BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

DIVISION OF CONSUMER AND COMMUNITY AFFAIRS

CA 20-9

May 21, 2020

TO THE OFFICERS AND MANAGERS IN CHARGE OF CONSUMER AFFAIRS SECTIONS AND TO FINANCIAL INSTITUTIONS SUPERVISED BY THE FEDERAL RESERVE:

SUBJECT: Investments in Areas with Elevated Poverty and Public Welfare Investments

Applicability to Community Banking Organizations: This guidance applies to all institutions supervised by the Federal Reserve, including those with total consolidated assets of $10 billion or less.

The Board of Governors of the Federal Reserve System is issuing this letter to inform state member banks ("SMBs") of a recent determination made under the Public Welfare Investment ("PWI") provision of the Federal Reserve Act ("FRA") that certain investments in "elevated poverty areas," as defined below, qualify as investments in low- or moderate-income areas ("LMI areas").

The PWI provision at section 9(23) of the FRA[1] authorizes SMBs to make investments "directly or indirectly, each of which is designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families, to the extent permissible under state law." The Board's Regulation H establishes procedures for public welfare investments by SMBs.[2] Under Regulation H, investments meeting certain criteria, including investments that the

[1] 12 U.S.C. § 338a.

[2] See 12 CFR 208.22.

Board has determined are designed primarily to promote the public welfare, may be eligible for post notice procedures.[3]

Among the investments that may be eligible for post notice procedures are certain investments in "LMI areas." Regulation H defines "LMI area" as one or more census tracts where the median family income in each tract is less than 80 percent of the median family income of the relevant Metropolitan Statistical Area ("MSA") or state, as appropriate. Because this definition is based on relative income, areas with a high absolute poverty rate are sometimes not considered LMI areas because they are located in an MSA or state in which median incomes are low in general. In such an MSA or state, the median income of an area with a high absolute poverty rate may not be significantly less than the generally low median income of the MSA or state as a whole.

The Board recently considered investments in areas in which the poverty rate is 20 percent or more ("elevated poverty areas").[4] Unlike the Regulation H definition of "LMI area," the definition of "elevated poverty area" is not based on income relative to the MSA or state in which the area is located. In order to promote the welfare of low- and moderate-income communities and families, the Board has determined that certain investments in elevated poverty areas are "designed primarily to promote the public welfare" within the meaning of section 9(23) of the FRA. Specifically, the Board has determined that an investment in an entity whose activities would satisfy section 208.22(b)(1) of the Board's Regulation H[5] ("eligible investments") if an elevated poverty area were considered to be an LMI area meets this standard. Thus, an investment in an entity that conducts activities in an elevated poverty area would be a permissible public welfare investment if an investment in an entity that conducts those same activities in an LMI area would be a permissible public welfare investment. As a result, SMBs are authorized to make investments in such entities under section 9(23) of the FRA, and may also be eligible for the Regulation H post-notice procedure, as long as those investments comply with all other applicable statutory and regulatory criteria.[6]

Reserve Banks are asked to distribute this letter to supervised institutions in their districts, appropriate supervisory staff, staff engaged in community affairs and outreach, and community development stakeholders in their districts. If you have any questions, please contact Alison Thro, Deputy Associate General Counsel, at (202) 452-3236, David Alexander, Senior Counsel, at (202) 452-2877, or Marysol McGee, Senior Community Development Analyst, at (202) 452-3131. In addition, questions regarding this letter may be sent via the Board's public website.[7]

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[3] An SMB that makes an investment that qualifies for the post notice procedures is required to submit to the appropriate Reserve Bank a notice of the investment not more than 30 calendar days after making the investment.

[4] In other words, within the census tract (or a group of contiguous census tracts), 20 percent or more of the population lives below the federally defined poverty level.

[5] 12 CFR 208.22.

[6] See additional requirements in 12 CFR 208.22(b) including requirements related to state law, capitalization, and supervisory ratings.

[7] See http://www.federalreserve.gov/apps/contactus/feedback.aspx.

Sincerely,

Suzanne Killian
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Division of Consumer and Community Affairs