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August 8, 2022

VIA EMAIL

Chief Counsel's Office
Attention: Comment Processing, Office of the Comptroller of the Currency
400 7th Street SW, Suit 3E-218
Washington, DC 20219

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

James P. Sheesley
Assistant Executive Secretary
Attention: Comments RIN 3064-AF81
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Community Reinvestment Act (Docket No. R-1769; RIN 7100-AG29) – Response to Question 13

To Whom It May Concern:

Mayer Brown LLP represents Kickstart Capital, LLC ("Kickstart") and University Growth Fund Management, LLC ("UGF" and, together with Kickstart, each, a "Sponsor"). The Sponsors have requested that we assist them in responding to the Notice of Proposed Rulemaking (the "NPR") issued by the Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System (the "FRB"), and the Federal Deposit Insurance Corporation (the "FDIC" and, together with the OCC and the FRB, the "Agencies") to revise the Agencies' Community Reinvestment Act ("CRA") regulations.[1] As discussed below, the Sponsors have submitted their own responses to previous CRA proposed rulemakings, and have now retained this firm to assist them in responding to the NPR in the context of relevant regulatory history and other legal considerations, which we believe all support Kickstart's and UGF's strong opposition to the NPR's elimination of several activities that currently qualify for CRA credit as "economic development"[2] as discussed in more detail in this letter.

[1] Community Reinvestment Act Notice of Proposed Rulemaking, 87 Fed. Reg. 33,884 (June 3, 2022).
[2] The current definition of "community development" includes: (1) affordable housing (including multifamily rental housing) for low- or moderate-income individuals; (2) community services targeted to low- or moderate-income individuals; (3) activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross

Specifically, in response to the first part of the NPR's Question 13,[3] UGF and Kickstart strongly request that the Agencies retain the "jobs" provisions of the current "purpose" test[4] for non-SBIC financial intermediaries, but not just for low- or moderate-income ("LMI") persons. The Funds specifically request that the Agencies continue to give CRA credit to banks that finance, either directly or through an intermediary, businesses or farms that

(1) have gross annual revenues over $5 million, but that meet the size eligibility standards of the Small Business Administration's ("SBA") Small Business Development Company ("SBDC") or Small Business Investment Company ("SBIC") programs, and

(2) support permanent job creation, retention, and/or improvement: (a) for LMI persons; (b) in LMI geographies; or (c) in areas targeted for redevelopment by Federal, state, local or tribal governments.

This letter will: (i) provide relevant background of the Sponsors and their long track record of successfully documenting the "purpose" test; (ii) review the regulatory background of the "purpose" test (including the expansion of the "purpose" test in 2016) and the unfortunate use of the disparaging term "low-wage jobs;" and (iii) discuss some informative parallels between CRA's concept of "community development" and similar public welfare investment ("PWI") concepts laid out in statute and implementing regulations (the PWI statutes give banks legal authority to make investments "designed primarily to promote the public welfare, including the welfare of low- or moderate-income communities or families (such as by housing, services, or jobs)."[5]

I. UGF AND KICKSTART GENERAL BACKGROUND AND THEIR HISTORY OF SUCCESSFULLY DOCUMENTING THE "SIZE" AND "PURPOSE" TESTS

Our clients have a deep appreciation for the CRA, and for their bank investors. Kickstart and UGF each sponsor and manage community development venture capital funds (each, a "Fund") that are operated for the purposes of qualifying as CRA eligible investments for the banks that invest in the Sponsors. Kickstart currently manages seven Funds and UGF currently manages two Funds. Our attorneys have worked with Kickstart since the formation of its third Fund and have worked with UGF since its inception. The Sponsors have been created in partnership with banks that are willing, through their CRA programs, to innovate and create new kinds of community development venture capital funds to meet the requirements of the CRA program. Without those banks and their commitment to community

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annual revenues of $1 million or less; or (4) activities that revitalize or stabilize: (i) low- or moderate-income geographies; (ii) designated disaster areas; or (iii) distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, FDIC, and Office of the Comptroller of the Currency, based on - (A) Rates of poverty, unemployment, and population loss; or (B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals. (12 CFR § 345.12(g)(1)-(4).)

[3] The NPR's Question 13 consists of three subparts: *Should the agencies retain a separate component for job creation, retention, and improvement for low- and moderate-income individuals under the economic development definition? If so, should activities conducted with businesses or farms of any size and that create or retain jobs for low- or moderate-income individuals be considered? Are there criteria that can be included to demonstrate that the primary purpose of an activity is job creation, retention, or improvement for low- or moderate-income individuals and that ensure activities are not qualified simply because they offer low wage jobs?* 87 Fed. Reg. at 33,900.

[4] *See* Interagency Questions & Answers Regarding Community Reinvestment ("Interagency Q&A") at Section ___.12(g)(3)—1.

[5] *See* 12 U.S.C. §338a (applying to State member banks of the Federal Reserve System), and 12 U.S.C. §24 (Eleventh) (applying to national banking associations), collectively, the "PWI Statutes".

development, the Sponsors would not have succeeded on the scale that they have, or produced such extensive and impactful community development results.

Since their inception, the Kickstart Funds and the UGF Funds have always qualified for CRA credit for their bank investors, based on their "promotion of economic development" and documented compliance with the "size" and "purpose" tests. Also, bank investors in UGF's predecessor – University Opportunity Fund, LLC ("UOF") – launched in 2004, always received CRA credit for their investments in UOF. Notably, during 2004, UOF worked closely with two bank lead investors and officials in the Salt Lake, San Francisco and Washington, D.C. offices of the FDIC regarding how to sufficiently document the "size" and "purpose" tests, and with the FDIC's specific guidance developed the attached documentation framework for each investment made (see Attachment 1 hereto). The Sponsors have continued to use this template (along with annual job data updates), which has been accepted by CRA examiners since the first UOF bank investor was examined in 2005.

The NPR preamble describes some stakeholders reporting difficulty in documenting the jobs aspect of the "purpose" test,[6] but curiously there is no reference to the many previous public comments from stakeholders asserting that they or their members were able to document the "purpose" test to the satisfaction of CRA Examiners. For example, both UGF and Kickstart submitted comment letters (see Attachment 2 and Attachment 3 hereto) in response the OCC's and FDIC's joint notice on December 12, 2019[7] (the "2019 NPR") that proposed to delete the entire jobs prong of the purpose test "because *the agencies could not identify an objective method for demonstrating job creation, retention, or improvement for LMI individuals or census tracts or other targeted geographies*, other than by determining if the activity would create additional low-wage jobs."[8] There were also letters from some large industry trade associations stating that members had reported success in documenting the jobs part of the "purpose test."[9]

UGF and Kickstart again submitted comment letters (see Attachment 4 and Attachment 5 hereto) in response to the Federal Reserve's 2020 Advance Notice of Proposed Rulemaking ("2020 ANPR").[10] Notably, in response to Question 58's request for feedback regarding "clearer standards for economic development activities to 'demonstrate LMI job creation, retention, and/or improvement,'" both UGF and Kickstart again described their successful record of demonstrating the jobs component to the satisfaction of numerous sets of CRA examiners over several years (all based on the original regulatory guidance described above) and even offered to share the template and methodology and to assist in the creation of an optional template to assist banks in collecting the requisite data.

Also missing from the preambles of the 2019 Proposal, the 2020 ANPR, and the current NPR is the fact that in 2016[11] the Agencies acknowledged commenters' feedback that the "purpose" test could be difficult to document, and after, in regard to that precise issue, announced a significant clarification about examiner flexibility:

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[6] *See* 87 Fed. Reg. at 33,898 – 33,899.
[7] Community Reinvestment Act Notice of Proposed Rulemaking. 85 Fed. Reg. 1,204 (January 9, 2020).
[8] *See* 85 Fed. Reg. at 1,213 (emphasis added).
[9] *See, e.g.,* April 2020 public comment letters from American Bankers Association (at pp. 51-52), Utah Bankers Association and National Association of Industrial Banks (at pp. 3-5), and Small Business Investors Alliance (at. pp.2-3).
[10] Community Reinvestment Act Advance Notice of Proposed Rulemaking, 85 Fed. Reg. 66,410 (Oct. 19, 2020).
[11] Community Reinvestment Act Interagency Questions and Answers Regarding CRA, 81 Fed. Reg. 48,506 (July 25, 2016).

> *First, the agencies recognize that financial institutions may rely on a variety of methods to demonstrate that activities promote economic development. To make clear that financial institutions may provide various types of information to demonstrate that an activity meets the purpose test, the Agencies have added a statement in the final Q&A clarifying that* ***examiners will employ appropriate flexibility in reviewing any information provided by a financial institution that reasonably demonstrates that the purposes, mandate, or functions of an activity meets the purpose test*** (bolding added).[12]

The Agencies' instruction regarding examiner flexibility and the "reasonably demonstrates" standard was incorporated as part of the 2016 revisions to the Interagency Q&A ("2016 Q&A Revisions"):

> "*[e]xaminers will employ appropriate flexibility in reviewing any information provided by a financial institution that reasonably demonstrates that the purpose, mandate, or function of the activity meets the "purpose test."*"[13]

This guidance documents the Agencies' continuing support for "jobs" remaining part of the "purpose" test, so it was surprising that a mere three years later the preamble to the 2019 NPR contained no discussion of the Agencies' 2016 clear emphasis on examiner flexibility and the "reasonably demonstrates" standard for documents submitted by banks to demonstrate compliance with the "purpose" test. It is also concerning the current NPR contains no mention of the 2016 Q&A Revisions and no discussion of any policy basis to support such an abrupt reversal of position.

Based on all of the above, including the Funds' successful documentation of the "purpose" test that has been accepted by CRA examiners for many years, UGF and Kickstart respond to the third part of the NPR's Question 13 regarding "criteria that could be included to demonstrate that the primary purpose of an activity is job creation, retention, or improvement for LMI individuals" as follows:

- the Agencies should retain their 2016 guidance that examiners exercise flexibility regarding bank documentation of the "purpose" test,

- the Agencies should retain their 2016 "reasonably demonstrates" standard for documentation of the "purpose" test, and

- if the Agencies now desire a more "objective demonstration" of job creation, retention, and/or improvement, they should consider providing an optional template that could assist banks in documenting the "purpose" test (UGF and Kickstart remain willing to work with the Agencies in this regard).

II. UGF AND KICKSTART CONCERNS REGARDING PROPOSED ELIMINATION OF THE "PURPOSE" TEST DUE TO LACK OF DEMONSTARTING SOMETHING OTHER THAN "LOW-WAGE JOB" CREATION

UGF and Kickstart are also concerned about the NPR's seemingly dismissive attitude towards jobs for LMI persons as reflected in Question 13's request for feedback regarding any criteria that could

[12] *See* 81 Fed. Reg. at 48,508 (highlighted portions of which are included at Attachment 6 hereto).
[13] *See* Interagency Q&A at Section ___.12(g)(3)—1.

be included "that ensure activities are not qualified simply because they offer low-wage jobs".[14] This disparaging reference to low-wage jobs echoes a similar statement in the 2019 NPR preamble given as the reason to eliminate the "purpose" test because the Agencies could not identify an objective method for demonstrating job creation, retention, or improvement *other than by determining if the activity would create additional low-wage jobs*.[15] These statements are based on the incorrect assumption that all jobs held by LMI persons are "low-wage," and also seem to reflect that jobs for LMI persons are no longer important enough to continue to qualify for CRA credit as part of the "promotion of economic development," both of which UGF and Kickstart strongly disagree with. The statements also contradict the 2016 expansion of the "purpose" test. Both of these points are discussed further below.

A. Not All LMI Jobs Are "Low-Wage": UGF's and Kickstart's comment letters (Attachment 2 and Attachment 3 hereto) addressed the 2019 NPR's use of the term "low-wage jobs." The Sponsors' letters set forth strong policy arguments regarding the mistaken equation of *all* LMI (which definition includes up to 80% of AMI) jobs as being nothing more than "low-wage jobs." Other comment letters also emphasized the importance of jobs for LMI persons, a few of which are summarized below:

> American Bankers Association (ABA): *The proposed rule, however, "does not include the more general aspect of economic development that involved a bank having to demonstrate that its activities that finance businesses or farms that met the size test to support job creation, retention, and improvement for LMI individuals, LMI census tracts, and other areas targeted for redevelopment by Federal, state, local, or tribal governments." The agencies did not articulate a legal or policy reason for excluding these aspects of economic development…. Financing small businesses that create/retain jobs is an essential component of a bank's reinvestment in the community, and there is no sound policy reason for removing that as an activity for which banks can receive CRA credit. Furthermore, several banks invest in innovative non-SBIC equity funds that finance small businesses that meet the meet the "size" and "purpose" tests outlined in the Q&A. All three agencies have received extensive documentation over the past 15 years and have given CRA credit for investing in these funds* (ABA Comment Letter to FDIC and OCC dated April 8, 2020, at pp. 51-52).

> National Association of Affordable Housing Lenders (NAAHL): *While retaining certain specific economic development activities, the NPR removes more general LMI job creation and retention activities because the Agencies cannot provide a workable definition other than providing "low wage jobs." We urge the Agencies to reconsider this dismissive decision. The Brookings Institution has found that "53 million Americans between the ages of 18 to 64—accounting for 44% of all workers—qualify as 'low-wage.' Their median hourly wages are \$10.22, and median annual earnings are about \$18,000."4 While it may be unfortunate that low-wage work is so widespread in the U.S., these jobs are critically important to LMI people and communities. Moreover, there is considerable room to include LMI jobs that pay substantially higher wages, based on 80 percent of the U.S. median household income of \$61,937 in 2018. In our members' experience, the current CRA policy has indeed proven workable and should be retained* (footnotes omitted) (NAAHL Comment Letter to OCC and FDIC dated April 7, 2020 at pp. 8-9).

> U.S. Chamber of Commerce: *We believe that this decision not to include the more general aspect of economic development was a mistake.*

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[14] *See* 87 Fed. Reg. at 33900.
[15] *See* 85 Fed. Reg. at 1,213 (emphasis added).

> *First, "creat[ion] of additional low-wage jobs" is an appropriate goal of CRA activities. Indeed, the Interagency Q&A for CRA has long indicated that supporting "job creation, retention, and/or improvement" for "low- or moderate-income (LMI) persons," is a valuable outcome of CRA activities.[16] In addition, not all LMI jobs are "low-wage." In fact, LMI can be up to 80% of Area Median Income, so in a county with $80,000 AMI,[17] an LMI job could be up to $64,000, which would not typically be characterized as "low-wage." In fact, millions of important jobs fall into that category, including many of our teachers and law enforcement personnel. In addition to jobs for LMI persons, the Interagency Q&A for CRA currently lists four additional types of job creation, retention, and/or improvement that all qualify for CRA credit and that are not limited to "low-wage jobs"[18] (some of which were added in the July 2016 expansion of Section ___.12(g)(3)-(1) of the Interagency Q&A on CRA[19]). Because of the critical importance that small businesses and job creation play in economic development in this country (especially in times of wide-spread economic distress such as the United States is currently experiencing), and based on the important policy considerations emphasized by the Agencies in the 2016 Revision to the Interagency Q&A,[20] all of the activities currently listed in the Interagency Q&A Section ____.12(g)(3)-(1) as "promoting economic development" should be retained or even expanded (*footnotes omitted)(U.S. Chamber of Commerce Comment Letter to OCC and FDIC 4-8-2020 at pp. 8-9).

The final rule issued solely by the OCC in June 2020[16] reinstated the purpose test elements "to correct the inadvertent exclusion of certain activities that qualify under the current framework" and mentioned University Growth Fund by name[17] but contained no mention of stakeholder feedback regarding "low-wage" jobs or the feedback noting that several banks had been submitting acceptable documentation of the "purpose" test for many years. We note that the 2020 ANPR discussion of LMI job creation, retention, and/or improvement contain no mention of "low-wage jobs."

Also worth noting is that the phrase "low-wage jobs" as cited in the preambles to both the 2019 NPR and the current NPR seems to relate back to 2014, when the Agencies used that term in their explanation of why they were proposing to eliminate the word "currently" from the Interagency Q&A's then-current guidance:

> "*[t]he Agencies propose to revise the statements that activities promote economic development if they 'support job creation, retention, and/or improvement for persons who are currently low-moderate-income' by removing the word 'currently.' The Agencies believed that, as currently drafted, the statement may unnecessarily focus bank community development activities on supporting low-wage jobs."*[18]

In finalizing the 2016 Q&A Revision, the Agencies in the preamble summarized some comments regarding "low-wage jobs,"[19] but did not make it clear that commenters were responding to the Agencies' initial use of that term. It is important to understand that distinction in putting these stakeholder comments into proper context.

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[16] OCC Final Rule 85 Fed Reg 34,734 (June 5, 2020) at 34,739.
[17] *See* 85 Fed. Reg. .at 34,739.
[18] Community Reinvestment Act Notice and Request for Comment Regarding Interagency Questions and Answers Regarding CRA, 79 Fed. Reg. 53,838 (September 10, 2014), highlighted portions of which are included at Attachment 7 hereto.
[19] *See* 81 Fed. Reg. at 48,508.

B. Jobs For LMI Persons Are Only One of Five Current Categories for Job Creation, Retention, and/or Improvement: The deletion of the jobs component of the "purpose" test as proposed by both the 2019 NPR and the current NPR seems to be based on the seeming desire to have banks demonstrate something other than the creation of "low-wage jobs." As established above, the definition of LMI includes up to 80% of AMI and clearly includes jobs that cannot be categorized as just "low-wage jobs."

Additionally, the 2019 NPR and the current NPR do not acknowledge that in 2016 the Agencies specifically *expanded* the jobs component of the "purpose" test to include two additional categories: by financing of intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms; and through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance.[20] In adding the new categories, the Agencies emphasized as follows:

> *"The Agencies note that only one of the examples in the final Q&A explicitly refers to permanent job creation, retention, and/or improvement for low- or moderate-income persons"*[21] (emphasis added).

The 2016 Q&A Revisions also addressed the issue of whether the Q&A should include a reference to "quality of jobs," but the Agencies declined to do so, explaining as follows:

> *"Several community organization commenters, as well as a state bank supervisory agency commenter, suggested the Q&A should also include a reference to the 'quality of jobs' created, retained, or improved. Industry commenters, however, opposed a 'quality of jobs standard,' expressing concerns related to increased subjectivity by examiners and the Agencies and documentation burden on institutions, small businesses or small farms, and examiners. The Agencies recognize the term 'quality' is subjective, not easily defined, and heavily influenced by local economic conditions, needs, and opportunities. The amount of time, resources, and expertise needed to fairly evaluate the quality of jobs created, retained, and/or improved for low- or moderate-income individuals could be overly burdensome for examiners, financial institutions, and small businesses or small farms."* [22]

The Agencies made it clear that they declined to add some kind of "quality of jobs" standard that would perhaps distinguish among various job levels by wage amount or benefits offered.

III. "COMMUNITY DEVELOPMENT" HAS INFORMATIVE PARALLELS WITH PUBLIC WELFARE CONCEPTS REGARDING ECONOMIC DEVELOPMENT AND JOBS

Portions of CRA regulations regarding community development appear to be markedly similar to key concepts laid out in PWI Statutes, including PWI requirements that investments must be designed "primarily" to promote the public welfare, including the welfare of low- or moderate-income communities or families (such as by providing housing, services, or jobs). Those provisions are closely mirrored in the CRA regulatory community development provisions regarding "primary" purpose, the emphasis on benefit to LMI areas or people, and the first three categories of the definition of community

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[20] *Id.*
[21] *Id.*
[22] *Id.*

development: affordable housing for LMI individuals, community services targeted to LMI individuals, and promotion of economic development by financing small businesses as demonstrated through job creation, retention, and/or improvement.[23]

The OCC and FRB promulgated regulations to implement the PWI Statutes,[24] both of which contain provisions regarding jobs and economic development.[25] During the several decades that the PWI Statutes and PWI Regulations have been in effect, the OCC and FRB have approved numerous investments in entities based on the creation or retention of jobs, yet there has not been any successful move to delete the jobs component from either the PWI Statutes or the PWI Regulations. Accordingly, because of the strong emphasis on jobs at both the statutory and regulatory levels, there would not appear to be any valid policy reason for the Agencies to eliminate the jobs component from the CRA regulatory provisions regarding "promotion of economic development" and the "purpose" test.

IV. CONCLUSION

In summary, for all of the considerations discussed in this letter, the Agencies should retain the jobs component of the "purpose" test and continue to give CRA credit to banks that finance, either directly or through a non-SBIC intermediary, businesses or farms that:

(1) have gross annual revenues over $5 million, but that meet the size eligibility standards of the SBDC or SBIC programs, and

(2) support permanent job creation, retention, and/or improvement: (a) for LMI persons; (b) in LMI geographies; or (c) in areas targeted for redevelopment by Federal, state, local or tribal governments.

Doing so will continue to support innovation that positively impacts a wide variety of stakeholders including individual consumers, businesses, banks, social programs, healthcare systems, and so on. This means significant job creation, revenue generation, continued increase in the hiring of LMI employees and subsequent graduation from the LMI thresholds, and economic growth. Kickstart and UGF would be happy to provide any additional information helpful to the Agencies or to meet in person to discuss their concerns.

Sincerely,

Jim Kelly

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[23] *See* 12 CFR §§345.12(g)(1)-(4), (h)(1), (i)(1), and (t)(1).
[24] *See* 12 CFR Part 24 (OCC) and 12 CFR §208.22(FRB), collectively "PWI Regulations."
[25] *See* 12 CFR §§24.3 and 24.6(b)(1) – (4), and 12 CFR §208.22(b)(1)(iv)(C) and (E).

ATTACHMENT 1

UGF's Framework for Demonstrating LMI Job Creation, Retention, and/or Improvement

We understand that some stakeholders have expressed concern that it can be difficult to demonstrate that an activity meets both the size and purpose test. However, for the past 17+ years UGF has consistently been able to demonstrate impact on LMI individuals, LMI communities, and small businesses through job creation, business location, and business model (financing or providing support to other small businesses). Through development with the FDIC, UGF created the following framework which we use to evaluate potential CRA qualification of our investment opportunities:

1. "SIZE TEST" The company must meet one of the following two regulatory standards for size:
    a. Does this company meet the size eligibility standards of the SBA's Development Company or SBIC programs (13 CFR 121.301):
        i. Does the company have tangible net worth of less than $19.5 million and average of $6.5 million in net income over the previous two years? Yes/No
        ii. Is the company a "smaller" business by having lower annual revenues or a lesser employee count than allowed for the applicable NAICS code? Yes/No

            (Report the Revenue or Employee Limit for the NAICS code. Note: For purposes of determining the financial data of the potential investment company, all affiliated entities (i.e. entities with common ownership) need to be included in the calculation. Please list and attach source for verification (e.g., income statement, financials, etc.).

    -OR-

    b. Does this company have gross annual revenues of $1 million or less? Yes/No

2. "PURPOSE TEST" (FFIEC Interagency Questions and Answers regarding the CRA (12 CFR §228.12(g)(3) – 1A.). Would an investment in the company promote economic development by:
    a. supporting permanent job creation, job retention, and/or improvement for low- or moderate-income ("LMI") persons:
        i. What is the area median income ("AMI") [MSA] where the company is located?
        ii. Of the company's current employees, how many are currently low- or moderate-income (less than 80% of AMI)?
        iii. How many new LMI employees are anticipated to be hired?

    -OR-

    b. supporting permanent job creation, job retention, and/or improvement in:
        i. low- or moderate income geographies (is the company located in a low- or moderate-income geography?) Yes/No; Report Tract income level
    c. supporting companies in areas targeted for redevelopment by Federal, state, local or tribal governments? Yes/No. Provide supporting documentation
3. Based on the answers to the above questions, does this investment meet both the "Size" and "Purpose" tests? Yes/No

We gather this information at time of investment, then track total job creation and LMI job creation annually to demonstrate impact over time. In addition, we look for small businesses that are having additional LMI impact outside of these metrics. This might include a small business that provides financial support and education to LMI individuals or underserved populations or a small business that leverages their technology to connect small farms directly to small restaurants to improve margins for both parties. Most of our portfolio companies have multiple levels of impact on LMI individuals.

ATTACHMENT 2

Via Electronic Mail April 8, 2020

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Re: Community Reinvestment Act Regulations (Docket ID OCC-2018-0008; RIN 1557-AE34; RIN 3064-AF22)

Ladies and Gentlemen:

We are managing partners of the University Growth Fund I ("UGF" or "Fund"), an innovative $32 million student-run community development venture capital fund. UGF finances small businesses while also giving low- and moderate-income ("LMI") student associates an unparalleled, real-world experience in venture capital investing. We were also managing partners of UGF's predecessor fund, the University Opportunity Fund ("UOF"), an $18M venture capital fund that operated in the same way as UGF.

To begin, we want to express our deep appreciation for CRA, and for the many banks that made investments in both UGF and UOF through their bank CRA programs. Both UGF and UOF were created primarily due to the willingness of federally insured banks to innovate and create a new kind of fund as part of their CRA programs by collaborating with venture capitalists and students. Although both funds were innovative and impactful, they did not have the extensive track record usually required by institutional investors such as banks. Without those banks and their commitment to community development and student education, we do not think that these funds would have succeeded on the scale that they have, or produced the amazingly impactful community development story that we want to share briefly in this letter.

It is from this perspective that we provide our comments on the joint proposal by the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation ("Agencies") to revise their Community Reinvestment Act ("CRA") regulations ("Proposal).

Specifically, UGF is deeply concerned about the Proposal's intended deletion of the following list of qualifying activities that give banks CRA credit for "promoting economic development by financing small businesses." These activities are considered to promote economic development if they support:

- permanent job creation, retention, and/or improvement
  - for low- or moderate-income persons;
  - in low- or moderate-income geographies;
  - in areas targeted for redevelopment by Federal, state, local, or tribal governments;
  - by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms; or
  - through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance; or

- Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate- income persons to jobs or to job training or workforce development programs."[1]"

These provisions – which are being removed by the Proposal – are vital to UGF's continued CRA qualification for its bank investors, which in turn is critical to UGF's continued ability to operate, raise additional capital, and have a positive impact not only on communities generally, but also on students and thousands of others (including employees of the small businesses in which UGF invests) through job creation, retention, and/or improvement.

The only reasoning we could find for this deletion was that the Agencies "could not identify an objective method for demonstrating job creation, retention, or improvement for LMI individuals or census tracts or other targeted geographies, other than by determining if the activity would create additional low-wage jobs."[2] This is concerning on several fronts. First, it relates to only one of the five previously mentioned categories of job creation. Second, it doesn't consider the extensive work UGF has done with examiners from the three Agencies to create a framework that objectively measures the impact on job creation, retention and improvement. A framework, that when paired with the extensive data collection UGF provides, has resulted in every bank investor in UGF receiving full CRA credit from examiners for their investment. Lastly, we respectfully suggest that the creation and expansion of low- and moderate-income jobs, particularly in today's environment, is something worth supporting and promoting. Most individuals employed where UGF invests have opportunities to grow their income and move into middle- and upper-income brackets. In most cases they receive equity grants that also help to move them up the income ladder. Accordingly, we implore the Agencies to retain all of the categories of "promotion of economic development" currently listed in the CRA Interagency Q&A.

CRA Background of UOF and UGF

As explained above, UGF is a student-run venture capital fund created to give back to the community on several different levels. From inception, the creators of both UGF and UOF worked with banks and their federal banking regulators, especially the FDIC, to ensure the funds would benefit LMI individuals and communities by promoting economic development and therefore qualify for CRA credit by satisfying both the "size test" and the "purpose" test established by the CRA Interagency Q&A.[3] The funds received the FDIC's feedback on the appropriate data and documentation that would confirm CRA qualification for the bank investors. Under the applicable CRA qualification requirements and based on the extensive job data documentation provided by the funds, the banks rightly received CRA credit for their investments in UOF and later UGF (at both the fund level and also at the portfolio company level). During our time managing UOF, all of our bank investors received CRA credit for their investments based on the documentation we provided, and one bank received especially positive comments from their regulators (see highlighted portions of Attachments A, B and C).

After running UOF for many years, we launched UGF in late 2014 as a successor fund to UOF. Again, our bank investors confirmed the CRA qualification of the fund with their CRA regulators before they invested. In total, five banks invested a total of $22.5 million in UGF, and every bank's investment has qualified for CRA. One of our bank's regulators made special note of UGF (see highlighted portions of Attachment D).

[1] Interagency Questions & Answers Regarding Community Reinvestment ("CRA Interagency Q&A"), Section ___.12(g)(3)– 1.

[2] 85 Fed. Reg. 1,204 and 1,213 (Jan. 9, 2020).

[3] CRA Interagency Q&A"), Section ___.12(g)(3)– 1.

In summary, CRA has always been at the very core of both UOF and UGF for over 15 years. During that time, UOF and UGF provided its bank investors with comprehensive job data for the small businesses in which the funds invested, and the respective bank regulators from all three regulators (FDIC, OCC and the Federal Reserve) have universally accepted that documentation as satisfying the CRA requirement for showing "economic development." Thus, the Proposal's elimination of those very provisions was *extremely disappointing* and was especially surprising coming from the FDIC, because the FDIC was so closely involved in establishing the correct job data documentation in 2004 as the "objective measure" of an investment that "promoted economic development" (the "purpose" test) and in consistently giving CRA credit to our many bank investors regulated by the FDIC.

How the Fund Operates and Helps Banks Give Back by Financing Small Businesses

The Fund currently has two full-time professional partners who ensure continuity and regulatory compliance, but the rest of the investing activities are primarily led and carried out by the student associates (there are typically between 20-40 student associates working with UGF at any given time). Student associates involved in the Fund receive a first-class education with unique hands-on experience investing real money into real companies with real employees. Not only does UGF provide unparalleled opportunities to learn first-hand about performing due diligence and analyzing companies in order to make wise venture capital and private equity investments, but UGF also allows students to witness the power and impact such investments have on themselves and others. In addition to the incredible hands-on experience with live deals, students also receive robust training from the partners (and other students) and an outstanding financial education. By the time a student completes four semesters with UGF, they have all the skills and training necessary to perform each part of an investment analysis, as well as improved analytical, writing, presentation, communication, and leadership skills. All of this comes together to set UGF's students up for success, resulting in the outcomes described below.

Job Creation, Retention, and/or Improvement at the Student Associate Level

In addition to the "job creation, retention, and/or improvement" by the small businesses in which UGF invests (discussed below), UGF also provides job creation and improvement *for its student associates*:

- Approximately 96% of UGF students are LMI individuals with an average annual income of $21,488 and 100% of them obtain jobs upon completion of the UGF program.
- After graduating from UGF, students have an average annual income of $98,617, an average increase of 508% (this reflects a 72% income premium compared to students at the same schools who do not go through the UGF program).
- UGF alumni also continue to benefit from the UGF program years later due to the superior career trajectory that they start on, often out-competing other job applicants from more privileged backgrounds.
- Without UGF, many students (especially those who come from challenging or underprivileged backgrounds) might not be able to access the same opportunities to improve their life and economic potential. UGF's ability to change an LMI student's trajectory by offering unique professional opportunities and increased income is unparalleled.

Since UGF launched in 2014, over 180 student associates have participated in the UGF program. Also, an additional 400+ participated in the UOF prior to UGF. We believe our program is so effective because our bank investors, through CRA, have provided tens of millions of dollars that make the fund *real* for students: the students invest using *real* money from *real* investors (to whom the students feel accountable) to make investments in *real* small businesses that create jobs for *real* people – all of which combine to give our students an educational and work experience that they could not have obtained anywhere else. In fact, it is hard to imagine a more effective "workforce development" program.

Another critical part of the student education is a keen awareness of the social impact of helping LMI persons and areas. Student associates understand the community development impact of UGF's investments by tracking job creation for LMI individuals/areas and ensuring that the majority of the Fund's deployed capital helps positively impact LMI individuals/areas.

<u>Job Creation, Retention, and/or Improvement at the Small Business/Portfolio Company Level</u>

The 30+ small businesses in which UGF invested have job creation, retention, and/or improvement of over 4,500 individuals. We would like to share the details of just a few of these small businesses that had significant impact on job creation for LMI individuals (comprehensive data on all of our portfolio companies has been provided previously to the OCC, FDIC, and also Federal Reserve in conjunction with the CRA examinations of our bank investors, but contains confidential information that cannot be attached to this letter that becomes "public" when we file it):

- Company A, for instance, is a compelling community development investment in many ways. Over 78% of Company A's 167 employees are LMI and assist with warehouse operations, packaging, deliveries, etc. In addition, Company A only expects this number to grow over time as it expands to new markets and sets up new warehouses in those markets. Company A also supports other small businesses, connecting over 200 farms directly to over 1,300 businesses and consumers. This enables farmers to make more money from their produce, and small businesses like restaurants, to save money on food costs (which enables them to expand and hire more staff).

- Company B is another compelling community development investment by virtue of its direct impact on LMI communities and individuals**.** At the time of our investment over 51% of Company B's employees qualified as LMI by making less than $74,320. Since the percentage was very close to 51%, the company also agreed to sign a side letter that our entire investment would be used to retain or promote those employees, which the company did until they went public and UGF exited the investment.

- Company C is a community development investment that is impactful both directly and indirectly. At the time UGF invested in this company, Company C only had three employees and all three qualified as LMI. As the business grew, those wages were improved, moving them above the LMI threshold. In addition, the company was founded in a moderate-income area. Company C's technology helps its customers, many of which are LMI individuals, save thousands of dollars on immigration attorney's fees.

<u>How the Proposal Could Severely Damage UGF's Ability to Maintain its Community Development Impact</u>

If the OCC and FDIC do not retain the current "economic development by financing small businesses" provisions in any final new CRA regulation, our bank investors would no longer be able to invest in UGF and foster innovation to create better economic outcomes for LMI individuals and communities. As a result, UGF and any successor funds would likely not be able to raise sufficient funds to cover operating expenses and investment projects for students.

Furthermore, not only will the change pull critical financial support from UGF, but it will also stifle innovation in job creation and community investment by only giving CRA qualification to banks that invest in funds certified as an SBIC, or similar Small Business Association (SBA) or government agency programs. Although UGF operates outside the jurisdiction of the SBA or a government agency, the Fund's FDIC-approved documentation method tracks job creation in ways that provide just as much (if not more) job information as the SBA forms. It is very expensive and time-consuming (of the 1-2 years) to obtain an SBIC license, especially with all of the widely publicized delays funds have experienced with the SBA over the last three years. All of these factors combined to make obtaining SBA certification extremely difficult for UGF and other innovative fund structures, and is not a realistic option for UGF.

Simply put, if the OCC and FDIC remove the "economic development" provision of the CRA regulations as currently proposed, the Agencies will stifle innovation and destroy an established and effective stream of "job creation, retention, and/or improvement." While UGF appreciates and agrees with the Proposal's stated intention to expand the list of qualifying activities and reduce ambiguity, the Proposal's deletion related to economic development *contradicts* that stated intention and does nothing to help individuals and organizations involved with the CRA. Removing the section and language as discussed in this letter only harms the very people the CRA was created to help.

We close by once again requesting the OCC and FDIC ***retain*** all of the activities listed as promoting economic development as currently set forth in the CRA Interagency Q&A section cited above, and to add all of the activities to the list of qualifying activities referenced in Section 25.05 (Qualifying Activities Confirmation and Illustrative List).

If you have any further questions, please contact us at (801) 410-5410.

Sincerely,

Tom Stringham
Managing Partner, UGF

Peter Harris
Managing Partner, UGF

List of Attachments:

- Attachment A: Morgan Stanley Bank 2006 CRA PE – pp. 12 and 14
- Attachment B: UBS Bank USA 2008 PE – FDIC pp. 14-15
- Attachment C: UBS Bank USA 2011 PE – FDIC pp. 11
- Attachment D: Ally Bank PE Report 2017 – FRB pp. 13-14

PUBLIC DISCLOSURE

January 30, 2006

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Morgan Stanley Bank
32992

2500 Lake Park Boulevard Suite 3C
West Valley, Utah 84120

Federal Deposit Insurance Corporation
20 Exchange Place, 4th Floor
New York, New York 10005

NOTE: **This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.**

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GENERAL INFORMATION

The Community Reinvestment Act (CRA) requires each federal financial supervisory agency to use its authority when examining financial institutions subject to its supervision, to assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. Upon conclusion of such examination, the agency must prepare a written evaluation of the institution's record of meeting the credit needs of its community. This document is an evaluation of the Community Reinvestment Act (CRA) performance of **Morgan Stanley Bank (MSB), West Valley, Utah,** prepared by the **Federal Deposit Insurance Corporation,** the institution's supervisory agency, as of **January 30, 2006.** The agency rates the CRA performance of an institution consistent with the provisions set forth in Appendix A to 12 CFR Part 345.

INSTITUTION'S CRA RATING: This institution is rated **Outstanding.**

The findings of this evaluation demonstrate that the bank continues to be highly proactive with regard to assessing the needs of its community and providing extensive resources and time in addressing those needs. During this assessment period the bank extended, funded, and committed nearly $59 million in qualified community development loans and investments. An important component of the banks performance is the investments from the previous period which increases the banks performance to over $68 million. This monetary involvement represents 1.5 percent of total average assets of the bank as of December 31, 2005. When affiliate activities are included, the total exceeds $78 million and represents about 1.75% of total average assets. Bank personnel and affiliates provided 5,052 qualified service hours to the respective communities.

Community Development Loans & Investments - Current Bank Activity

Investment / Entity	Investments/Loans Extended
2003 Investment Totals	5,410,604
2004 Investment Totals	17,854,943
2005-06 Investment Totals	13,848,945
2003 - 2006 Loan Totals	21,822,009
Total Current Period Loans & Investments for MSB	**58,936,501**

Outstanding Investments from Previous Period	9,146,223
Total Bank Activity	68,082,724
Affiliate Current Period Activity (not claimed by any other financial institution for CRA credit)	10,400,208
GRAND TOTALS	78,482,932

*2003 Reporting Period begins March 11, 2003
Total Assets as of 12/31/2005 - $8,677,843,000
Average Assets over the Evaluation Period - $4,667,114,000

Community Development Services

Service Hours Current Period	1,853
Affiliate Service Hours – Current Period (not claimed by any other financial institution for CRA credit)	3,199
GRAND TOTAL SERVICE HOURS	5,052

MSB CRA efforts are coordinated by a CRA officer. This officer is responsible for loan facilitation, investments, and grants origination and management; scheduling for CRA events; and coordination of bank CRA activities with its affiliates.

Service hours utilize the time and expertise of MSA and affiliate personnel and also include specialized projects such as the preparation of grants to nonprofit organizations, small businesses, and other low- and moderate-income individuals. Personnel also dedicated service hours on subjects ranging from financial literacy to essential services for low- and moderate-income students and adults; served on boards and committees working towards achievement of affordable/accessible housing, economic development, credit/legal education and numerous activities to enhance the development of the people and communities it serves.

There was no evidence of discriminatory practices or disparate treatment of borrowers identified at this evaluation.

DESCRIPTION OF INSTITUTION

Morgan Stanley Bank (MSB), formerly Morgan Stanley Dean Witter Bank, Inc., is a state-chartered industrial loan corporation (ILC), and operates out of a single office in West Valley City, a suburb of Salt Lake City, Utah, which is located in a moderate-income census tract. In November 2001, the ownership of MSB was transferred from NOVUS Credit Services, Inc. (NCSI) to Morgan Stanley Domestic Capital, Inc. (MSDCI). MSB is a wholly owned subsidiary of MSDCI. Both MSDCI and NCSI are wholly owned subsidiaries of Morgan Stanley Dean Witter, Inc. Affiliate entities also include Morgan Stanley Credit Servicing, Inc; Morgan Stanley International, Inc.; Discover Services Corporation; Bank of New Castle; Discover Bank; and Discover Financial Services, Inc.

Effective April 2001, the institution, formerly known as Morgan Stanley Dean Witter Bank (MSDWB), changed its name to Morgan Stanley Bank. MSDWB exited retail banking as of September 30, 2001. Its retail facility in Sandy, Utah was sold to a local commercial bank, and MSB relocated to West Valley City, Utah. MSB received its “Wholesale Institution” CRA designation from the FDIC on January 7, 2002. It had been designated a “Limited Purpose” institution since April 29, 1997.

The structure of the institution has changed significantly in the past few years because of its revised business plan. The institution does not extend home mortgage, small business, small farm, or consumer loans to retail customers. Beginning October 2001, the new business focus became “Senior Loans” (average size of $30 million) to major corporations, short-term warehouse loans to borrowers secured by specific assets, and purchased portfolios of mortgages on commercial and residential real estate loans. MSB anticipates extending credit to a maximum of its legal lending limits. Additionally, MSB will have no retail deposit operations. Until recently, funding for its lending activities comes primarily from brokered certificates of deposit, money market savings accounts, and NOW accounts. These deposit accounts had been purchased primarily from affiliates. Operations have changed so that the bank has one large NOW and one large MMDA account. Customers of the affiliate bank sweep funds into one of these two funds. Recordkeeping and transactions re now entered/completed by a computerized program maintained by an affiliate.

For CRA evaluation purposes MSB is evaluated as a limited purpose bank engaged in commercial lending that does not make loans to consumers. Therefore, given this restriction and the nature of the bank’s designation, CRA management has emphasized community development lending and investment activities. This classification permits an institution to be evaluated for CRA performance under any one of, or all of three community development tests: Services, Lending, and/or Investment.

All three areas were utilized in this evaluation. These tests evaluate the bank’s record of helping to meet community credit needs through qualified community development activities. The evaluation covered the period beginning March 11, 2003, and ending January 30, 2006.

MSB is headquartered in West Valley City, Utah and is a state-chartered Industrial Loan Corporation (ILC). The bank is within the Salt Lake City MSA Utah Metropolitan Statistical Area (MSA) #41620.

DESCRIPTION OF ASSESSMENT AREA

Demographics

Morgan Stanley Bank has defined its assessment area as Salt lake County (035) part of the Salt Lake City, Utah MSA #41620. This area is comprised of 193 contiguous census tracts including the cities of Salt Lake City, the largest city in the state. The Department of Housing and Urban Development (HUD) estimates the 2004 median family income (MFI) for the MSA at $61,550. The bank's assessment area is home to most of the major insured financial institutions in the state, including several regional banks, several credit unions, and many other ILCs. The following tables reflect the census tract income, population, and families' breakdown of Salt Lake County as determined by the 2000 US Census:

Salt Lake County Census Tract Characteristics

Census Tract Income	Number	%	Population	%	Families	%
Low Income Tracts	5	3	7,627	1	1,486	1
Moderate Income Tracts	43	22	211,552	23	46,752	22
Middle Income Tracts	90	47	438,603	49	107,901	50
Upper Income Tracts	55	28	240,605	27	59,725	27
Totals	**193**	**100.0**	**898,387**	**100.0**	**215,864**	**100.0**

Salt Lake County Income Demographics

Income Classification	Families	%
Low-Income	36,682	17
Moderate-Income	43,009	20
Middle-Income	53,639	25
Upper-Income	82,534	38
Total	**215,864**	**100.0**

The preceding two tables show that 23 percent of all 2004 families in Salt Lake County resided in low- and moderate-income census tracts, and 37 percent of all families had low- and moderate-incomes. Forty-five percent (898,387 people) of the states 2.2 million population reside in Salt Lake County.

Salt Lake City is the largest city in the state and in Salt Lake City MSA. The area continues to grow and offer many new jobs. The transportation, warehouse, and utilities sector exhibited the strongest growth over the past year, expanding by 6%. Growth in this sector was boosted by staff additions at Delta although these jobs could quickly be eliminated given the carrier's financial woes. The professional and business services sector added the most new jobs through September totaling 5,804, and this sector will continue to provide the bulk of new jobs over the next five years. Total employment growth in Salt Lake City is expected to be above average over the forecast, growing at an annual average of nearly 2%, and all sectors are expected to outperform the U.S. Average.

The annual change in employment over the last 10 years is more volatile in Salt Lake City compared with the U.S. average and is expected to experience a stronger rebound going forward. Volatility has resulted from an influx of residents and high tech jobs from California during the early and mid-1990s while the state was in a more severe downturn, as well as from a large number of jobs in the high tech sector. The highest concentration of jobs is in the construction sector.

Population growth in Salt Lake City was above average at 1.4% compared to 0.9% nationwide over the last year. Over the forecast, population growth is expected to outpace the national average. Utah's population grew at a pace of 29.6 percent compared to an average U.S. Growth rate of 13.1 percent for the same period.

The bank operates in a highly competitive assessment area with numerous financial institutions that specialize in more traditional array of retail bank loans, deposits, and services than does MSB. These retail institutions and the many other industrial loan corporations located in Salt Lake County directly compete with MSB by also fulfilling their qualified CRA activities within the same assessment area. While local community organizations benefit from these funding sources, they are somewhat limited in the amount of funding they can receive as they have to in turn hold, manage, and invest the funds responsibly over time.

COMMUNITY CONTACTS

Six community contacts were made with a variety of organizations. The individuals contacted all indicated a strong ongoing need for affordable housing. This includes multi-family housing as well as single family residences. Many indicated that they could still use some grants and donations for various purposes, as well.

Other needs identified include credit, homebuyer, and other related financial literacy training (pre-purchase counseling for first-time homebuyers) targeting adults as well as student-age children; economic development in areas identified by various governments for rehabilitation, healthcare for low- and moderate-income families and individuals, and childcare for low- and moderate- income families during the workday, including after-school programs for "at-risk" youth.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS

The bank's CRA performance under the community development test for wholesale institutions is considered outstanding. Board members and senior management have demonstrated a leadership role in many of the community development activities the bank has participated in. The evaluation period is from March 11, 2003 to January 30, 2006. Relevant data and information regarding the bank's qualified community development activities are detailed on the following pages.

COMMUNITY DEVELOPMENT LENDING (CDL)

Morgan Stanley has originated a substantial level of community development loans and made additional commitments relative to the institution's business strategy, available opportunities, and the competition from other financial institutions. In addressing its community development lending goals, Morgan Stanley has extended credit through affiliations with local third party community development and services throughout the state of Utah, and eight American Indian tribal communities. Over this 3-year CRA evaluation period the bank originated and funded new loans totaling $7,727,656 and has over $14 million in unfunded loan commitments. The table on the following page summarizes Morgan Stanley's qualified loans, including outstanding commitments:

Community Development Loans			
Year	**Recipient**	**New Extensions During Year**	**Remaining Unfunded Commitments**
2003*	A Community Reinvestment Corporation	169,886	
	A Native American Initiative	76,800	
	A Community Development Corporation	673,855	445,452
	A community Legal Service Provider	353,600	116,800
		300,000	
	Community Services for Low- and Moderate-Income Disabled and Senior Citizens	164,375	
	2003 Totals	**1,738,516**	**562,252**
2004	A Community Development Corporation	964,833	474,380
	A Preservation Project for Elderly Low-Income individuals	151,000	
	A Multi-Ethnic Development Corporation	319,001	
	A Childhood Development Corporation for Low Incomes	316,000	1,000
	A Community Reinvestment Corporation	948,632	
	2004 Totals	**2,699,466**	**475,380**
2005-06	A Community Reinvestment Corporation	622,449	1,659,115
	A Multi-Ethnic Development Corporation	819,716	5,045,115
	Neighborhood Redevelopment Phase II	691,143	8,857
	A Community Development Corporation	612,167	4,387,833
	Neighborhood Housing Revitalization Services	544,199	1,955,801
	2005-06 Totals	**3,289,674**	**13,056,721**
Combined	**Assessment Period Totals**	**7,727,656**	**14,094,353**
	Total Current Period Funded & Unfunded	**21,822,009**	
	Previous Period Unfunded Loan Commitments	**N/A**	**N/A**
	Lending Totals	**7,727,656**	**14,094,353**
	Grand Total	**21,822,009**	

***Reporting period for 2003 began March 11**

The following is a breakdown of activities by aforementioned recipients and beneficiaries:

A Native American Walk-in Center – Morgan Stanley in 2003 granted a $76,800 loan to pay-off a remaining mortgage on existing building, and in 2004, the loan was renewed for an additional two year term. The purpose of this Walk-In-Center is to deliver social economic services, health care, family financial planning, small business entrepreneurship, and SCORE mentoring. They also provide economic development via technical assistance such as, job placements, affordable rental housing, home buying education, tribal leadership training and, lending programs for American Indians residing along the Wasatch Front, as well as, individuals and/or families residing on tribal trust lands.

Citifront-II Apartments (Bridge Partners) – Is a second phase of a project to provide affordable condos for ownership. Morgan Stanley participated as lender during the first phase of this project, which provided 181 units of affordable housing and retail commercial space, in the heart of Salt Lake City' s Gateway District. Presently Morgan Stanley has total commitments of $700,000 to Citifront II LLC, via participation loan with Zion's Bank, as per credit agreement dated April 19, 2004.

A Community Development Corporation – Morgan Stanley Bank has given this non-profit organization an aggregate of $6.1 million dollars in loan financing (during this reporting period), for the construction and rehabilitation of homes. To date MSB, has contributed towards the development of Library Square condominium, and building of 12 homes under the HUD ACA Program; 9 homes at Fenton Cove; 2 homes at Canyon Oaks, and 6 other homes at the Lincoln Street Town homes, in down town Salt Lake City. In addition MSB granted loans for the successful construction of 2 single family homes, part of the County Youth Build project; and various single family homes per city/district area in Kearns, Taylorsville, Salt Lake, South Salt Lake and Magna. CDC's overall mission is to help low income families achieve homeownership, so that residents may become stable partners in their community, including but not limited to, people living in substandard housing or public assistance, that are re-seeking self sufficiency.

A Community Housing Service – Morgan Stanley bank helped finance two HUD preservation projects in 2004, called the Glenbrook and Suncrest Apartments, which are comprised of 24 units that provided affordable multi family rental housing for the elderly, disabled and low income Section 8 families in West Valley City.

A Community Legal Center – During later part of 2003, Morgan Staley authorized a revolving line of credit in the amount of $470,000, to help establish this Legal Center which provides free legal services to minorities, disabled, homeless, elderly, and single/separated mothers' that are victims of domestic violence.

A Multi Ethnic Development Corporation (MEDC) - Morgan Stanley has provided and/or committed financial assistance to MEDC of $6,169,800, towards the creation of affordable housing opportunities for low, moderate income families in UTAH, and conditioned properties, to safe, clean, affordable living spaces.

The following are projects that Morgan Stanley Bank (MSB) has committed financial assistance through their lending power: A $25M pre development unsecured line of credit, for the pre-development costs towards the purchase, and renovation of dilapidated properties, including land and other essential items necessary for project development; A $280,000 land acquisition loan for Phase I property purchase; and an $864,800 loan for land banking the adjacent lot phase II development. MSB has also provided over 150 hours of financial advice counseling and worked in conjunction with the developers, city officials, RDA board of directors, to insure the success of this project, which will also provide potential for new businesses in the area. Most recently MSB approved a $5,000,000 construction loan for this redevelopment project to begin early 2006. The project will include 5 live/work spaces, and 31 two and three bedroom condos, all for sale to qualified homebuyers, out of which with 7 condos are reserved for low to moderate income families or individuals below 80% of area median income.

A Local CAP Head Start – Morgan Stanley Bank (MSB) has provided and committed financial assistance in the amount of $317,000, participation loan with Zion's First National Bank, for the construction of a West Valley City School that currently provides a pre-school program for low – income children, and offer other nutritional, medical, dental, disability, and social services to children and families living in poverty.

A Neighborhood Housing Services - Morgan Stanley Bank (MSB) has provided and/or committed financial assistance in the aggregate amount of $2.8 million dollars, towards creating affordable housing and revitalizing and preserving a positive image of neighborhoods. The following are projects that Morgan Stanley Bank (MSB) has provided financial assistance through loans.

a) The Hodges Lane Project, a mixed income subdivision with 9 single family homes (5 reserved for low income families) and 11 town homes (5 for low income families)

b) The Citifront I Apartments & Citifront II Land Acquisition: for which MSB provided a $200,000 loan, to support the construction of (Citifront I) a 155 unit multi family facility that furthermore produced 27 new jobs for retail occupants. Citifront II – Is participation with Zion's Bank, which will eventually allow for the purchase of an adjacent property for the future construction of single family condos, to be sold to low-moderate income families.

Turn Community Services – provides employment skills, financial services and creative housing alternatives for the mentally challenged or disabled. The $164,375 loan granted by MSB was used to purchase an existing property for conversion into a special needs housing facility for the low income individuals with mental disabilities.

A State Community Reinvestment Corporation (UCRC) – Is a state wide nonprofit organization that continues to provide flexible financing for multi-family rental projects serving lower income Utah residents. Morgan Stanley Bank hosted the initial meeting with this organization, in response to the critical need for low/moderate income housing throughout the state. MSB has increased its funding commitment to UCRC in the amount of $3,885, 751, as their pool of loans continues to experience considerable growth. To date, 46 loans have been funded to subject organization, which in turn has provided 2,402 of affordable multi-family and senior housing units throughout the state of Utah.

COMMUNITY DEVELOPMENT INVESTMENTS

Morgan Stanley Bank (MSB) has provided an outstanding level of qualified community development investments and made numerous grants and donations relative to the institution's business strategy, available opportunities, and competition within the assessment area.

MSB has addressed its qualified investment goals through a wide range of conduits including, housing related securities, investment tax credits, and donations to a host of entities within the area. Over this three-year CRA evaluation period the bank acquired qualified, held-to-maturity investments of $36,597,148 including various grants and donations. In addition the bank holds $525,000 in unfunded commitments. There are also over $9 million in previous qualified investments within the portfolio. The following table summarizes the bank's outstanding qualified investments, commitments, and donation/grants used in evaluating the bank's CRA performance during the reporting period:

Community Development Investments				
Year	**Investment or Entity**	**##**	**Amount Extended**	**Unfunded Commitment**
2003*	A CRA Fund	1	150,000	
	Mortgage-Backed Securities	4	1,371,782	
	A Capital Fund (Mutual Fund)	1	500,000	
	Housing Finance Agency Bonds	10	2,900,000	
	Financing Solutions	2	130,250	
	Grants & Donations	134	363,478	
	2003 Totals	**152**	**5,415,510**	
2004	An Opportunity Fund	1	225,000	525,000
	Mortgage-Backed Securities	10	8,643,063	
	A CRA Fund (Mutual Fund)	7	5,265,114	
	Housing Finance Agency Bonds	11	2,395,000	
	A Microenterprise Loan Fund	2	100,000	
	Grants & Donations	245	703,116	
	2004 Totals	**276**	**17,331,293**	**525,000**
2005-06	A CRA Fund (Mutual Fund)	8	6,584,886	
	Mortgage-Backed Securities	4	5,245,909	
	Housing Finance Agency Bonds	8	1,095,000	
	Financing Solutions	1	58,000	
	Grants & Donations	293	866,549	
	2005-06 Totals	**314**	**13,850,345**	
	Assessment Period Totals	**742****	**36,597,148**	**525,000**
	Total Current Period Funded & Unfunded		**37,122,148**	
	Prior Period Outstanding		**9,146,223**	
	Investment Totals		**46,268,371**	
	Grand Total		**46,268,371**	

*2003 Reporting Period began March 11th; **Funded Investments Only

The following are some of the notable investments made by MSB during the assessment period:

- **A Capital Community Investment Fund -** The overall objective of this fund is to earn an appropriate risk-weighted return in investment while providing a secondary market finance vehicle for community development. The fund purchases CRA securities, backed by various community development loans (i.e. home mortgages, affordable rental housing, commercial real estate and small business loans), and use various U.S. Government Agency guarantees or AAA-rated credit enhancements, to generate a rate of return equivalent to or better than the yield on comparable U.S. Treasury notes and bonds. Morgan Stanley during this reporting period has invested a total of $500,000 to date.

- **A CRA Investment Fund – (Mutual Fund) –** The Fund seeks investments in specific geographical areas based on shareholders request. The Fund designates each security to a particular investing institution for CRA-qualifying purposes, and no institution is allocated the same portion of the same security. The aggregate investment of $12,000,000 by Morgan Stanley' during this reporting period, was used to help purchase Utah Housing Corporation Single Family Mortgage Bonds (2005 series F-2) in furtherance of its Single Family Mortgage Program to provide financing for the purchase of housing by low and moderate income individuals within the state of UTAH.

- **Mortgage Backed Securities (MBS) –** During the assessment period Morgan Stanley acquired 18 MBS pools through FHLMC (Federal Home Loan Mortgage Corporation- "Freddie Mac") , and the National City Corporation, totaling $15,260,754. Freddie Mac generally buys the single-family and multifamily residential mortgages and mortgage related securities, for financing by issuing mortgage pass through securities and debt instruments in the capital markets. These securities are then used to fund affordable housing, and underlying mortgages extended to low- or moderate-income borrowers. The servicer in this case is the National City Corporation, one of the nation's largest financial holding companies, which core businesses include commercial and retail banking, consumer finance, asset management mortgage financing and servicing, and payment processing. All of the underlying mortgages making up these bonds were in fact extended to low- or moderate-income borrowers. Previous period pools exceeded $43 million at purchase.

- **Housing Finance Agency Bonds (UHFA) –** This agency is a self-supporting public agency created by the Utah Legislature to finance, develop, and preserve affordable housing for lower income individuals and families throughout Utah. During the assessment period the bank purchased 29 bonds totaling $6,390,000.

- **A Micro-enterprise Loan Fund –** During the reporting period Morgan Stanley has invested an aggregate of $100,000 in small business loan pools to empower people to move from dependency to self sufficiency through small business ownership. Micro enterprise programs benefit all individuals who would otherwise be ineligible to receive traditional financing and have no other resource to start or expand a small business. Microenterprise programs not only provide access to credit, but also offer technical assistance in supportive environments that reinforce the belief that people can improve their lives through initiative and hard work.

- **A University Venture Fund (an opportunity fund) -** Is a collaborative effort between students, alumni, the David Eccles Scholl of Business, and the local professional community to promote community development. The program is self sustaining with the newly raised fund to invest in top tier young companies creating economic stimulus for scholarships and charities of the investors' choice. The Fund is actively managed and directed by the University of Utah students along with successful entrepreneurs and venture capital professionals. The capital contribution for Morgan Stanley during this reporting period is $225,000 with $525,000 in unfunded commitments.

- **A Technology Finance Corporation (Financing Solutions) –** Provides financing for non-profit corporations whose mission is community development. During the reporting period Morgan Stanley invested a total of $188,250.

Qualified Grants & Donations

MSB and its affiliates are focused on providing essential services to educate and assist low-moderate-income individuals become self sufficient. During the exam period MSB (bank only) donated $742,423 in qualified grants and donations to over 100 non-profit organizations inside the banks assessment area. The following table illustrates the wide range of community needs served by MSB:

Grants & Donations

Type of Organization	2003*	2004	2005-06
Self Sufficiency and Education	39,762	62,950	50,200
Job Training and Employment	8,500	20,895	9550
Homeless/Transitional Housing	55,000	61,250	122,925
Elderly/Child Day Care	6,000	37,500	10,000
Operating Expenses	37,500	66,885	38,214
Legal Assistance / Healthcare	12,500	22,500	18,200
Sponsorships/Scholarships/Memberships	14,860	16,836	22,740
In-Kind Donations	4,906	1,350	1,400
Total by Year – Bank Only	**179,028**	**290,166**	**273,229**
Utah Contribution Committee (Affiliate) Donations	34,750	37,750	45,790
Morgan Stanley Foundation - VIP Program Donations	149,700	375,200	547,530
All Bank and Utah Affiliate Totals	**363,478**	**703,116**	**866,549**
Morgan Stanley Corporation Nationwide Grants/Donations	**10,400,208**		
GRAND TOTALS	**12,333,351**		

*Reporting Period for 2003 began March 11th

Additional contributions include $118,290 from the Utah Contribution Committee and $1,072,430 from Morgan Stanley Foundation (VIP Grants). Additionally, $10,400,208 was donated to similar organizations nationwide by the Morgan Stanley Corporation.

The following is a brief description of the services provided by these organizations.

- **Self-Sufficiency Education** – MBA's goal is to facilitate the means for non-profit organizations to provide education to children and adults so that they may be able to achieve self sufficiency. Households participate in homebuyer education workshops and counseling, children participate in financial literacy classes, and teachers are provided train the trainer credit training in Spanish and English.

- **Job Training & Employment** – Attention is given to providing skill training to low-income individuals with physical, emotional, financial, and domestic challenges. People with disabilities are given the opportunity to obtain "real jobs with competitive pay and the opportunity for advancement."

- **Homeless/Transitional Housing –** The main focus of the state and the nation is empowering homeless individuals with basic needs and skills to aid them in mainstreaming into society. MBA recognizes the need and funds programs that aid individuals in obtaining housing assistance.

- **Elderly/Child Day Care –** The baby-boomers are retiring and many times without sufficient income or physical capacity to take care of their essential needs. Younger couples with children are not making the anticipated income needed to care for their growing families. MSB works to lessen stress and financial burden placed on the low- and moderate-income families by funding non-profit organizations that are set up to be caregivers and educators for this segment of society.

- **Operating Expenses** – Non-profit organizations many times fall short of funds to stay in operation. Thereby, MSB fulfills an essential role in assisting them financially with day to day financial commitments, supplies and equipment needed so that these organizations can focus on what they do best; providing food, shelter, clothing, education, social-emotional assistance, health services and much more.

- **Legal Assistance – Healthcare –** Individuals such as single and separated mothers, homeless families, disabled individuals, minorities and the elderly are often times without needed funds to provide them with legal representation. MSB fills this gap by assisting non-profit agencies with operating funds.

COMMUNITY DEVELOPMENT SERVICES

Company wide employees are encouraged to become engaged in services needed in the communities in which they live and work. MSB and its affiliates (Utah Contribution Committee, Morgan Stanley Foundation Volunteer Incentive Program [VIP] and its parent Morgan Stanley) provide critically needed assistance to aid the communities served. Together they contributed 5,052 accredited hours of service to their respective communities. Included in these hours were 2,426 accredited hours dedicated to Salt Lake County.

Service hours provide for a wide range of human needs ranging from providing essential services to achieving self sufficiency to low- and moderate-income and handicapped individuals. Many of these services are not offered by federal/state funding or non-profit organizations and community special interest groups are in need of additional assistance to achieve their goals. Specific community needs are addressed in the areas of credit education and essential services. All of the services meet the definition of "community development" and relate to the provision of financial services as required by the regulation for consideration under CRA. Constant review and alignment of services are undertaken by MSB to meet the ever changing community needs and to comply with the Community Reinvestment ACT (CRA).

Through CRA qualified board and committee service, as well as through other volunteer opportunities employees have volunteered their time to CRA qualified activities. Their involvement on Boards of Directors of non-profit organizations contributes staff expertise, fund raising efforts, and technical assistance and education.

The following pages describe the service activities in greater detail:

MSB identified the need for credit education and essential services development as a primary assessment area needs. Additional information is shown below:

COMMUNITY DEVELOPMENT SERVICES (Credit Education & Essential Services)							
Qualifying Services	**Brief Description**	**2003**		**2004**		**2005-06**	
		MSB	Other	MSB	Other	MSB	Other
Financial Educational Literacy	Provide financial literacy training to low-and moderate-income individuals at schools/facilities. This included coverage of the following topics: making wise financial decisions, understanding various bank account types, importance of a good credit history, managing credit wisely, reality of interest, and exploring career choices and education.	10	54	44	186	163	890
Essential Services and Community Development	A wide variety of services were provided to all conceivable targeted areas in need through a well-planned and investigated need assessment of the community that the bank serves.	41	54	62	770	164	522
TOTAL HOURS	**2,960**	51	108	106	956	327	1,412

The following is a small sample of the many services provided by MSB as a result of their Credit Education and Essential Services development provided to the communities that it serves:

- *State Individual Development Accounts Network (UIDAN). IDA's are matched savings accounts designed to help low-income families accumulate a few thousand dollars towards an asset such as education or job training or home ownership. Or self-employment. IDA savers learn how to improve their credit and use credit and banking accounts effectively to increase wealth and acquire an asset.*

- *A foundation board which provides credit information using a training program containing training materials that provides basics of checking, savings and banking and moves into credit, investing and ultimately homeownership. The classes are provided at local Title 1 junior high schools as well as several special needs charter schools.*

- *A club with activities for the entire family such as adult education, employment, mental health, parenting, advocacy, assistance and social interaction. It is designed to educate low- and moderate-income families.*

- *A mentoring program helping no income or low income single mothers develop the self-confidence, the skills, the networks and the resources, to build a better future for themselves and their children through long-term successful employment.*

MSB employees and members of management, based on skilled and qualifications, have filled numerous committee and board of director positions with local non-profit organizations. Some activities included are:

COMMUNITY DEVELOPMENT SERVICES MSB and the Utah Contribution Committee (Board of Directors Commitments)				
Qualifying Services	**Activity**	**2003**	**2004**	**2005-06**
Affordable/Accessible Housing	Members of management provided numerous hours of service on Boards and Committees of qualifying non-profit entities.	97	159	95
Credit/Legal Education	Provide consumer education programs in Title I schools and other organizations.	35	48	22
Essential Services	Provide assistance to low income individuals through nonprofit organizations in various areas such as legal services, after school programs, shelter, language training etc.	42	40	26
Other	Work with numerous committees and special interest to implement new programs addressing emerging needs of the community	531	506	491
TOTAL OVERALL HOURS	**2,092 HOURS**	**705**	**753**	**634**

The following is a small sample of services provided by MSB and the Utah Contribution Committee as a result of their Board participation:

- *Service on a county housing authority Board (aids in providing housing while promoting individual self-sufficiency and revitalization of neighborhoods).*

- *Service on a non-profit mentoring Board that offers after-school organization for children (a non-profit art and mentoring program for underserved youth aged 5-18, designed to break the cycle of poverty and prepare young people for professional careers of the future).*

- *Service on a foundation Board that provides services and materials items to individuals with challenges while they are actively seeking employment or striving to retain employment.*

- *Service on a State Board working with other ILC's in a statewide network for Individual Development Accounts (IDA). The IDA program offers financial management counseling and matching savings for low-income families to be used for homeownership, education or entrepreneurial pursuits.*

- *Service on a state-wide nonprofit affordable housing organization that provides affordable housing for low-and moderate-income families, seniors, formerly homeless populations, and individuals with chronic mental and physical impairments.*

- *Assistance to 85+ non-profit organizations, community development groups and state initiative programs by consistently providing guidance on credit programs, input in the preparation of new programs, and know-how for housing and economic development initiatives.*

Other Affiliate Activity

The parent, Morgan Stanley (MS) and its affiliates, are extensively involved in *qualified* community development activities across the nation. In addition to the certified hours contributed with this examination they have provided countless additional services to the communities they serve. Also, affiliates have contributed over $10 million in qualified grants and donations.

Fair Lending Review

No violations of the substantive provisions of the antidiscrimination laws and regulations were identified. The bank has policies, procedures, and training programs in place to prevent discriminatory or other illegal credit practices. Current automated underwriting scoring models do not collect, consider, or score any information concerning the eleven protected factors as listed under the Equal Credit Opportunity or Fair Housing regulations.

APPENDIX A

SCOPE OF EXAMINATION		
TIME PERIOD REVIEWED	March 11, 2003 to January 27, 2006	
FINANCIAL INSTITUTION Morgan Stanley Bank, West Valley City, Utah		**PRODUCTS REVIEWED** Community Development Loans Community Development Investments Community Development Services
AFFILIATE	**AFFILIATE RELATIONSHIP**	**PRODUCTS REVIEWED**
Discover Card Services, Salt Lake City, Utah	Affiliate Company	Qualified Investments Qualified Services
Morgan Stanley, New York, NY	Parent Company (Corporation)	Qualified Investments Qualified Services

LIST OF ASSESSMENT AREAS AND TYPE OF EXAMINATION			
ASSESSMENT AREA	**TYPE OF EXAMINATION**	**BRANCHES VISITED**	**OTHER INFORMATION**
UTAH Salt Lake County (035)	Full-Scope – On Site	N/A	None

PUBLIC DISCLOSURE

September 22, 2008

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

UBS Bank USA
Certificate Number: 57565

299 South Main Street, Suite 2275
Salt Lake City, Utah 84111

Federal Deposit Insurance Corporation
25 Jessie Street at Ecker Square, Suite 2300
San Francisco, California 94105

NOTE: **This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.**

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GENERAL INFORMATION

The Community Reinvestment Act (CRA) requires each federal financial supervisory agency to use its authority when examining financial institutions subject to its supervision, to assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. Upon conclusion of such examination, the agency must prepare a written evaluation of the institution's record of meeting the credit needs of its community.

This document is an evaluation of the CRA performance of ***UBS Bank USA (UBS)*** *prepared by the* ***Federal Deposit Insurance Corporation****, the institution's supervisory agency, as of* ***September 22, 2008****. The agency evaluates performance in assessment area(s), as they are delineated by the institution, rather than individual branches. This assessment area evaluation may include the visits to some, but not necessarily all of the institution's branches. The agency rates the CRA performance of an institution consistent with the provisions set forth in Appendix A to 12 CFR Part 345.*

INSTITUTION'S CRA RATING

UBS is rated "**Outstanding**" based on its exceeding each of the CRA Strategic Plan (Plan) goals for outstanding performance during the Plan years 2005 – 2007. This rating represents a continuation of the outstanding rating received at the prior June 20, 2005, CRA examination.

SCOPE OF THE EVALUATION

UBS elected to be evaluated under the Plan option for CRA. Under this option, a bank establishes a regulatory approved Plan, with measurable goals detailing how it will meet the requirements of the CRA in its assessment area based on an evaluation of needs, the financial institution's capacity, and input from the public. The UBS original Plan, approved by the FDIC on March 11, 2004, covers the entire years of 2004 – 2006. The current examination analyzed years 2005 and 2006 of the original Plan, and year 2007 of the bank's current Plan, approved June 19, 2007.

For each respective year, the Plan outlines measurable goals for both Satisfactory and Outstanding performance under a combined Community Development Lending/Investment (CDL/CDI) test, and a Community Development Service (CDS) test. Plan goals are based on whole-year performance, therefore, this CRA examination did not evaluate year 2008.

CONCLUSIONS

UBS has achieved its Plan goals for outstanding performance for each of the three Plan years analyzed (2005-2007). Bank management and the Board of Directors continue to be highly proactive with regard to assessing the needs of its community and providing extensive time and resources in addressing those needs. The bank's CRA staff is extremely engaged and competently led by the CRA officer.

Combined Lending/Investment Test - UBS has met the requirements established under its Plan for an overall "Outstanding" rating under the CDL/CDI goals. During Plan year 2005, the bank had outstanding funded/committed loans of over $144 million in CDL/CDI and donations in its local market, representing 0.80 percent of average assets. During Plan year 2006, the bank's CDL/CDI levels increased to $177 million, or 0.89 percent of average assets. For Plan year 2007, these values rose to $269 million, or 1.15 percent of average assets.

During the assessment period, the bank's average assets grew by 50 percent, compared to the bank's total CDL/CDI growth of 274 percent during this same time frame. The majority of the bank's CDL/CDI activity for each year was centered in mortgage backed securities (MBS), at roughly 72 percent. The bank purchased 39 MBS pools funding 1,484 mortgages to low- and moderate-income (LMI) borrowers. A review of the underlying mortgages determined that they were traditional fixed-rate loans extended to LMI borrowers with prime Fair Isaacs Company (FICO) scores.

UBS has doubled its equity investment in an innovative local university, student operated venture capital fund it helped to establish, that is dedicated to funding qualified community development start-up businesses. During the assessment period, the fund invested in 13 small start-up businesses.

CDLs that were funded during the assessment period include loans to the Utah Housing Authority, the Utah Community Reinvestment Corporation, and the Community Development Corporation of Utah. The bank also participated in a loan to help develop a community health center in Ogden, and the Children's Tree House located in Ogden's redevelopment zone.

Service Test - UBS has met the requirements established under its Plan for an overall "Outstanding" rating under the service test for each of the Plan years. Bank employees have contributed significant time, expertise, and resources to entities that assist LMI individuals and small businesses.

In addition, no evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs was identified.

DESCRIPTION OF INSTITUTION

UBS is a $27 billion federally insured Utah Industrial Bank which began operations on September 9, 2003. UBS is a wholly-owned subsidiary of UBS Americas, Inc. (UBSAI), a Delaware corporation located in Stamford, Connecticut, which is a wholly- owned subsidiary of the ultimate parent, UBS AG in Zurich, Switzerland. UBSAI was organized on November 3, 2000, when UBS AG acquired 100 percent ownership in the Paine Webber Group. It functionally serves as a holding company for most of UBS AG's operating entities in the United States and does not conduct operations of its own. UBS AG is a global financial services company with total assets of approximately $2 trillion as of June 30, 2008, and is the largest bank in Switzerland. UBS AG operates directly or through wholly-owned subsidiaries in over 50 nations, including the United States.

UBS is a specialized entity that offers limited loan and deposit services to existing and future clients of affiliate UBS Financial Services, Inc. (UBSFS), which is the registered brokerage arm of UBS AG. Customers are strictly high net worth individuals and/or corporations located throughout the world. The bank primarily operates out of a single location in downtown Salt Lake City, Utah. Approximately 45 employees are located at the Salt Lake City office, while 2 employees work out of the parent building, UBSAI, in Stamford, Connecticut.

UBS primarily offers securities based loan products fully collateralized by marketable equity and fixed income securities. These loans are offered via three products: the Premier Variable Credit Line, the Premier Fixed Credit Line, and the Prime Variable Credit Line. The Prime Variable Credit Line uses the Wall Street Journal Prime, with credit lines ranging from $25,001 to $249,999. The Premier Variable Credit Line uses the London Interbank Offered Rate (LIBOR), with a loan size ranging from $250,000 and up. The fixed rate product requires a minimum $500,000 loan with minimum $250,000 draws.

The bank's primary funding source consists of brokered deposits of excess cash in UBSFS that is swept into the bank on a daily basis. Deposit products offered to customers consist of money market deposit accounts (MMDA) and negotiable order of withdrawal (NOW) accounts. The bank does not offer demand or time deposits.

As of June 30, 2008, the bank reported total assets of $27,316,033,000, with total loans of $13,287,227,000 and total deposits of $24,422,373,000. During the bank's 2007 Plan year, the bank's total assets grew 14 percent, from $22 billion to $25 billion, with growth relatively evenly split between loans and trading account assets.

As of June 30, 2008, the bank's loan mix was as follows:

Loan Portfolio Mix as of June, 2008

Loan Type	Total Dollar Amount	Percentage of Loan Portfolio
Securities Based Loans to Commercial Entities	6,790,559,000	51%
Securities Based Loans to Private Individuals	6,315,693,000	48%
Other Loans	178,254,000	1%
Residential Real Estate *	2,721,000	nominal
Total Loans	**13,287,227,000**	**100.00**

SOURCE: Examiner developed table * Represents a pool of loans extended as part of the bank's CRA program.

DESCRIPTION OF ASSESSMENT AREA

SALT LAKE COUNTY - METROPOLITAN STATISTICAL AREA (MSA) #41620

The bank has defined Salt Lake County as its assessment area, which comprises 193 contiguous census tracts (CTs) and is part of the Salt Lake City, Utah Metropolitan Statistical Area MSA – #41620, which also includes Summit and Tooele Counties. The MSA Median Family Income (MFI) for Salt Lake County, determined by the Department of Housing and Urban Development (HUD), was $61,550 for 2005, $61,300 for 2006, and $60,100 for 2007.

The following table reflects the CT income and population breakdown of Salt Lake County as determined by the 2000 U.S. Census:

Salt Lake County CT Characteristics

CT INCOME LEVEL	NUMBER OF TRACTS	%	POPULATION	%
Low Income Tract	5	3	7,627	1
Moderate Income Tract	43	22	211,552	23
Middle Income Tract	90	47	438,603	49
Upper Income Tract	55	28	240,605	27
Total Salt Lake County Tracts	**193**	**100**	**898,387**	**100**

Source: 2000 U.S. Census

Major employers in Salt Lake County include Intermountain Health Care; the State of Utah; the Hill Air Force Base; the University of Utah; Pacificorp – Utah Power; the Granite and Jordan School Districts; the Internal Revenue Service; the Smiths Food and Drug Centers; the Wal-Mart District Office; C.R. England; and Delta Air Lines. The county is also home to most of the major insured financial institutions in the state, including regional banks, credit unions, and industrial banks.

Salt Lake County is in the heart of Utah's economic core, with Salt Lake City and surrounding suburbs the major metropolitan area within the county. The Salt Lake Valley is home to nearly 1 million residents and 40,000 businesses. According to the Utah Department of Workforce Services, an estimated 63,000 Utah workers were employed in technology jobs at year end 2006. Utah is one of the fastest growing states in the country and ranks 35th in the nation in population growth.

According to 2005 D&B data, 101,614 businesses were located in the county with 9 percent of them located in low-income tracts and 23 percent in moderate- income tracts. Small businesses with annual revenues of $1 million or less make up 88 percent of this total. Thirty-eight percent of all households in Salt Lake County resided in LMI CTs according to the 2000 U.S. Census. Of the 295,290 households, 20 percent were classified low-income, 18 percent moderate-income, 23 percent middle-income, and 39 percent upper-income.

Assessment Area Economic Outlook

Utah is enjoying a robust expansion, with job growth running at about triple the national pace. The construction industry still leads job growth, despite a contraction in homebuilding, but manufacturing payrolls are declining after three years of strong growth. Service industry employment is also growing at far above the national pace. Population growth in the Salt Lake Valley remained well above average in 2007, but has slowed over the past two years.

BANK'S IDENTIFICATION OF ASSESSMENT AREA NEEDS

UBS identified the following areas to focus its community development efforts in meeting its CRA responsibilities:

- **Regional Loan Funds** – Funds that focus on community development activities such as affordable housing for single family residential or multifamily rental housing.

- **Community Development Financial Institutions** – Supporting any institution that serves market segments consistent with UBS's overall community development objectives.

- **Affordable Housing Developers (Non-Profit and For-Profit)**

- **Microfinance Loan Funds -** Entities that provide management and financing support to owners of start-up and existing small businesses that do not have access to traditional funding sources, particularly those that are socially and economically disadvantaged.

- **Tax Credit Syndication Funds and/or New Markets Tax Credits**

- **Revitalization or Stabilization of LMI Geographies –** Entities involved with revitalization or stabilization of LMI geographies, designated disaster areas, or distressed or underserved middle-income geographies.

Community Contacts

Numerous contacts were made during 2007 that targeted credit and other financial services and community needs within the Salt Lake County assessment area. These were reviewed in conjunction with this evaluation. The contacts revealed a strong ongoing need for affordable housing, including multi-family housing as well as single family residences. Other needs identified include: credit, homebuyer, pre-purchase counseling, and other related financial education training targeting adults as well as student-age children; economic development in areas identified by various governments for rehabilitation; healthcare for LMI families and individuals; and childcare for LMI families during the workday, including after-school programs for "at-risk" youth.

DISCUSSION OF ASSESSMENT AREA CRA PERFORMANCE

A summary of UBS' 2005 through 2007 Plan Lending/Investment, Service test goals, and its actual performance pertaining to each goal is detailed on the following pages. Each of the two performance test criteria have measurable requirements needed for the institution to achieve either a "Satisfactory" or "Outstanding" level of CRA performance.

GOAL 1: COMMUNITY DEVELOPMENT LENDING/INVESTMENT (CDL/CDI) TEST

UBS has met the requirements established under its Plan for an overall "Outstanding" rating under the combined CDL/CDI test. Despite its limited tenure, UBS has established a large and diversified portfolio of qualified community development funding assets that serve the low-income housing, small business, and various non-profit needs of its community. On the investment side, the bank has met assessment area needs through the acquisition of qualifying MBS, municipal bonds, equity investments, and through charitable contributions. On the lending side, the bank has extended credit through affiliations with third parties to provide affordable housing, and financial education and development to economically disadvantaged youth.

UBS CDL/CDI GOAL: Achieve a volume of combined and cumulative CDL/CDI equal to a predetermined percentage of the bank's average assets for each Plan year. The cumulative amount for any Plan year will include (1) the total of the bank's CDL/CDI outstanding at the end of any prior year, plus (2) the amount of all new CDL/CDI extended during the current Plan year, including any loans or investments that originated and paid-off during the current year.

For Plan year 2005, the bank determined that a volume of CDL/CDIs equal to 0.40 percent of average assets* would establish the minimum goal for satisfactory performance, and a ratio of 0.60 percent would be the level needed to achieve outstanding performance.

For Plan year 2006, the respective investment to average asset ratios thresholds increased to 0.60 percent for satisfactory performance, and 0.80 percent for outstanding performance.

For Plan year 2007, the respective investment to average asset ratios thresholds increased to 0.80 percent for satisfactory performance, and 1 percent for outstanding performance.

* The bank's average assets for any given Plan year is calculated using the amounts from line 9 of schedule RC-K (Quarterly Averages) from the bank's four quarterly Call Reports, for the respective Plan year. The following table shows the bank's average assets for 2005 – 2007.

Year	Schedule RC-K Average Assets
2005	18,105,541,000
2006	19,970,590,000
2007	23,421,303,750

Source: Call Reports

CDL/CDI ACTIVITY AS A PERCENT OF AVERAGE ASSETS

The following table reflects the bank's respective combined CDL/CDI goals for each of the three Plan years being evaluated, followed by descriptions of its efforts in meeting those goals:

COMBINED 2005 CDL/CDI GOALS

	Bank Performance		**Bank Established Goals**			
Plan Year	Actual CDL/CDI Activity		CDL/CDI Volume Needed to Achieve Satisfactory Performance		CDL/CDI Volume Needed to Achieve Outstanding Performance	
2005	As a % of Avg. Assets	Stated in $	As a % of Avg. Assets	Stated in $	As a % of Avg. Assets	Stated in $
	0.80	**144,203,323**	**0.40%**	**72,442,164**	**0.60%**	**108,633,246**

Source: Bank Records

As the above table indicates, the bank has met its combined 2005 CDL/CDI goals for outstanding performance. The following tables breakout the various investment/loan activities.

2005 QUALIFIED CDL ACTIVITY

2005 Qualified Loans	Loans/Commits Carried Forward	2005 Loan Commits/ Acquisitions	Total 2005 CDL Activity
Utah Housing Corporation	3,254,700	4,233,357	7,488,057
Community Development Corp (CDC)	3,000,000	0	3,000,000
Utah Community Reinvestment Corp	0	6,200,000	6,200,000
Salt Lake Community Action Program	0	315,000	315,000
Children's Treehouse Museum	0	1,500,000	1,500,000
Sprenger Lang Foundation	0	11,000,000	11,000,000
2005 CDL Totals	**6,254,700**	**23,248,357**	**29,503,057**

Source: Bank Records

2005 QUALIFIED CDI ACTIVITY

2005 Qualified Investments	Carryover from Prior Years (Book Value)	New 2005 Investments (Purchase Value)		TOTAL
	Amount	#	Amount	Amount
Mortgage Backed Securities	44,793,765	1	59,123,311	103,917,076
Municipal Utah Housing Bonds	4,875,000	21	3,100,000	7,975,000
University Opportunity Fund Equity Investment	2,500,000	1	0	2,500,000
Qualified Grants & Donations	0	17	308,190	308,190
Total Qualified Investments	**52,168,765**	**40**	**62,531,501**	**114,700,266**

Source: Bank Records

COMBINED 2006 CDL/CDI GOALS

	Bank Performance		Bank Established Goals			
Plan Year	Actual CDL/CDI Activity		CDL/CDI Volume Needed to Achieve Satisfactory Performance		CDL/CDI Volume Needed to Achieve Outstanding Performance	
2006	As a % of Avg. Assets	Stated in $	As a % of Avg. Assets	Stated in $	As a % of Avg. Assets	Stated in $
	089%	**176,931,643**	**0.60%**	**119,823,540**	**0.80%**	**159,764,720**

Source: Bank Records

As the above table indicates, the bank has met its combined 2006 CDL/CDI goals for outstanding performance. The following tables breakout the actual investment/loan activity

2006 QUALIFIED CDL ACTIVITY

2006 Qualified Loans	Loans/Commits Carried Forward	2006 Loan Commits/ Acquisitions	Total 2006 CDL Activity
Utah Housing Corporation	4,816,268	0	4,836,268
Community Development Corp (CDC)	3,000,000	0	3,000,000
Utah Community Reinvestment Corp	6,200,000	0	6,200,000
Salt Lake Community Action Program	260,081	0	260,081
Children's Treehouse Museum	1,500,000	0	1,500,000
Sprenger Lang Foundation	11,000,000	0	11,000,000
Midtown Community Health Center	0	750,000	750,000
Volunteers of American	0	10,800,000	10,800,000
Provo Neighborhood Housing	0	350,000	350,000
2006 CDL Totals	**26,776,349**	**11,900,000**	**38,696,349**

Source: Bank Records

2006 QUALIFIED INVESTMENT ACTIVITY

2006 Qualified Investments	Carryover from Prior Years (Book Value)	New 2006 Investments (Purchase Value)		TOTAL
	Amount	#	Amount	Amount
Mortgage Backed Securities	86,534,974	5	40,300,858	126,835,832
Municipal Utah Housing Bonds	5,565,000	0	0	5,565,000
University Opportunity Fund Equity Investment	2,500,000	1	2,500,000	5,000,000
FDIC Deposit UCB Credit Union	0	1	100,000	100,000
Qualified Grants & Donations	0	48	734,462	734,462
Total Qualified Investments	**94,599,974**	**55**	**43,635,320**	**138,235,294**

Source: Bank Records

COMBINED 2007 CDL/CDI GOALS

	Bank Performance		Bank Established Goals			
Plan Year	Actual CDL/CDI Activity		CDL/CDI Volume Needed to Achieve Satisfactory Performance		CDL/CDI Volume Needed to Achieve Outstanding Performance	
2007	As a % of Avg. Assets	Stated in $	As a % of Avg. Assets	Stated in $	As a % of Avg. Assets	Stated in $
	1.15%	**269,081.412**	**0.80%**	**187,370,430**	**1.00%**	**234,213,038**

Source: Bank Records

As the above table indicates, the bank has met its combined 2007 CDL/CDI goals for outstanding performance.

The following tables breakout the actual investment/loan activity:

2007 QUALIFIED CDL ACTIVITY

Year	Agency	Loans/Commits Carried Forward	2007 Loan Commits/ Acquisitions	Total 2007 CDL Activity
2007	Utah Housing Corporation	3,283,083	0	3,283,083
	Community Development Corp (CDC)	3,000,000	0	3,000,000
	Utah Community Reinvestment Corp	6,200,000	0	6,200,000
	Salt Lake Community Action Program	248,535	0	248,535
	Provo Neighborhood Housing	350,000	0	350,000
	Sprenger Lang Foundation *	11,000,000	0	11,000,000
	Volunteers of American	10,000,000	0	10,000,000
	Children's Treehouse Museum	0	750,000	750,000
	Homestead Community Financing	0	500,000	500,000
	Georgia Industrial Children's Home *	0	250,000	250,000
	Children's Home Society of Washington *	0	1,100,000	1,100,000
	Maranatha Foundation *	0	5,000,000	5,000,000
	The JARC Foundation *	0	2,500,000	2,500,000
	2007 CDL Totals	**34,081,618**	**10,100,000**	**44,181,618**

*These entities are located out of the bank's immediate assessment area and wider regional area; however, loans extended to them reflect only 7% of total CDL/CDI during 2007. Source: Bank Records

2007 QUALIFIED INVESTMENT ACTIVITY

2007 Qualified Investments	Carryover from Prior Years (Book Value)	New 2007 Investments (Purchase Value)		TOTAL
	Amount	#	Amount	Amount
Mortgage Backed Securities	104,620,254	13	95,530,259	200,150,513
Municipal Utah Housing Bonds	585,000	6	18,560,000	19,145,000
University Opportunity Fund Equity Investment	4,853,410	0	0	4,853,410
FDIC Deposit UCB Credit Union	100,000	0	0	100,000
Qualified Grants & Donations	0	43	650,871	650,871
Total Qualified Investments	**110,158,664**	**62**	**114,741,130**	**224,899,794**

Source: Bank Records

The following details the specific loans extended by UBS during 2005 through 2007:

COMMUNITY DEVELOPMENT LENDING (CDL)

- **Utah Housing Corporation (UHC) –** UBS purchased a 100 percent interest in a $4.2 million loan pool from the Utah Housing Authority, in 2005, for the purpose of funding first time home buyers in Utah.

- **Community Development Corporation (CDCU) –** In December 2004, UBS extended a $3,000,000 revolving line of credit to the CDCU to fund the acquisition and rehabilitation of existing single family dwellings, for LMI individuals throughout Utah. UBS extended the loan for the exclusive purpose of allowing CDCU to become the first Utah participant in the Asset Control Area (ACA) Program run by HUD. Participation in the ACA Program is limited to non-profits and local governments. CDCU is a 501(c) (3) non-profit agency that, since its inception 14 years ago, has assisted more than 1,500 LMI families become homeowners in numerous rural and urban Utah communities. This loan was fully funded in 2005.

- **Utah Community Reinvestment Corp. (UCRC) –** UBS extended a $6.2 million funding commitment to the UCRC loan pool in 2005. The funds were used to help fund 2 affordable housing developments providing 83 new units. In 2006, the bank helped fund 3 additional developments establishing 59 units, and in 2007, the bank help fund 5 additional projects, creating 80 more affordable housing units.

- **Salt Lake Community Action Program (CAP) – Head Start –** UBS participated in a 1/3 interest ($315,000) of a total $950,000 loan to construct a new 10,000 square foot Head Start educational facility. Salt Lake CAP Head Start provides vital community services, including health, social, and early childhood educational services targeted to benefit LMI children and their families in Salt Lake and Tooele Counties. Head Start also provides community services targeted to LMI adults. Head Start serves more than 2000 families each school year, and this new facility will enable Salt Lake CAP Head Start to expand its community services to a larger number of low-income children and their families. This line paid down to $260,081 in 2006, and to $248,535 by year-end 2007.

- **Children's Treehouse Museum –** In 2005, the bank purchased a $1.5 million participation in a $2.16 million construction to the Children's Treehouse in Ogden, Utah. The location of the museum is on the former Ogden City Mall site, which is in a low-income tract and is also within the HUD approved Neighborhood Revitalization Strategy Area in downtown Ogden. This area has been identified by the City of Ogden as part of its master plan for redevelopment of the downtown area.

- **Midtown Community Health Center -** In 2006, the bank purchased a 50 percent interest in a $1.5 million term loan to help construct the Midtown Community Health Center of Ogden in 2006. This clinic serves the medical needs of indigent and low- income individuals who would typically not have access to health care.

- **Volunteers of America –** UBS extended a $10 million line of credit to this entity from the bank's national affiliate, and through the bank's securities based lending program. Volunteers of

America is a non-profit organization that operates human service programs in Salt Lake, Davis, Tooele, San Juan, Carbon, Grand, and Emery Counties and serves thousands of individuals each year. The programs include the areas of homeless outreach, substance abuse detoxification and treatment, and senior services. The goal of Volunteers of America Utah is to provide a continuum of services for individuals in need, to foster self-sufficiency, and to provide opportunities for volunteer involvement.

- **Provo Neighborhood Housing –** In 2006, UBS extended a $350,000 line of credit to acquire and rehabilitate single family dwellings to LMI families located in a redevelopment zone in Provo, Utah.

- **Sprenger Lang Foundation –** In 2005, the bank extended an $11 million line of credit to renovate the Atlas Theater, located in a designated redevelopment zone of Washington, DC. This building is located in a moderate-income tract with a minority population of nearly 80 percent. The renovation initiated a revitalization of the neighborhood by attracting ancillary businesses.

- **Homestead Community Financing –** A $500,000 revolving line of credit was extended in 2007 to eligible affordable housing developers to make affordable loans to individuals making 60 percent or less of MFI, throughout the western states including Utah.

- **Marantha Foundation** – A $5 million line of credit extended in 2007 to acquire and renovate the Connecticut shelter for battered children and women. This loan was extended by UBS in its normal course of business, as a wealth client of UBS Financial Services, Inc.

- **The JARC Foundation –** A $2.5 million credit line to pay-off existing debt used to acquire real estate and provide liquidity for operating expenses. JARC is a non-profit that gives assistance to disabled LMI youth, adults, and their caregivers.

COMMUNITY DEVELOPMENT INVESTMENTS (CDI)

The following table details the bank's qualified CDI activity during the 2005 - 2007 assessment period:

- **Mortgage Backed Securities (MBS)** – During the reporting period, UBS purchased 24 pools of MBS totaling $56,855,658. Underlying these pools, are over 460 single family mortgages extended to LMI individuals, and an 81 unit multi-family apartment complex with a majority of units being dedicated to LMI tenants.

- **Utah Housing Corporation Municipal Bonds** – UBS purchased two pools of affordable housing bonds, at $2.5 million each, issued by the Utah Housing Corporation (UHC). UHC is the largest provider of affordable housing assistance in Utah, and offers numerous home purchase assistance programs to LMI residents of Utah.

- **University Opportunity Fund, LLC (UOF) –** UBS was the lead investor ($2.5 million of a total of $5 million) in the initial closing of the UOF, a highly innovative community development venture capital fund. In 2006, UBS purchased the remaining $2.5 million. This fund was organized to promote community development and to support the mission of the University

Venture Fund (UVF), a Utah 501(c) (3) non-profit corporation that serves as the managing member of the fund. The UOF is a collaborative effort between students, the Utah University's Business School, and members of the banking and the venture capital communities to promote community development by providing growth capital to small businesses and educating students. As lead investor, UBS has stipulated in its agreement with fund management, that the fund's primary purpose is to facilitate community development by investing in small businesses that meet the size and purpose test to qualify for CRA credit. During the 3 year assessment period, the fund invested in 13 small start-up businesses.

- **FDIC Deposit UCB Credit Union –** UBS purchased an FDIC deposit in this Utah Credit Union for Utah blind and visually impaired individuals.

QUALIFYING DONATIONS – During the 3 year assessment period, UBS provided a non-cumulative total of $1.69 million in qualifying donations to a diverse group of non-profit, charitable, and education based entities, as well those that promote new business development. UBS directs qualified charitable donations to organizations that focus on underserved youth and community development, with particular emphasis on affordable housing, educational programs, and other out-reach services that benefit children.

GOAL 2 : COMMUNITY DEVELOPMENT SERVICE TEST

UBS Service Goal: Bank employees will achieve a total volume of qualified service hours for each Plan Year equal to a predetermined level of hours established for either "Satisfactory" or "Outstanding" performance.

UBS has met the requirements established under its Plan for an overall "Outstanding " rating under the service test. On behalf of UBS and in-line with its Plan, bank employees have contributed significant time, expertise, and resources to entities that assist LMI individuals and small business development. The following discussion details the bank's 2005-2007 CDL/CDI goals and its efforts in meeting these goals.

			Bank Established Goals	
Plan Year	**Qualified Community Service**	**Actual Bank Performance**	**Hours For Satisfactory Performance**	**Hours For Outstanding Performance**
2005	UBS Employee Hours Dedicated to Community Service Activities	**333 hours**	225 hours	275 hours
2006	UBS Employee Hours Dedicated to Community Service Activities	**451 hours**	275 hours	325 hours
2007	UBS Employee Hours Dedicated to Community Service Activities	**441 hours**	325 hours	400 hours

Source: Bank Records

Representatives of UBS have attended numerous community meetings to discuss affordable housing and small business development needs within its assessment area. Bank officers have held positions as Board members and committee members of several community service agencies designed to assist the development of at risk youth residing in disadvantaged areas of its community. Staff has provided a large volume of service hours providing financial literacy to LMI students and adults.

RESPONSE TO COMPLAINTS

The bank has not received any CRA related complaints since the previous Compliance Examination.

FAIR LENDING OR OTHER ILLEGAL PRACTICE REVIEW

No evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs was identified.

PUBLIC DISCLOSURE

October 24, 2011

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

UBS Bank USA
Certificate Number 57565

299 South Main Street, Suite 2275
Salt Lake City, Utah 84111

Federal Deposit Insurance Corporation
25 Jessie Street at Ecker Square, Suite 2300
San Francisco, California 94105

NOTE: This document is an evaluation of this institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

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GENERAL INFORMATION

The Community Reinvestment Act (CRA) requires each federal financial supervisory agency to use its authority when examining financial institutions subject to its supervision, to assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income (LMI) neighborhoods, consistent with safe and sound operation of the institution. Upon conclusion of such evaluation, the agency must prepare a written evaluation of the institution's record of meeting the credit needs of its community.

This document is an evaluation of the CRA performance of ***UBS Bank USA (UBS)*** *prepared by the* ***Federal Deposit Insurance Corporation (FDIC)****, the institution's supervisory agency, as of* ***October 24, 2011****. The agency evaluates performance in assessment area(s), as they are delineated by the institution, rather than individual branches. This assessment area (AA) evaluation may include the visits to some, but not necessarily all of the institution's branches. The agency rates the CRA performance of an institution consistent with the provisions set forth in Appendix A to 12 CFR Part 345.*

This institution elected to be evaluated under the strategic plan option (Plan). The Plan approved by the agency, sets forth goals for satisfactory (and outstanding, if applicable) performance.

INSTITUTION RATING

INSTITUTION'S CRA RATING: **This institution is rated Outstanding.**

UBS's CRA performance depicts an outstanding record of helping to meet the credit needs of its AA, as outlined by the Plan, in a manner consistent with its resources and capabilities. The following supports this rating:

- Cumulative community development (CD) loans and investments exceeded the bank's minimum established goals for "Outstanding" performance for Plan years 2008, 2009, and 2010.
- CD service hours exceeded the bank's established minimum goals for "Outstanding" performance for all three years.
- UBS has not received any complaints relating to its CRA performance.

In addition, no evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs was identified.

SCOPE OF EVALUATION

This evaluation utilizes the interagency examination procedures for banks evaluated under strategic plans. To assess UBS's performance with respect to these procedures, the following five CD performance criteria were analyzed: UBS's CD loans; CD investments (including grants and donations); CD services; the level of innovativeness represented by CD activities; and response to any consumer complaints regarding its CRA performance.

This evaluation relies upon records and reports provided by UBS, publicly available financial information, demographic data, and information gathered as part of the evaluation process, including recent community contacts. The evaluation reflects UBS's CRA performance since the previous evaluation, conducted by the FDIC, as of September 22, 2008. The evaluation was conducted from UBS's main office location in Salt Lake City, Utah.

UBS operated under two FDIC approved Plans for this CRA Evaluation review period. The first Plan, hereafter referred to as Plan A, was effective on January 1, 2007, through December 31, 2009. The second Plan, hereafter referred to as Plan B, was effective January 1, 2010, through December 31, 2012. Plan A and B were approved based on annual performance. This CRA Evaluation review period included calendar years 2008, 2009, and 2010.

Plan A and B include measurable goals to meet for CD loans, investments (including grants and donations), and service activities. The primary focus of these goals is to address identified needs for affordable housing, financial and healthcare education, and community services through grants and donations targeted to LMI individuals in UBS's designated AA. UBS will achieve its CRA obligations through loans, investments, leadership, and technical services.

A significant portion of UBS's Plan A and B focuses on cumulative CD loans and investments. Therefore, greater weight was assigned to performance in this category to establish an overall rating. CD service hours were also evaluated and considered to a lesser degree in the overall rating.

Examiners evaluated UBS's CRA performance in the context of the following:

- The current economic environment
- Demographic characteristics of its AA
- CD opportunities within its AA
- Financial resources and constraints
- Institution product offerings and business strategy
- Information derived from community contacts

DESCRIPTION OF INSTITUTION

UBS is a $31.5 billion federally insured Utah Industrial Bank as of June 30, 2011, which began operations on September 9, 2003. UBS is a wholly-owned subsidiary of UBS Americas, Inc. (UBSAI), a Delaware corporation located in Stamford, Connecticut, which is a wholly- owned subsidiary of the ultimate parent, UBS AG, in Zurich, Switzerland. UBSAI was organized on November 3, 2000, when UBS AG acquired 100 percent ownership in the Paine Webber Group. UBS AG is a global financial services company with total assets of approximately $1.4 trillion as of December 31, 2010, and is the largest bank in Switzerland. UBS AG operates directly or through wholly- owned subsidiaries in over 50 nations, including the United States.

UBS is a specialized entity that offers limited loan and deposit services to existing and future clients of affiliate UBS Financial Services, Inc. (UBSFS), which is the registered brokerage arm of UBS AG. Customers are strictly high net worth individuals and/or corporations located throughout the world. The bank primarily operates out of a single location in downtown Salt Lake City, Utah, and employs approximately 88 employees.

UBS primarily offers securities-based loan products fully collateralized by marketable equity and fixed income securities. These loans are offered via three products: the Premier Variable Credit Line, the Premier Fixed Credit Line, and the Prime Variable Credit Line. The Prime Variable Credit Line uses the Wall Street Journal Prime, with credit lines ranging from $25,001 to $249,999. The Premier Variable Credit Line uses the London Interbank Offered Rate (LIBOR), with a loan size ranging from $250,000 and up. The fixed rate product requires a minimum $500,000 loan with minimum $250,000 draws. UBS did start offering mortgage loans in late 2009; however, this product was not part of UBS's Strategic Plan A or B. Therefore, mortgage lending was not considered in this evaluation.

The bank's primary funding source consists of brokered deposits of excess cash in UBSFS that is swept into the bank on a daily basis. Deposit products offered to customers consist of money market deposit accounts and negotiable order of withdrawal accounts. The bank does not offer demand or time deposits.

As of June 30, 2011, the bank reported total assets of $31.5 billion, total loans of $19.8 billion, and total deposits of $27.5 billion.

UBS received an "Outstanding" rating at its prior CRA Evaluation dated September 22, 2008. There are no apparent legal or financial impediments that would prohibit UBS from meeting the credit needs of the community.

DESCRIPTION OF ASSESSMENT AREA

Salt Lake County, Utah Demographic Information

UBS has defined its AA as Salt Lake County, which contains the largest population concentration in Utah. The state capital and county seat, Salt Lake City, is the largest city in the county followed by 15 cities and 6 townships including West Valley, Sandy, West Jordan, Taylorsville, Murray, Cottonwood Heights, and South Jordan. As of 2009, Salt Lake County had over 1.1 million residents. Table 1 shows key demographic information for Salt Lake County.

Table 1 Salt Lake County Demographics

Demographic Characteristics	#	Low % of #	Moderate % of #	Middle % of #	Upper % of #
Geographies (Census Tracts)	193	3	22	47	28
Population by Geography	898,387	1	23	49	27
Owner-Occupied Housing by Geography	203,690	0	17	52	31
Business by Geography	85,085	7	21	41	31
Farms by Geography	1,305	3	17	45	35
Family Distribution by Income Level	215,864	17	20	25	38
Distribution of LMI Families throughout AA	79,691	2	36	49	13
Median Family Income (MFI)		54,586	Median Housing Value		165,698
Housing and Urban Development (HUD) Adjusted MFI for 2010		70,000			
Households Below Poverty Level		8%			

Source: 2000 U.S. Census, 2010 HUD updated 2010 D&B Business Data

Economy

The Utah Department of Workforce Services listed health care providers as the largest employers in 2009, with over 20,000 employees. Next were the State of Utah, Wal-Mart, and the two major higher education institutions: Brigham Young University and the University of Utah. According to the Bureau of Labor Statistics, the December 2010 unemployment rate for Salt Lake County was 6.8 percent, which is well below the national average of 9 percent reported in December 2010.

Competitive Environment

According to the June 30, 2011, FDIC Summary of Deposits, there were 48 FDIC-insured financial institutions with offices or branches located in Salt Lake County. UBS ranks 4th in deposit market share, holding 10.5 percent of the county's $264 billion in total deposits. The institutions with the greatest market share of deposits are Morgan Stanley Bank with 22.2

percent, Ally Bank with 14.6 percent, and Goldman Sachs Bank with 12.0 percent.

As of June 30, 2011, the State of Utah Department of Financial Institutions lists total Utah depository institutions at 161 with $372 billion in total assets. Of that total, 43 were commercial banks with combined assets of $195 billion, 88 were credit unions with $14 billion in combined assets, 22 were industrial banks with $101 billion in combined assets, and 6 were savings and loan associations with $62 billion in combined assets.

Community Contacts

In conjunction with this evaluation, information from two existing community contacts was reviewed in order to determine the credit needs of the AA. The director of a local housing authority indicates that there is a critical need for housing for the homeless, services for senior citizens, and transitional housing for people impacted by recent mortgage troubles. The organization is involved in affordable housing development and indicated that they have been pleased with local community and financial institution involvement. One example of financial institution involvement mentioned was the assistance provided through the Utah Community Reinvestment Corporation that has provided much needed assistance for the development of affordable housing. There continues to be a need for additional affordable housing assistance, school programs, services for seniors, and other related community services.

The director of a local business and economic development corporation explained that there is an ongoing need for affordable housing and the development of affordable housing projects in the greater Salt Lake area. The director indicated that there is also a strong need for small business lending within the area. The representative specifically mentioned the Utah Microenterprise Loan Fund (MLF) as a helpful organization providing funds, training, and support needed by small business owners that do not qualify for traditional financing. The need for additional funding and support for small businesses continues and will play a critical role in rebuilding the Salt Lake economy according to the contact.

CONCLUSIONS WITH RESPECT TO CRA PERFORMANCE UNDER THE STRATEGIC PLAN

UBS's CRA performance depicts an outstanding record of helping to meet the credit needs of its AA, as outlined by Plan A and B, in a manner consistent with its resources and capabilities. The following information pertains to performance for 2008, 2009, and 2010 under each year's respective Plan and measurable goals.

UBS was very proactive in meeting the needs of its AA and seeking out new CD opportunities. In particular, UBS showed strong and innovative leadership in responding to the needs of two major agencies in Utah that experienced serious funding challenges resulting from the disruption to the bond markets starting in late 2008. UBS worked with senior management of the two agencies to put in place a total of $350 million in revolving credit lines, which were critical for these agencies to continue carrying out their respective missions (providing financing for first time homebuyers and for students seeking higher education) during the economic crisis.

Combined Cumulative Lending and Investments

The measurable goal for lending and investments consists of combined cumulative CRA loans and investments expressed as a percentage of UBS's cumulative quarterly average assets for each plan year divided by 4, as opposed to percentages of the bank's total assets at the end of each plan year. UBS's quarterly average assets for each Plan year are calculated using the amounts from line 9 of the Schedule RC-K of UBS's call reports for that plan year. This is the same approach used by the bank in its 2004-2006 Strategic Plan. The results of this analysis are displayed in Table 2.

Table 2 Cumulative Community Development Loans and Investments

Plan Year	Bank Established Goals		Bank Performance		
	Satisfactory	Outstanding	Loans/Investments Total (000s)	Average Assets (000s)	Actual Performance
2008	0.90%	1.10%	$313,179	$27,639,376	1.13%
2009	1.00%	1.20%	$510,352	$32,836,770	1.55%
2010	1.10%	1.30%	$458,264	$29,673,648	1.54%

Source: UBS Records and UBS Strategic Plan

Cumulative CD loans and investments exceed bank established minimum goals for "Outstanding" performance in 2008 (Plan A). In years 2009 and 2010 (Plan A and Plan B, respectively), UBS substantially exceeded the minimum goal for "Outstanding" performance. As indicated by community contacts utilized for the evaluation, organizations focusing on affordable housing and small business assistance are among those in greatest demand of funding. UBS has sufficiently applied loan and investment funds toward organizations that meet these needs. Table 3 displays the organizations and investment funds that received benefit of UBS's loan and investment activities by Plan year.

Table 3 Community Development Loans and Investments Breakdown			
	Plan Year		
Community Development Activity	**2008 (000's)**	**2009 (000's)**	**2010 (000's)**
Loans			
Housing Corporation	$2,374	$1,591	$151,218
Community Development Corporation	$3,000	$3,000	$3,000
Community Reinvestment Corporation	$6,200	$6,200	$6,200
Additional Affordable Housing	$4,200	$2,850	$2,654
Non-Profit Community Services Program	$235	$223	$205
Additional Community Development Services	$22,650	$17,650	$17,650
Non-Profit Community Services Program for Children	$476	$275	$114
Non-Profit Foundation	$11,000	$11,000	$11,000
Board of Regents	-------	$200,000	-------
Subtotal	$50,135	$242,789	$192,041
Investments			
Mortgage Backed Securities	$232,521	$237,827	$247,151
Municipal Utah Housing Bonds	$25,065	$24,380	$14,005
Certificate of Deposit	$100	$100	$100
Equity Investment	$4,808	$4,768	$4,493
Other Qualified Grants and Donations	$550	$488	$474
Subtotal	$263,044	$267,563	$266,223
TOTAL	**$313,179**	**$510,352**	**$458,264**

Source: UBS Records

Community Development Lending

Board of Regents: $200 million Revolving Line of Credit

In 2009, UBS extended a $200 million line of credit to the Board of Regents to provide short-term funding for the origination and/or purchase of student loans originated under the Federal Family Education Loan Program (FFELP). The FFELP serves more than 60,000 students annually, who attend 11 universities and colleges throughout Utah, with the vast majority of student loans being made to low- or moderate-income students. The Board of Regents had been Utah's major student financial aid provider through the administration of student loan, grant, and scholarship programs. Due to FFELP changes in late 2007 and the capital markets crisis in 2008, Utah lenders that had made up more than half of the past loan program volume were no longer participating in the program, which prompted the Board of Regents to become a direct lender. The Board of Regents had traditionally funded itself primarily through the issuance of tax-exempt bonds, but found itself no longer able to issue such bonds because of severe market disruptions. Faced with an expected student loan volume of $450 million for the coming academic year, the risk that additional lenders could withdraw from the program, and with only

$200 million in cash reserves to meet the potential loan demand, the Board of Regents sought an interim liquidity facility from UBS.

Although only one draw of $730,000 was made under the $200 million line of credit during the review period, the Board of Regents considered the availability of the entire amount of the credit line to be critical in assuring no disruptions in the funding of student loans during the 2009/2010 academic year.

Housing Corporation: $150 million Revolving Line of Credit

In 2010, UBS extended a $150 million revolving line of credit to a housing corporation to provide financing for the purchase of affordable housing by low- or moderate-income persons pursuant to a Single Family Mortgage Program. The housing corporation is Utah's leading provider of affordable housing finance, and was formed specifically to assist in the creation of affordable housing opportunities for lower-income individuals across the state. This housing corporation provides mortgage financing to qualifying first time homebuyers and financial resources to developers building or renovating affordable multifamily rental housing projects.

The UBS line of credit was designed to provide the housing corporation with short-term funding for the purchase of mortgage loans that would subsequently either (a) become subject to a bond issuance, or (b) be sold to Ginnie Mae or Fannie Mae. Historically, this housing corporation had not needed this type of short-term liquidity facility because of its strong internal liquidity and its previous pattern of issuing primarily tax-exempt municipal bonds every six to eight weeks. However, due to prolonged disruptions in the financial markets during 2008 and 2009, the housing corporation found itself in need of a short-term liquidity source to purchase and hold mortgage loans.

During the review period, the housing corporation made a total of $64.1 million in draws on the UBS line of credit to finance first mortgage loans for 421 homes. Additionally, the housing corporation was able to use its internal liquidity to finance an additional $70 million in first mortgage loans (for approximately 450 homes) that would not have been feasable without the existence of its line of credit with UBS.

Community Development Corporation: $3 million Revolving Line of Credit

UBS maintained the $3 million revolving line of credit originally extended to a CD corporation: a 501(c) (3) non-profit agency that has assisted more than 1,700 low- or moderate-income families become homeowners in numerous rural and urban Utah communities. This line of credit enabled the CD corporation to become the first Utah participant in the Asset Control Area (ACA) Program run by the United States Department of Housing and Urban Development (HUD), and one of only five nationally.

Under the ACA Program, HUD sells foreclosed single-family properties in designated HUD revitalization areas to the CD corporation at a deeply discounted price (participation in the ACA Program is limited to non-profits and local governments). Next, the CD corporation rehabilitates the homes and sells them to Utah families meeting HUD's income requirements.

During the review period, this CD corporation used $2.5 million of the line of credit to finance the acquisition and rehabilitation of 32 homes for Utah families. The revolving nature of the line has been a significant benefit to the CD corporation over the 6 years from inception (in late December 2004) through the end of the current review period (December 2010) by providing a total amount of more than $6.3 million in financing for the purchase and rehabilitation of 86 homes.

Community Reinvestment Corporation: $6 million Funding Commitment

UBS has maintained a $6.2 million funding commitment to a community reinvestment corporation loan pool. During the review period, UBS's participation in the loan pool helped to fund 28 affordable housing developments providing 1,178 new affordable housing units for Utah families.

Non-Profit Housing Corporation: $1 million Line of Credit

In 2008, UBS extended a $1 million revolving line of credit to a non-profit housing corporation as a source of financing for the acquisition and rehabilitation of single family dwellings in distressed downtown neighborhoods located in Logan, Utah, in collaboration with Logan City's revitalization program called "Returning Homes to Logan." This housing corporation is a 501(c)(3) non-profit agency organized in 1996 and has successfully facilitated the construction of more than 140 single family affordable homes. During the review period, this housing corporation used $226,325 of the UBS line of credit to purchase and rehabilitate 2 homes.

Community Apartments: $1.4 million Participation in a Construction Loan

In 2008, UBS purchased a $1.4 million participation interest in a loan to a community apartment complex for the construction of a multi-family rental project located in Springdale, Utah. The project had received an award of low-income housing tax credits, and was developed by a Utah non-profit corporation. The apartment complex provided 22 affordable housing units.

Non-Profit Community Service Organization: $15 million Line of Credit

In 2008, UBS increased its line of credit to a non-profit community service organization from $10 million to $15 million. This non-profit organization operates human service programs in 26 states, including Utah, and the District of Columbia. The goal of its programs is to support and empower America's most vulnerable groups, including the homeless; at-risk youth; and people struggling with substance abuse, addictions, mental health issues, and disabilities.

Non-Profit Community Service Organization: Two loans for $303,500

In 2010, UBS extended 2 loans totaling $303,500 to a non-profit community service organization founded almost 40 years ago by parents seeking community alternatives for their family members with disabilities. More than 90 percent of its clients are dependent upon social security and Medicaid benefits, which amount to monthly income of 20 percent to 30 percent of the HUD area median family income. The proceeds of the two loans were used for the purchase of a commercial building to be used as a day center for disabled clients, for the costs of tenant improvements, and for moving expenses associated with the relocation of the non-profit organization's corporate offices.

Innovative or Flexible Lending Practices

UBS made extensive use of flexible lending practices in serving AA credit needs during the review period. This represents a core strength of the bank's lending to LMI borrowers.

The previous and following sections detail the various innovative and flexible programs offered by UBS throughout the review period that resulted in loan originations and investments. UBS offers a myriad of innovative and flexible loans and investment programs, most of which are offered to non-profit organizations that target LMI individuals and/or families. In addition, many of these programs are complex and assist with meeting community credit needs noted by community contacts.

- UBS is the lead investor in an equity investment fund that is a highly innovative, and a first of its kind, CD venture capital fund organized in 2004 and continues today in promoting CD activities.

- The Board of Regents $200 million line of credit provided short-term funding for the origination and/or purchase of student loans originated under the FFELP. The FFELP serves more than 60,000 students annually, who attend 11 universities and colleges throughout Utah, with the vast majority of student loans being made to low- or moderate-income students.

- The UBS line of credit was designed to provide a housing corporation with short-term funding for the purchase of mortgage loans that would subsequently either (a) become subject to a bond issuance, or (b) be sold to Ginnie Mae or Fannie Mae. Due to the economy and prolonged disruptions in the financial markets during 2008 and 2009, the housing corporation found itself in need of a short-term liquidity source to purchase and hold mortgage loans.

Community Development Investments

Mortgage-backed securities (MBS):

During the review period, UBS purchased 39 MBS pools totaling $211.2 million. The underlying pools consist of 1,399 single family mortgages extended to low- and moderate-income individuals for the purchase of homes in Utah.

Municipal Bonds:

During the review period, UBS purchased 2 new bonds totaling $4.9 million from a housing corporation to participate in its Single Family Mortgage Program and provide financing for the purchase of affordable housing by LMI persons in Utah. UBS also purchased 1 new bond totaling $2 million from a housing finance agency to participate in its Single Family Mortgage Program and provide financing for the purchase of affordable housing by LMI persons in Idaho.

Equity Investment:

UBS is the lead investor ($5 million of the $17.2 million total) in an equity investment fund. The fund is a highly innovative, and a first of its kind, CD venture capital fund organized in 2004 to promote CD. This equity investment fund also supports the educational mission of a non-profit venture fund corporation that serves as the managing member of the fund. The equity investment fund is a collaborative effort between students, local universities, members of the banking industry, and members of venture capital communities to promote economic development by providing growth capital to small businesses that meet the size and purpose test to qualify as CD.

Because the equity investment fund partners with prominent venture capital firms throughout the country, students are provided with an unparalleled educational experience through meaningful interaction with these industry professionals. The students perform due diligence and other "value added" projects, which often include evaluating exciting young companies in their growth stages. During the review period, approximately 125 students have participated in this equity investment fund, and for 2009 and 2010, the students had a 100 percent job or intern placement at graduation, which is especially impressive during the continued economic crisis and high national unemployment rates. During the review period, this equity investment fund invested in four additional small businesses.

Community Development Grants and Donations

Table 4 provides details of the bank’s CD grants and donations by CD purpose and year. Table 5 lists dollar amount of the bank’s CD grants and donations by type of organization and year.

Table 4 – Community Development Grants and Donations										
Year	Total		Affordable Housing		Community Development Services		Economic Development		Revitalization or Stabilization	
	#	$	#	$	#	$	#	$	#	$
2008	34	550,000	11	165,835	21	339,165	2	45,000	-	-
2009	36	488,483	11	124,300	21	329,183	4	35,000	-	-
2010	32	474,380	9	100,000	21	344,380	1	20,000	1	10,000
Total	**102**	**1,512,863**	**31**	**390,135**	**63**	**1,012,728**	**7**	**100,000**	**1**	**10,000**

Source: UBS Records and UBS Strategic Plan A and B

During the 3 year review period, UBS donated a total of $1.5 million to CRA qualified organizations that provide community service, affordable housing, economic development, and revitalization or stabilization to LMI populations. Among these organizations, 12 received donations of $20,000 or more per year for over the 3 year review period.

Table 5 Community Development Grants & Donations			
Type of Organization	**2008 ($)**	**2009 ($)**	**2010 ($)**
Self Sufficiency and Education	264,700	201,183	226,380
Job Training and Employment	20,000	25,000	10,000
Homeless/Transitional Housing/Affordable Housing	90,000	109,300	105,000
Elderly/Child Day Care	79,300	50,000	60,000
Healthcare	46,000	80,000	45,000
Sponsorships/Scholarships/Memberships	50,000	23,000	28,000
Total by Year	**550,000**	**488,483**	**474,380**
GRAND TOTALS	**1,512,863**		

Source: UBS Records and UBS Strategic Plan A and B

Self-Sufficiency and Education

During the review period, UBS provided grants to non-profit organizations promoting self sufficiency and education among LMI individuals and households. Specifically, the non-profit organizations provide education to local Title 1 schools and LMI adults so they can become self-sufficient. LMI households participate in homebuyer education workshops and counseling, and school-aged students participate in financial literacy education that include workforce readiness and entrepreneurship.

Donations funded the operations of food banks throughout low-income areas in Utah. UBS's donation also went to purchase needed equipment and vehicles for the food banks' new facilities.

Job Training & Employment

UBS provided grants to non-profit organizations specializing in offering skills training to low-income individuals with physical, emotional, financial, and domestic challenges. People with disabilities are given the opportunity to obtain real jobs with competitive pay and the opportunity for advancement. The programs combined workshop training, mentoring, coaching, employment referral services, business clothing referral services, and more to help low- and moderate-income individuals achieve their full potential in the workforce.

Donations were provided to a MLF to provide financing and management support to entrepreneurs who are unable to access traditional sources of financing, especially those who are socially and/or economically disadvantaged.

Homeless/Transitional Housing/Affordable Housing

The main focus of the state and the nation is empowering homeless individuals with basic needs and skills to aid them in mainstreaming into society. The bank recognized this need by funding programs that aid individuals in obtaining housing assistance, transitional housing, as well as permanent affordable housing. The organization's efforts to increase homeownership also help to improve housing quality and promote neighborhood unity/leadership in Salt Lake County and Provo, Utah.

Elderly/Child Day Care

The beneficiaries of the bank's grants and donations also provide the local community with counseling, crisis nursery, parent advocacy, affordable living classes, and a learning library. The crisis nursery program is the only service of its kind in the Salt Lake Valley. Through the program, parents are allowed to drop off their children for 72 hours during an emergency. The program provides a safe and supervised environment for the children.

Healthcare

Individuals such as single mothers, homeless families, disabled individuals, and the elderly often lack funds to obtain healthcare. UBS fills some of this gap by contributing to non-profit agencies that provide healthcare services to LMI individuals.

Sponsorships/Scholarships/Memberships

The bank provides funding for sponsorship, scholarship, and membership programs to help organizations accomplish their missions; achieve their vision of building strong kids, strong families, and strong communities; and reinforce core values of caring, honesty, respect, and responsibility. These programs use an asset-building approach in their work. Each program is different, reflecting the needs of the local community and focusing on LMI individuals or geographies.

Community Development Services

CD services are evaluated by the number of hours spent performing qualified services. Service hours are also evaluated based on the service performed and the use of financial expertise of the employee performing the service. Table 6 displays UBS's performance goals for each Plan year. For all three years, UBS exceeded the minimum goals for "Outstanding" performance.

Table 6 Community Development Service Hours

Plan Year	Bank Established Goals		Bank Performance
	Satisfactory	Outstanding	Qualified Service Hours
2008	375	450	557
2009	425	500	562
2010	350	500	684
Total	1,150	1,450	1,803

Source: UBS Records and UBS Strategic Plan A and B

UBS personnel are responsive to the local community by providing the following services that may not always be available through federal and/or state funding or other non-profit activities. Table 7 describes the cumulative CD service activities.

Table 7 – Community Development Services

Year	Total		Affordable Housing		Community Development Services		Economic Development		Revitalization or Stabilization	
	#	Hours	#	Hours	#	Hours	#	Hours	#	Hours
2008	14	557	7	240	6	242	1	75	-	-
2009	8	562	3	270	4	229.5	1	62.5	-	-
2010	13	684	4	282	6	344.5	3	57.5	-	-
Total	35	**1,803**	**14**	**792**	**16**	**816**	**5**	**195**	-	-

Source: UBS Records and UBS Strategic Plan A and B

A majority of UBS's service efforts focused on underprivileged school programs, LMI housing, and local financial education programs. With the exception of the underprivileged school programs, employee involvement consists of service at the Board level of each organization as well as additional assistance utilizing the employees' financial expertise. The underprivileged school programs involved numerous employees who participated in teaching financial education and other various curriculums at a local Title 1 school.

FAIR LENDING OR OTHER ILLEGAL CREDIT PRACTICES REVIEW

No evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs was identified.

SCOPE OF EVALUATION

<table>
<tr><th colspan="4">SCOPE OF EVALUATION</th></tr>
<tr><td colspan="2">TIME PERIOD REVIEWED</td><td colspan="2">January 1, 2008 through December 31, 2010</td></tr>
<tr><td colspan="2">FINANCIAL INSTITUTION
UBS Bank USA
Salt Lake City, Utah</td><td colspan="2">PRODUCTS REVIEWED
Community Development Loans, Investments, Grants/Donations, and Services</td></tr>
<tr><td colspan="4">LIST OF ASSESSMENT AREAS AND TYPE OF EVALUATION</td></tr>
<tr><td>ASSESSMENT AREA</td><td>TYPE OF EVALUATION</td><td>BRANCHES VISITED</td><td>OTHER INFORMATION</td></tr>
<tr><td>Salt Lake County</td><td>Full-scope
On-site</td><td>Main Office</td><td>NA</td></tr>
</table>

PUBLIC DISCLOSURE

February 21, 2017

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Ally Bank
RSSD # 3284070

6985 Union Park Center, Suite 435
Midvale, Utah 84047

Federal Reserve Bank of Chicago
230 South LaSalle Street
Chicago, IL 60604

NOTE: This document is an evaluation of this institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

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INSTITUTION'S RATING

Ally Bank's Overall CRA Rating: Outstanding

A CRA Rating of "Outstanding" is assigned. The institution's performance reflects an outstanding record of helping to meet the credit needs of the assessment area, including low- and moderate-income areas, as outlined by its 2014-2016 Strategic Plan ("the Plan"). The following conclusions support this rating:

Lending Goals

- Small loans to businesses in low- or moderate-income (LMI) census tracts exceeded the institution's established goals for "Outstanding" performance;
- Consumer automotive financing transactions to LMI borrowers exceeded the institution's established goals for "Satisfactory" performance and substantially achieved the institution's established goals for "Outstanding" performance;
- Consumer automotive financing transactions made to borrowers residing in LMI census tracts exceeded the institution's minimum established goals for "Satisfactory" performance and substantially achieved the institution's established goals for "Outstanding" performance;

Community Development Goals

- Community Development ("CD") lending exceeded the institution's established goals for "Outstanding" performance;
- CD investments exceeded the institution's established goals for "Outstanding" performance; and
- CD service hours exceeded the institution's established goals for "Outstanding" performance.

SCOPE OF EXAMINATION

Ally Bank's CRA performance was evaluated under the Interagency Strategic Plan CRA Examination Procedures. The evaluation assesses the bank's performance in meeting the credits needs of its communities, including the bank's responsiveness to and effectiveness in meeting the credit and community development needs of its assessment area, and the performance criteria, including achievement of measurable goals established in the bank's approved 2014-2016 CRA Strategic Plan. The bank's performance was evaluated taking into consideration information about the institution including its business model, assessment area demographics and economic indicators, and information obtained from community contacts. Performance rating criteria and thresholds are established in the approved Plan, and ratings are evaluated for actual performance in relation to these established goals.

ALLY BANK

DESCRIPTION OF INSTITUTION

Ally Bank is a wholly-owned subsidiary bank of Ally Financial, Inc. (AFI), an independent, nationwide automotive financial services firm. As of December 31, 2016, AFI held $157.4 billion in combined assets with Ally Bank comprising $123.5 billion in assets. AFI is headquartered in Detroit, Michigan, and Ally Bank is headquartered in Midvale, Utah. Ally Bank maintains no branch offices or deposit-taking automated teller machines (ATMs); it provides all of AFI's direct banking business online.

Ally Bank does not maintain any traditional banking offices that are open for the public to conduct transactions; however, as a leading online bank, Ally Bank offers retail banking deposit products and services nationwide. Deposit products include checking accounts, savings accounts, money market deposit accounts, and certificates of deposit. Ally Bank, together with AFI, is the nation's leading provider of automotive financing and leasing products, including automotive vehicle purchase and lease financing to consumers, dealership financing, and commercial financing. In 2016, Ally Bank launched a number of new product lines, including a co-branded credit card, digital brokerage and wealth management, and limited direct-to-consumer mortgage lending.

As presented in the following table, the bank held $92.9 billion in loans as of December 31, 2016. Consistent with AFI's core line of business, Ally Bank's loan portfolio is primarily represented by commercial and industrial loans (dealer floorplan) and automobile loans.

Comparative Loan Mix

	$ Volume (000) 12/31/16	% of Portfolio 12/31/16	$ Volume (000) 12/31/15	% of Portfolio 12/31/15
Real Estate				
1-4 Family Res Construction Lns (03/2008)	6,873	0.0	0	0.0
Other Const Lns & Land Dev & Other (03/2008)	289,448	10.3	213,211	0.3
1-4 Family-Revolving	1,314,207	1.4	1,536,673	1.9
1-4 Family Res Secured by First Liens	9,480,531	10.2	7,910,824	9.6
1-4 Family Res Secured by Junior Liens	248,547	0.3	325,334	0.4
Lns Secured Owner Occupd NonFrm NonRes (03/2008)	3,223,743	3.5	3,023,263	3.7
Lns Secured by Other NonFrm NonRes (03/2008)	53,439	0.1	39,449	0.0
Total Real Estate Loans	**14,616,788**	**15.7**	**13,048,754**	**15.9**
Commercial & Industrial	43,083,540	46.4	38,169,457	46.4
Automobile Loans	34,892,818	37.6	30,843,213	37.5
All Other Loans including to non-depository institutions	218,193	0.2	112,555	0.1
Lease Financing	83,024	0.1	17,981	0.0
Total Loans & Leases	**92,894,363**	**100.0**	**82,191,960**	**100.0**

Note: Percentages may not add to 100.0 percent due to rounding.

There are no known legal, financial or other factors impeding the bank's ability to help meet the credit needs in its communities.

DESCRIPTION OF ASSESSMENT AREA

Ally Bank's 2014-2016 assessment area consists of five contiguous counties in the Salt Lake City-Provo-Orem CSA #482 including or bordering the Midvale, Utah headquarters location. Specific counties include Salt Lake County and Tooele County in the Salt Lake City MSA #41620, Davis County and Weber County in the Ogden-Clearfield MSA #36260, and Utah County in the Provo-Orem MSA #29340. The assessment area changed since the previous performance evaluation when Morgan County was included in the assessment area.

The assessment area contains 455 census tracts, of which 24 are low-income, 85 are moderate-income, 218 are middle-income, 124 are upper-income, and four for which income is unknown. Additional demographic information as of 2016 for the assessment area is presented below.

2016 Assessment Area
Portions of the Salt Lake City-Provo-Orem CSA #482

Income Categories	Tract Distribution		Families by Tract Income		Families < Poverty Level as % of Families by Tract		Families by Family Income	
	#	%	#	%	#	%	#	%
Low-income	24	5.3	16,446	3.4	4,668	28.4	86,209	17.6
Moderate-income	85	18.7	84,033	17.1	12,039	14.3	93,179	19.0
Middle-income	218	47.9	252,552	51.5	14,830	5.9	116,113	23.7
Upper-income	124	27.3	137,689	28.1	4,479	3.3	195,219	39.8
Unknown-income	4	0.9	0	0.0	0	0.0	0	0.0
Total Assessment Area	**455**	**100.0**	**490,720**	**100.0**	**36,016**	**7.3**	**490,720**	**100.0**

	Housing Units by Tract	Housing Types by Tract						
		Owner-Occupied			Rental		Vacant	
		#	%	%	#	%	#	%
Low-income	33,747	6,872	1.5	20.4	23,863	70.7	3,012	8.9
Moderate-income	142,150	63,254	13.6	44.5	66,836	47.0	12,060	8.5
Middle-income	347,774	251,354	54.1	72.3	80,570	23.2	15,850	4.6
Upper-income	174,104	143,063	30.8	82.2	20,864	12.0	10,177	5.8
Unknown-income	0	0	0.0	0.0	0	0.0	0	0.0
Total Assessment Area	**697,775**	**464,543**	**100.0**	**66.6**	**192,133**	**27.5**	**41,099**	**5.9**

	Total Businesses by Tract		Businesses by Tract & Revenue Size					
			Less Than or = $1 Million		Over $1 Million		Revenue Not Reported	
	#	%	#	%	#	%	#	%
Low-income	3,653	4.0	2,926	3.5	666	8.2	61	5.2
Moderate-income	16,264	17.7	13,731	16.6	2,349	28.9	184	15.7
Middle-income	41,884	45.6	37,820	45.8	3,646	44.9	418	35.8
Upper-income	29,887	32.5	27,997	33.9	1,390	17.1	500	42.8
Unknown-income	192	0.2	108	0.1	78	1.0	6	0.5
Total Assessment Area	**91,880**	**100.0**	**82,582**	**100.0**	**8,129**	**100.0**	**1,169**	**100.0**
	Percentage of Total Businesses:			**89.9**		**8.8**		**1.3**

Source: 2015 FFIEC Census Data and 2015 D&B Information

Population Characteristics

Census data indicates that, between 2000 and 2010, the population of the state as a whole increased by nearly one quarter, with sizable increases in assessment area counties Tooele and Utah. Growth in Utah County is particularly notable given its volume; a total of 148,028 residents between 2000 and 2010. The combined assessment area represents 77.5 percent of the total state population, indicating that this assessment area is the major population center of the state and is chiefly responsible for the state's increase in population. Growth in the state of Utah outpaces that in the U.S., with the state growing by 23.8 percent compared to U.S. growth at 9.7 percent.

Population Change

Area	2000 Population	2010 Population	Percentage Change
Salt Lake County, UT	898,387	1,029,655	14.6
Tooele County, UT	40,735	58,218	42.9
Davis County, UT	238,994	306,479	28.2
Weber County, UT	196,533	231,236	17.7
Utah County, UT	368,536	516,564	40.2
State of Utah	2,233,169	2,763,885	23.8
United States	281,421,906	308,745,538	9.7

Source: 2000—U.S. Census Bureau: Decennial Census
2010—U.S. Census Bureau: Decennial Census

Economic Characteristics

Population growth in the assessment area is driven largely by a strong economy that attracts and retains highly skilled workers, particularly in the financial services and information technology sectors. Clustering, expanding startups, and highly engaged universities acting as feeders contribute to a robust metropolitan economy. Unemployment data for the assessment area MSAs evidences that the unemployment rate in each has steadily decreased between 2014 and 2016 and is at a rate that is far below the national average. MSA data for 2014-2016 follows:

Unemployment Rates 2014-2016

Region	2014	2015	2016
Ogden-Clearfield, UT MSA	3.9	3.7	3.4
Provo-Orem, UT MSA	3.5	3.3	3.1
Salt Lake City, UT MSA	3.7	3.4	3.2
United States	6.2	5.3	4.9

Bureau of Labor Statistics: Local Area Unemployment Statistics

In addition to low unemployment, the overall quality of employment in the assessment area is strong. Location quotients (LQ), which are ratios based on data from the U.S. Bureau of Labor Statistics (BLS) that allow an area's distribution of employment by industry to be compared to the

U.S.'s distribution, were reviewed to determine industry mix and dependence. A ratio of 1.0 reflects a match, with a lower ratio indicating less dependence upon a particular industry and a higher ratio an increased dependence. Based on BLS data for employment using the North American Industry Classification System (NAICS), the Salt Lake City metropolitan area's LQ for the non-depository credit intermediation industry (financial services firms) was 4.2. This means that non-retail financial institutions represent a share of the regional employment that is more than four times that of the U.S. as a whole. As a point of comparison, depository credit intermediation has an LQ of 1.1, which is roughly on par with the US as a whole.

The state of Utah is one of seven states that charter Industrial Loan Companies (ILC), which are primarily owned by financial services firms and focus on a single product line or customer type. Although many former ILCs have since re-chartered, the State of Utah, generally, and Salt Lake County, specifically, retains the largest concentration of ILCs. Data published in 2007 by the Federal Reserve Bank of St. Louis estimated that Utah's ILCs account for 90 percent of the industry's assets.

Although difficult to segment by NAICS code, high-tech employment, including information technology and biotechnology, represents 7.8 percent of employment in the Salt Lake City metropolitan area compared to the U.S. at 4.8 percent of employment. Outreach with area companies reflect the positioning of the Salt Lake City metropolitan area as an increasingly strong draw for private equity firms willing to invest in innovative technologies, which are commonly unseasoned start-ups unable to receive a bank loan. The assessment area's primary economy is currently supported by a highly educated and skilled workforce able to command high wages as evidenced by the presence of debt and equity providers, the focus on incubating high tech companies, and the large number of nearby colleges and universities. The following table represents the change in median family income for counties in the assessment area between 2000 and 2010. The relatively high median family income and its increase between 2000 and 2010 reflect this skilled, educated workforce.

Median Family Income Change
2000 and 2010

Area	2000 Median Family Income	2006-2010 Median Family Income	Percentage Change
Salt Lake County, UT	54,470	67,451	23.8
Tooele County, UT	50,438	65,618	30.1
Davis County, UT	58,329	73,259	25.6
Weber County, UT	49,724	61,300	23.3
Utah County, UT	50,196	62,938	25.4
State of Utah	51,022	64,013	25.5

Source: 2000—U.S. Census Bureau: Decennial Census
2006-2010—U.S. Census Bureau: American Community Survey

As another measure of the assessment area's economic strength, upward mobility in the Salt Lake City metro area, defined as the probability that a child born to parents in the bottom 20 percent of income distribution will reach the top 20 percent ("absolute mobility"), is the fifth best among the largest U.S. metropolitan areas. The following data presents probability for the top five and bottom five metro areas based on income data from 2011-2012.

Upward Mobility in the 50 Largest U.S. Metropolitan Areas
Probability of Movement from Lowest Quintile of Income Distribution to Top Quintile

Rank	Commuting Zone	Percent Probability
1	San Jose, CA	12.9
2	San Francisco, CA	12.2
3	Washington, D.C.	11.0
4	Seattle, WA	10.9
5	Salt Lake City, UT	10.8
46	Indianapolis, IN	4.9
47	Dayton, OH	4.9
48	Atlanta, GA	4.5
49	Milwaukee, WI	4.5
50	Charlotte, NC	4.4

Source: Equality of Opportunity Project - The Poverty and Inequality Report 2015

In the U.S. as a whole, the odds of reaching the top quintile are 7.5 percent. In Salt Lake City, the odds of reaching this top quintile are 10.8 percent, which means that a child born into poverty is nearly one and a half times more likely to become a high income earner than in the U.S., generally.

Housing Characteristics

The effects of a robust economy and a highly skilled and highly paid workforce are reflected in the rise of housing costs throughout the assessment area. The following table shows the increase in the median housing values between 2000 and 2010 for assessment area counties.

Trends in Housing Costs
2000 and 2010

Location	2000 Median Housing Value	2006-2010 Median Housing Value	Percent Change
Salt Lake County, UT	153,500	237,500	54.7
Tooele County, UT	124,300	183,000	47.2
Davis County, UT	153,100	224,400	46.6
Weber County, UT	122,600	168,300	37.3
Utah County, UT	153,600	233,800	52.2
State of Utah	142,600	218,100	52.9

Source: 2000—U.S. Census Bureau: Decennial Census
2006-2010—U.S. Census Bureau: American Community Survey

Median housing values have increased substantially throughout the assessment area, and at a rate far greater than the increase in median family income. Therefore, despite positive economic indicators, the assessment area generally has become less affordable to assessment area residents.

The decrease in affordability is further evidenced by the fall in the assessment area's affordability ratio. The affordability ratio is calculated by dividing median household income by median housing value, and allows for comparison of housing affordability across the assessment area. An area with a high ratio generally has more affordable housing than an area with a low ratio. The following table presents the change in the affordability ratio between 2000 and 2010 for assessment area counties.

Trends in the Affordability Ratio
2000 and 2010

Location	2000 Affordability Ratio	2006-2010 Affordability Ratio	Percent Change
Salt Lake County, UT	0.32	0.24	-22.5
Tooele County, UT	0.37	0.33	-10.1
Davis County, UT	0.35	0.30	-15.1
Weber County, UT	0.36	0.32	-10.5
Utah County, UT	0.30	0.24	-18.4
State of Utah	0.32	0.26	-19.5

Source: 2000 – U.S. Census Bureau: Decennial Census
2006-2010 – U.S. Census Bureau: American Community Survey

This data further supports that, despite increases in income and low unemployment, housing became less affordable across the assessment area between 2000 and 2010.

The need for subsidized housing is particularly acute in Salt Lake County, which has seen the greatest decrease in the affordability ratio. Although data is not available for all assessment area counties, within the three most populated counties for which it is available, Salt Lake County evidences the greatest need for an increase in subsidized units.

Subsidized Housing Indices
2013

Location	Average Household Income for Subsidized Households	Number of Subsidized Units	Average Months on Waiting List
Salt Lake County, UT	11,677	8,513	30
Davis County, UT	11,873	1,776	18
Utah County, UT	12,446	2,289	11
State of Utah	11,739	17,563	23

Source: Federal Reserve Bank of San Francisco 12th District Community Indicators Project - 2015

Salt Lake County has the highest average housing cost within assessment area counties and an average income that is 105.3 percent that of the State of Utah as a whole, yet it has the longest waitlist for subsidized housing for which data is available and an average household income for those seeking subsidized units that is only 17.3 percent of the county median. Given the advantages to residing within Salt Lake City, as evidenced by economic mobility indices, data indicates a need for increasing access to subsidized housing so that low-income residents may remain within the community.

Community Contacts

Two community representatives were contacted to help determine the credit and banking needs of the assessment area. Additionally, organizations who received community development financing from Ally Bank were interviewed in order to provide specific context regarding impactful lending, investment, and service opportunities and how they were addressed by the bank. Finally, information was reviewed from the bank's community needs assessment, which was performed in conjunction with the development of Ally Bank's Plan.

Representatives corroborated data indicating that the assessment area, particularly Utah County, is becoming a tech hub and that is responsible for most of the growth in population. Computer software company Adobe Systems opened a large tech campus in Utah County in 2013, as did e-commerce corporation eBay. Organizations repeatedly referenced the strength of the assessment area in seeding and incubating tech startups, and the number of local colleges and universities that act as feeders. Contacts also repeatedly referenced the number of financial institutions in the area looking to make CRA-qualified investments. One representative stated that banks are "always" contacting her organization to understand its needs.

Despite the robust assessment area economy and large number of institutions subject to CRA, contacts noted a number of community development needs. Contacts maintained that opportunities remain for financing affordable housing projects. Further, given the number of small start-ups, opportunities remain for financial institutions to provide technical assistance to small businesses. Need was noted for an increase in micro-enterprise loans, particularly those in amounts of $100,000 or greater. Additional support was also suggested through participation in New Markets Tax Credit pools.

CONCLUSIONS WITH RESPECT TO PERFORMANCE TESTS

LENDING TEST

Ally Bank's performance relative to the lending test is rated Outstanding. The Plan established four goals for both the assessment area and for the broader statewide and regional area as follows:

- Small loans (<$1MM) to businesses in LMI geographies for purchase of a vehicle;
- Loans in LMI geographies to consumers for purchase of a vehicle;
- Loans to LMI borrowers (consumer) for purchase of a vehicle; and
- Community Development loans

Ally Bank's performance relative to each goal exceeded the goals for a Satisfactory rating and substantially achieved the goals for an Outstanding rating.

Small Loans to Businesses in LMI Geographies

As the bank only originates or purchases business purpose loans for auto finance, a goal for small auto loans to businesses in LMI geographies was established to reflect performance in providing small dollar credit to businesses. The following table presents information regarding Ally Bank's performance relative to benchmarks established within the assessment area for Plan years 2014-2016.

Number of Small Auto Loans to Businesses in LMI Assessment Area Geographies												
	Goal Thresholds									Actual Performance		
	Low Satisfactory			High Satisfactory			Outstanding					
Year	Low	Moderate	LMI Total	Low	Moderate	LMI Total	Low	Moderate	LMI Total	Low	Moderate	LMI Total
2014	13	38	51	14	44	58	16	48	64	25	97	122
2015	14	39	53	15	45	60	17	50	67	24	125	149
2016	15	39	54	16	45	61	18	51	69	20	89	109
Total	**42**	**116**	**158**	**45**	**134**	**179**	**51**	**149**	**200**	**69**	**311**	**380**

Actual performance exceeded goal thresholds for an Outstanding rating in lending to both low- and moderate-income geographies in each of the plan years, with the total aggregate lending in LMI tracts substantially exceeding that threshold.

Loans in LMI Geographies to Consumers for Purchase of a Vehicle

Given the bank's focus on automotive lending, a goal was established for lending in LMI geographies to consumers for purchase of a vehicle to reflect performance in extending consumer credit throughout the assessment area. The following table presents information regarding performance on the goal for loans to consumers residing in LMI geographies.

Number of Auto Loans in LMI Assessment Area Geographies												
	Goal Thresholds									Actual Performance		
	Low Satisfactory			High Satisfactory			Outstanding					
Year	Low	Moderate	LMI Total	Low	Moderate	LMI Total	Low	Moderate	LMI Total	Low	Moderate	LMI Total
2014	21	146	167	23	161	184	25	175	200	17	156	173
2015	22	152	174	24	167	191	26	182	208	46	215	261
2016	23	155	178	25	171	196	27	186	213	37	201	238
Total	66	453	519	72	499	571	78	543	621	100	572	672

In 2014, lending in LMI areas met only the Low Satisfactory threshold. However, lending to LMI geographies exceeded the threshold for an Outstanding rating in 2015 and 2016 and greatly exceeded the threshold for low-income geographies specifically.

Loans to LMI Borrowers for Purchase of a Vehicle

Loans to LMI borrowers for purchase of a vehicle was designated as a goal to reflect performance in helping meet the credit needs of LMI individuals within the assessment area. The following table presents information regarding performance on the goal for loans to LMI borrowers for purchase of a vehicle.

Number of Auto Loans to LMI Borrowers												
	Goal Thresholds									Actual Performance		
	Low Satisfactory			High Satisfactory			Outstanding					
Year	Low	Moderate	LMI Total	Low	Moderate	LMI Total	Low	Moderate	LMI Total	Low	Moderate	LMI Total
2014	86	242	328	96	272	368	107	302	409	140	278	418
2015	90	251	341	100	283	383	111	315	426	148	322	470
2016	92	257	349	102	290	392	114	322	436	135	320	455
Total	268	750	1,018	298	845	1,143	332	939	1,271	423	920	1,343

Actual performance exceeded the threshold for an Outstanding rating for aggregate lending to LMI borrowers in each year. Lending in moderate-income areas met the High Satisfactory threshold in 2014 and 2015; however, lending to low-income borrowers substantially exceeded the Outstanding threshold.

Community Development Lending

Ally Bank's Community Development lending goals and lending performance for 2014-2016 are presented in the following table.

Community Development Lending				
Dollars Originated in Assessment Area and Broader State and Regional Area ($ in Millions)				
Year	Low Satisfactory	High Satisfactory	Outstanding	Actual Performance
2014	$21.5	$24.1	$28.9	$55.7
2015	$22.0	$24.6	$30.6	$53.0
2016	$22.7	$25.5	$32.6	$46.1
Total	**$66.2**	**$74.2**	**$92.1**	**$154.8**

The bank's community development lending originations greatly exceed the established thresholds for an Outstanding rating. Further, a number of the loans originated were focused in areas identified as part of the needs assessment as being particularly impactful and responsive. Of the $154.8 million in qualified community development loans originated, $140 million or 90.4 percent were made to affordable housing projects. Loans often required special expertise and effort to provide a benefit that would not otherwise be possible. Notable examples of impactful community development loans include:

- A construction to permanent loan of $9.7 million to finance a 100-unit multifamily Low-Income-Housing Tax-Credit (LIHTC) rental project in which 79 units were income restricted to very low-income seniors (between 25 percent and 50 percent of area median income). Providing debt for a LIHTC transaction evidences a high level of knowledge, familiarity, and skill with a complex tax credit investment model. Ally Bank further acted as a LIHTC investor for this project.

- Four loans totaling $13.2 million for New Market Tax Credit (NMTC) transactions. This includes a $500,000 participation in a bridge loan for a historic rehabilitation of a manufacturing warehouse in a moderate-income census tract that twinned NMTC with Historic Rehabilitation Tax Credits (HTC) in a leverage structure transaction. The project consists of 13 residential apartment units, all reserved for residents making less than 80 percent of area median income (AMI), as well as eight commercial spaces for artists or small businesses. Acting as a lender in a NMTC leverage structure that also uses HTC evidences an extremely sophisticated understanding of complex tax credit investments; further, as Ally Bank is not a commercial real estate lender its involvement in complex commercial real estate transactions, particularly in areas of the transaction that are often difficult to source, is notable.

- An $800,000 loan to the Salt Lake County Pay for Success (PFS) Development Fund. PFS is an outcome-based approach to financing social services that can be used to scale up particularly effective programs. The PFS Development Fund has adopted the PFS model to take a portfolio development approach in which several projects are simultaneously funded, creating better economies of scale, integrating performance-based contracts into policymaking, and promoting data sharing. This portfolio approach is the only such example in the PFS sector. Ally Bank's involvement with this unique PFS model evidences a particularly deep understanding of this initiative, which is designed to create increased community impact through multi-intervention funding.

INVESTMENT TEST

Ally Bank's performance relative to the investment test is rated Outstanding. The 2014-2016 Strategic Plan established performance thresholds as follows:

Community Development Investments New Investments and Grants Made in the Assessment Area and Broader State and Regional Area ($ in Millions)				
Year	Low Satisfactory	High Satisfactory	Outstanding	Actual Performance
2014	$240.5	$264.6	$288.6	$298.6
2015	$246.4	$271.0	$295.6	$313.2
2016	$255.0	$280.4	$305.9	$312.4
Total	**$741.9**	**$816.0**	**$890.1**	**$924.2**

Actual performance exceeds the number of dollars in new investments needed to meet the threshold for Outstanding in each year of the plan. The bank's investments and grants further highlighted a commitment to responding to identified community development needs, particularly in leadership positions and in complex areas. Notable examples include:

- Three investments totaling $10.0 million in Small Business Community Capital II (SBCC II), the first Latina-led Small Business Investment Company (SBIC) in the country and an SBA designated impact fund. SBCC II specializes in providing debt financing to new, small businesses between $100K and $1MM. This size of small business loan was identified within the community needs assessment as being particularly responsive. Ally investments in SBCC II have a purpose, mandate, and function of serving businesses in Utah. As the bank is not an SBA lender, investment through an SBIC is a particularly innovative way of meeting this assessment area need.

- Two venture capital investments totaling $10.0 million in the University Growth Fund (UGF). UGF is a successor to the University Venture Fund (UVF), a student-led venture capital fund that was recognized as a Community Development Venture Capital (CDVC) fund. As a CDVC fund, investments are predominately focused in CRA qualifying activities. UVF's investments were 98 percent CRA qualified, and UGF's investments are 78 percent CRA qualified to date. Ally Bank's participation as a lead investor in UGF evidences an innovative way to provide equity to small businesses.

- A $3 million venture capital investment in Kickstart Seed Fund II, a seed capital fund that provides equity financing to specifically new small businesses that may otherwise be too unseasoned for traditional venture capital firms. Kickstart's focus is on providing technical assistance to first-time entrepreneurs. Additionally, 68 percent of companies had revenue of less than $1 million, and 64 percent of employees were LMI. Ally Bank's investment in this seed capital fund is particularly responsive to assessment area needs as it funds small investments to entrepreneurs coupled with technical assistance.

- Donations totaling $60,000 to the Road Home and First Step House. The Road Home provides rental assistance and case management for the persistently homeless. First Step House provides intensive, targeted treatment, housing and case management for high-risk, high-need offenders. Both organizations are participants in Salt Lake County's Pay for Success project. Ally Bank's donations to these organizations coupled with lending to them through the PFS model evidences a high degree of involvement and impact.

SERVICES TEST

Ally Bank's performance relative to the service test is rated Outstanding. The 2014-2016 Strategic Plan performance thresholds and performance are as follows.

Community Development Services Service Hours Performed in the Assessment Area and Broader State and Regional Area				
Year	Low Satisfactory	High Satisfactory	Outstanding	Actual Performance
2014	650	700	750	841
2015	700	750	800	811
2016	750	800	850	979
Total	**2,100**	**2,250**	**2,400**	**2,631**

Actual performance exceeds the number of hours needed to meet the threshold for Outstanding in each year of the plan. Service hours performed evidenced a high level of involvement on Boards of Directors for organizations that promote the provision of financial services, and in providing technical assistance regarding financial services. Examples include:

- Board of Directors membership on the University Growth Fund. Ally Bank's Board membership, coupled with its investments, evidence a high level of participation and an ongoing commitment to its initiatives.

- Board of Directors membership on and teaching of financial literacy classes through the Arizona Auto Dealer Association. Through a collaborative effort with this organization, Ally Bank delivered budget and credit lessons using financial literacy curriculum that it developed (Ally Wallet Wise) to students in vocational schools located in LMI areas.

- Board of Directors membership on and technical assistance provided to Women of the World, an organization that provides services to refugee women, including housing, job placement, and English classes. Ally Bank employees served on the Board, helped prepare impact reporting metrics, and prepare budgets. Ally Bank further provided $40,000 in grants during the review period to this organization.

FAIR LENDING OR OTHER ILLEGAL CREDIT PRACTICES REVIEW

No evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs was identified.

APPENDIX A – Scope of Examination

SCOPE OF EXAMINATION			
TIME PERIOD REVIEWED	2014-2016		
FINANCIAL INSTITUTION Ally Bank			PRODUCTS REVIEWED Small loans to business Consumer auto loans
AFFILIATE(S)	AFFILIATE RELATIONSHIP		PRODUCTS REVIEWED
Ally Financial, Inc.	Parent Company		Small loans to business Consumer auto loans

IDENTIFICATION OF ASSESSMENT AREAS			
ASSESSMENT AREA	TYPE OF EXAMINATION	BRANCHES VISITED	OTHER INFORMATION
Salt Lake City-Provo-Orem CSA #482	Full Review	N/A	N/A

APPENDIX B – Glossary

Affiliate: Any company that controls, is controlled by, or is under common control with another company. A company is under common control with another company if the same company directly or indirectly controls both companies. A bank subsidiary is controlled by the bank and is, therefore, an affiliate.

Affordability ratio: To determine housing affordability, the affordability ratio is calculated by dividing median household income by median housing value. This ratio allows the comparison of housing affordability across assessment areas and/or communities. An area with a high ratio generally has more affordable housing than an area with a low ratio.

Area Median Income (AMI): AMI means –

1. The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or
2. The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

Assessment area: Assessment area means a geographic area delineated in accordance with section 228.41

Bank: Bank means a state member as that term is defined in section 3(d)(2) of the Federal Deposit Insurance Act (12 USC 1813(d)(2)), except as provided in section 228.11(c)(3), and includes an uninsured state branch (other than a limited branch) of a foreign bank described in section 228.11(c)(2).

Census tract: Small subdivisions of metropolitan and other densely populated counties. Census tract boundaries do not cross county lines; however, they may cross the boundaries of metropolitan statistical areas. They usually have between 2,500 and 8,000 persons, and their physical size varies widely depending upon population density. Census tracts are designed to be homogeneous with respect to population characteristics, economic status, and living conditions to allow for statistical comparisons.

Combined Statistical Area (CSAs): Adjacent metropolitan statistical areas/metropolitan divisions (MSA/MDs) and micropolitan statistical areas may be combined into larger Combined Statistical Areas based on social and economic ties as well as commuting patterns. The ties used as the basis for CSAs are not as strong as the ties used to support MSA/MD and micropolitan statistical area designations; however, they do bind the larger area together and may be particularly useful for regional planning authorities and the private sector. Under Regulation BB, assessment areas may be presented under a Combined Statistical Area heading; however, all analysis is conducted on the basis of median income figures for MSA/MDs and the applicable state-wide non metropolitan median income figure.

Community Development: The financial supervisory agencies have adopted the following definition for community development:

1. Affordable housing, including for multi-family housing, for low- and moderate-income households;
2. Community services tailored to meet the needs of low- and moderate-income individuals;
3. Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or
4. Activities that revitalize or stabilize low- or moderate-income geographies.

   Effective September 1, 2005, the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation have adopted the following additional language as part of the revitalize or stabilize definitions of community development. Activities that revitalize or stabilize:

   1) Low- or moderate-income geographies;
   2) Designated disaster areas; or
   3) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board, Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency based on:
      a. Rates of poverty, unemployment or population loss; or
      b. Population size, density and dispersion. Activities that revitalize and stabilize geographies designated based on population size, density and dispersion if they help to meet essential community services including the needs of low- and moderate-income individuals.

5. Loans, investments, and services that –
   i. Support, enable or facilitate projects or activities that meet the "eligible uses" criteria described in Section 2301(c) of the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289, 122 Stat. 2654, as amended, and are conducted in designated target areas identified in plans approved by the United States Department of Housing and Urban Development in accordance with the Neighborhood Stabilization Program (NSP);
   ii. Are provided no later than two years after the last date funds appropriated for the NSP are required to be spent by grantees, and
   iii. Benefit low-, moderate-, middle-income individuals and geographies in the bank's assessment area(s) or areas outside the bank's assessment area(s) provided the bank has adequately addressed the community development needs of its assessment area(s).

Community Development Loan: A community development loan means a loan that:

1) Has as its primary purpose community development; and
2) Except in the case of a wholesale or limited purpose bank –
   a. Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment as a home mortgage, small business, small farm, or consumer loan, unless it is a multi-family housing loan (as described in the regulation implementing the Home Mortgage Disclosure Act); and
   b. Benefits the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

Community Development Service: A community development service means a service that:

1) Has as its primary purpose community development; and
2) Is related to the provision of financial services.

Consumer loan: A loan(s) to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. This definition includes the following categories of loans: motor vehicle, credit card, home equity, other consumer secured loan, and other consumer unsecured loan.

Family: Includes a householder and one or more other persons living in the same household who are related to the householder by birth, marriage, or adoption. The number of family households always equals the number of families; however, a family household may also include non-relatives living with the family. Families are classified by type as either a married couple family or other family, which is further classified into "male householder" (a family with a male household and no wife present) or "female householder" (a family with a female householder and no husband present).

Fair market rent: Fair market rents (FMRs) are gross rent estimates. They include the shelter rent plus the cost of all tenant-paid utilities, except telephones, cable or satellite television service, and internet service. HUD sets FMRs to assure that a sufficient supply of rental housing is available to their program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many low-income families as possible. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard-quality rental housing units. The current definition used is the 40th percentile rent, the dollar amount below which 40 percent of the standard-quality rental housing units are rented. The 40th percentile rent is drawn from the distribution of rents of all units occupied by recent movers (renter households who moved to their present residence within the past 15 months). HUD is required to ensure that FMRs exclude non-market rental housing in their computation. Therefore, HUD excludes all units falling below a specified rent level determined from public housing rents in HUD's program databases as likely to be either assisted housing or otherwise at a below-market rent, and units less than two years old.

Geography: A census tract delineated by the U.S. Bureau of the Census in the most recent decennial census.

Household: Includes all persons occupying a housing unit. Persons not living in households are classified as living in group quarters. In 100 percent tabulations, the count of households always equals the count of occupied housing units.

Income Level: Income level means:

1) Low-income – an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent in the case of a census tract;
2) Moderate-income – an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 percent and less than 80 percent in the case of a census tract;
3) Middle-income – an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 percent and less than 120 percent in the case of a census tract; and
4) Upper-income – an individual income that is at least 120 percent of the area median income, or a median family income that is at least 120 percent in the case of a census tract.

Loan location: Under this definition, a loan is located as follows:

1) Consumer loan is located in the census tract where the borrower resides;
2) Home mortgage loan is located in the census tract where the property to which the loan relates is located;
3) Small business and small farm loan is located in the census tract where the main business facility or farm is located or where the loan proceeds have been applied as indicated by the borrower.

Market share: The number of loans originated and purchased by the institution as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the MA/assessment area.

Median Family Income (MFI): The median income determined by the U.S. Census Bureau every ten years and used to determine the income level category of geographies. Also, the median income determined by the Department of Housing and Urban Development (HUD) annually that is used to determine the income level category of individuals. For any given area, the median is the point at which half of the families have income above it and half below it.

Metropolitan Area: A metropolitan statistical area (**MSA**) or a metropolitan division (**MD**) as defined by the Office of Management and Budget. A MSA is a core area containing at least one urbanized area of 50,000 or more inhabitants, together with adjacent communities having a high degree of economic and social integration with that core. A MD is a division of a MSA based on specific criteria including commuting patterns. Only a MSA that has a single core population of at least 2.5 million may be divided into MDs. A metropolitan statistical area that crosses into two or more bordering states is called a multistate metropolitan statistical area.

Nonmetropolitan area: This term refers to any area that is not located in a metropolitan statistical area or metropolitan division. Micropolitan statistical areas are included in the definition of a nonmetropolitan area; a micropolitan statistical area has an urban core population of at least 10,000 but less than 50,000.

Other products: Includes any unreported optional category of loans for which the institution collects and maintains data for consideration during a CRA examination. Examples of such activity include consumer loans and other loan data an institution may provide concerning its lending.

Qualified Investment: This term refers to any lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

Rated area: This term refers to a state or multistate metropolitan area. For institutions with domestic branch offices in one state only, the institution's CRA rating is the state's rating. If the institution maintains domestic branch offices in more than one state, the institution will receive a rating for each state in which those branch offices are located. If the institution maintains domestic branch offices in at least two states in a multistate metropolitan statistical area, the institution will receive a rating for the multistate metropolitan area.

Small Business Loan: This term refers to a loan that is included in "loans to small businesses" as defined in the instructions for preparation of the Consolidated Report of Condition and Income. The loans have original amounts of $1 million or less and are either secured nonfarm, nonresidential properties or are classified as commercial and industrial loans.

ATTACHMENT 3

April 7, 2020

Via Electronic Mail

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Community Reinvestment Act Regulations (Docket ID OCC-2018-0008; RIN 1557-AE34; RIN 3064-AF22)

Ladies and Gentlemen:

The Kickstart Seed Fund ("Kickstart" or "Fund") appreciates the opportunity to comment on the proposal by the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation to revise the agencies' Community Reinvestment Act regulations ("Proposal"). Kickstart is writing to highlight the critical role that banks have played in economic development, and to urge the OCC/FDIC to retain the ability of banks to receive CRA credit through activities that promote economic development by financing small businesses - especially for banks whose investment supports job creation by financing an intermediary that lends to, invests in, or provides technical assistance to start-ups or recently formed small businesses.[1]

Background

Kickstart began with the recognition that there was a problem to be solved. Our founder, Gavin Christensen, saw that the lack of seed capital in Utah and the West was hurting entrepreneurs and that the ecosystem needed a seed fund to help new companies (i.e., businesses formed within the last 2-3 years) get started, hire employees and begin the journey to becoming significant employers. In 2008, Gavin worked with local universities, angel investors, entrepreneurs, and other key stakeholders to build a seed fund that the community could rally behind.

At that time, Utah and our nation faced difficult circumstances. Against all odds, Fund 1 was launched that very year, which would have been a nearly impossible feat if not for Ally Bank's early support through a CRA investment of $4 million (which was 50% of the entire fund). Kickstart, while starting with a humble $8M community development venture capital fund that took nearly 2.5 years to raise, has gone on to be one of the key catalysts for job creation and economic growth and mobility in Utah and the West. Kickstart prides itself on having paved the way for seed investing in the mountain west at a time when limited access to capital was creating a barrier to innovation. We believe the launch of Fund 1 contributed significantly to the creation of what is now one of the richest entrepreneurial ecosystems in the nation, accounting for thousands of jobs and dollars that have undoubtedly stimulated our economy, locally and beyond. Today, Kickstart manages over $250M across 5 funds, and has backed more than 110 companies across 6 states (78% concentration in Utah).

[1]The Interagency Questions &Answers Regarding Community Reinvestment ("CRA Interagency Q&A), at Section ____.12(g)(3)-1).

Kickstart is now launching its fifth fund as we once again face an unprecedented degree of uncertainty and economic hardship. It is our belief that the businesses we invest in are advantaged by being a part of the Kickstart community. Already, we are seeing our companies rally together to support one another as we navigate the challenges ahead. With major support from partners like Ally Bank, Kickstart is well-poised to provide extensive guidance and support to help these businesses and their employees weather the storms to come.

Economic Development Thesis
Kickstart Seed Fund I was created in partnership with a bank that was willing, through its CRA program, to work with other early stage investors to innovate and create a new kind of community development venture capital fund. From the beginning, it has been cost-prohibitive for a small fund like Kickstart to go through the application process to become an SBIC. Upon its inception, Kickstart worked with Ally Bank and the FDIC to create documentation for the "size" and "purpose" tests outlined in the CRA Interagency Q&A,[2] intended to both demonstrate impact of investments and to align investment decisions with a mandate to stimulate the local startup ecosystem and economy. The "size" and "purpose" tests are critical factors that ultimately enabled the fund's launch and continued success. To date, 99% of investments have met the size test, and 92% qualify for the purpose test, for a total of 91% qualifying for CRA credit (see statistics in the Job Creation section).

Over the last 10 years, all three federal banking agencies have found Kickstart's very thorough documentation to be sufficient as an "objective method" to demonstrate the requisite "job creation, retention, and/or improvement," and all of the banks that have invested in Kickstart have received CRA credit for their investments, further enabling economic development. Based on this long history of bank examiners accepting Kickstart's jobs data, Kickstart just cannot understand why the OCC/FDIC would want to eliminate the entire general "economic development" category with virtually no explanation.

Job Creation
Kickstart's cumulative portfolio of small businesses across all four funds currently accounts for a total of 4,800+ FTE employees, from 1,182 at the time of each investment, a 306% increase (for LMI person, in LMI areas, or by startups/recently formed small businesses). At the time of investment, aggregate revenue totaled to $209M across the portfolio. Today, these businesses account for a total of $784M annual revenue, which represents a 275% revenue increase since each investment. In total, the portfolio has gone on to raise $1.7B in subsequent funding. The national average for the number of businesses that go on to raise a Series B round is 15%. Currently, Kickstart's "beta" fund 1 matches that national average at 15%, fund 2 at 57%, and fund 3 at 37% (fund 4 is tracking to follow this trajectory). This has and will continue to lead to significant job creation and economic development in the state of Utah and beyond.

Kickstart Collective (Technical Assistance)
Kickstart prides itself on fostering a strong community of founders who regularly exhibit thought leadership and knowledge sharing to support one another in the "collective" entrepreneurial journey that each small business faces. Each year, Kickstart hosts events large and small to cultivate this ecosystem. The largest annual event is CEO Summit, which typically has around 140 attendees between companies and investors, and an NPS score of 100. Kickstart dedicates a great deal of time and capital to this effort.

Campus Founders Fund
Notably, Ally Bank has also played a major role in the creation and evolution of Campus Founders Fund, Kickstart's student-run venture investment group. CFF exists to empower the next generation of entrepreneurs by investing exclusively in student founders in the state of Utah. The fund is 100% managed by 8 local LMI students of different majors, ages, genders, and ethnicities. To date, CFF has deployed $480K across 30 startups. The portfolio has gone on to raise an additional $17.7M in funding and has an aggregate valuation of $82M, along with over $7M in annual

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[2]CRA Interagency Q&A), at Section ____.12(g)(3)-1) (the "size" test is that the small business meets the specified SBA size standards, and the "purpose" test consists of a list of at least five categories of and activities that meet the "purpose" test, including activities that support "job creation, retention, and/or improvement": (1) for low- or moderate-income "LMI) persons; (2) in LMI geographies; (3) in areas targeted for redevelopment by Federal, state, local, or tribal governments; (4) by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms, and (5) through technical assistance, supportive services for small businesses or farms, such as shared space, technology, or administrative assistance).

revenue. Top-performing CFF investment committee members have been invited to join Kickstart full-time, as well as Kickstart portfolio companies. Others have gone on to companies and universities including Bain, McKinsey, Deloitte, Goldman Sachs, Amazon, Microsoft, TCV, Wilson Sonsini, University of Chicago Law School, and Harvard Business School. Kickstart intends to allocate $300-$500K out of Fund 5 to CFF.

"Economic Development" Category

The new CRA Proposal would essentially retain CRA credit for bank investments *only* in SBICs, RBICs, or New Markets Venture Capital Companies, which would mean that banks would no longer receive CRA credit in Kickstart's funds. This would be extremely negative for several reasons. First, the SBIC approval process requires significant amounts of time and financial resources and the SBA is inherently prone to delays. The deletion of the "economic development" category, while retaining only the list of "presumptive" activities such as SBICs, will ultimately stifle innovation and create significant barriers for small businesses to enter the market when CRA credit is only given for investment in SBIC funds. Kickstart's robust documentation process includes extensive measurement of economic growth and development, and ultimately matches and even exceeds the information required by the SBA forms. Second, because Kickstart is not a SBIC, it is our understanding from our bank investors that they rely on their investments' CRA qualification for their exclusion from the Volcker Rule's exclusion from the definition of "covered fund."

Summary

In summary, it is critical that OCC/FDIC retain all categories of "economic development" currently set forth in the CRA Interagency Q&A by adding all of those activities as a subparagraph to Section 25.04 of the Proposal, and also to the corresponding list of qualifying activities. Doing so will continue to support innovation that positively impacts a wide variety of stakeholders including individual consumers, businesses, banks, social programs, healthcare systems, and so on. This means significant job creation, revenue generation, continued increase in the hiring of LMI employees and subsequent graduation from the LMI thresholds, and economic growth. Kickstart would be happy to provide any additional information helpful to the OCC/FDIC, or to meet in person to discuss our concerns.

Sincerely,

Gavin Christensen

Managing Partner, Kickstart Seed Fund

ATTACHMENT 4

Via Electronic Mail February 16, 2021

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th street and Constitution Avenue NW
Washington, DC 20551

Re: Community Reinvestment Act Advance Notice of Proposed Rulemaking (Docket No. R-1923; RIN 7100-AF94)

Dear Ms. Misback:

We are managing partners of the University Growth Fund I ("UGF" or "Fund"), an innovative $32 million student-run community development venture capital fund. UGF finances small businesses while also giving low-and-moderate-income ("LMI") student associates an unparalleled, real-world experience in venture capital investing. We were also managing partners of UGF's predecessor fund, the University Opportunity Fund ("UOF"), an $18M venture capital fund that operated in the same way as UGF.

Introduction

To begin, we want to express our deep appreciation for CRA, and for the many banks that have made investments in both UGF and UOF through their bank CRA programs. Both UGF and UOF were created primarily due to the willingness of federally insured banks to innovate and create a new kind of fund as part of their CRA programs by collaborating with venture capitalists and students. Although both funds were innovative and impactful, they did not have the extensive track record usually required by institutional investors such as banks - not to mention the extensive involvement of students. Without those banks and their commitment to community development and student education, we do not believe that these funds could have succeeded on the scale that they have, or produced the amazingly impactful community development story that has unfolded over that last 16+ years. It is from this perspective that we provide our comments on the Advance Notice of Proposed Rulemaking ("ANPR") by the Board of Governors regarding modernizing and strengthening its Community Reinvestment Act ("CRA") regulations.

Background and Previous CRA Comment Letter

Because CRA has been so integral to UGF's success on so many levels, including significant economic development, we also previously commented on the Notice of Proposed Rulemaking ("Proposal")[1] published by the Office of the Comptroller of the Currency ("OCC")_and the Federal Deposit Insurance Corporation ("FDIC"). Because our OCC/FDIC comment letter provided significant background about UGF, its unique model that provides a rare real-world educational experience, and its long experience with CRA, we have provided a copy of that comment as **Attachment A** to this letter. We had been deeply concerned about the Proposal's elimination of the "economic development" category that enables banks to receive CRA credit for their investments in UGF, and urged the OCC/FDIC to retain all of the current regulatory provisions and guidance on "promotion of economic development by financing small businesses."

After the comment letter deadline (April 8, 2020), our UGF student associates performed an extensive analysis of the 7,000+ comment letters, and were pleased to discover that several dozen other comment letters

[1] 85 Fed. Reg. No. 6, pp. 1204 and 1,213 (Jan. 9, 2020).

shared UGF's position.[2] In fact, it was extremely difficult to find comment letters that supported the wholesale elimination of the "economic development" category. In its introduction to the final rule published on June 5, 2020,[3] the OCC acknowledged the comment letters and even mentioned the University Growth Fund and stated that changes should be made "to correct the inadvertent exclusion of certain activities that qualify under the current framework." We appreciate that the OCC reinstated some of the previous "economic development" regulatory framework, but note that the final rule excluded any reference to job "improvement" for LMI people, which should be at the heart of CRA: helping people improve their economic situation. Also seeming to be absent were the previous references to "job creation, retention, and/or improvement" (1) in LMI geographies or in areas targeted for redevelopment by federal, state, local, or tribal governments, and (2) by financing intermediaries that invest in start-ups or recently formed small businesses. We do not completely understand the OCC's final rule and why it did not retain some important provisions regarding "economic development," which is one reason we are so thankful that the Board's ANPR does not propose to eliminate the "economic development" as the OCC/FDIC had proposed to.

<u>Comments on the Board's ANPR</u>

UGF offers the following comments in response to the designated ANPR Questions:

- ***Question 57.*** *What other options should the Board consider for revising the economic development definition to provide incentives for engaging in activity with smaller businesses and farms and/or minority-owned businesses?*

As discussed at length in our comment letter on the OCC/FDIC's proposal, CRA has always been at the very core of both UOF and UGF for over 16 years. During that time, UOF and UGF have gained significant experience with both the "size" test and the "purpose" test, and have always provided its bank investors comprehensive data to document that we meet both tests. Regarding the *"size"* test, UGF does not feel that the Board should narrow the "size" test to be based on only "annual gross revenues," but rather should retain the current size standards that include both of the following:

(1) "the size eligibility standards of the SBA's SBDC or SBIC programs" or
(2) "$1 million or less in annual gross revenues."

Because UGF does not focus solely on small, early stage companies, if the "size" test were restricted to companies with $1 million or less in annual gross revenues, most of UGF's current portfolio companies would not qualify. However, our portfolio companies have demonstrated significant "promotion of economic development" through job creation, retention, and/or improvement for LMI individuals, LMI areas, and areas targeted for redevelopment; specifically, several thousand jobs have been created, retained, or improved. From a policy perspective it would not seem consistent with the spirit of CRA to eliminate CRA credit for bank investments in funds like ours (and most SBICs) by implementing an exclusive focus on the smallest businesses.

However, UGF supports the Board's desire to help incentivize more financing to smaller businesses, and would suggest that a better alternative would be to retain the current "size" test standards while also adding additional support for smaller businesses. For example, the Board could expand the list of entities into which loans

[2] These letters were from a broad array of entities (including large trade associations, chambers of commerce, universities, individual funds from all over the country, non-profit organizations, and individuals) such as: American Bankers Association, Consumer Bankers Association, Banking Policy Institute, National Association of Affordable Housing Lenders, Utah Bankers Association, Mississippi Bankers Association, U.S. Chamber of Commerce, Salt Lake Chamber of Commerce, Small Business Investors Alliance, Enterprise Community Partners, Delaware Community Reinvestment Action Council, Community Reinvestment Fund, Rocky Mountain Community Reinvestment Fund, University of Utah, Utah State University, CORE Innovation Fund, Kickstart Seed Fund, Small Business Community Capital II, 1843 Capital, and numerous others. UGF would be happy to share with the Board further details of our comment letters analysis.
[3] 85 Fed. Reg. No. 109, June 5, 2020, at pp. 34739 and 34743.

and investment are “presumed to promote economic development” (and thus do not have to document compliance with the “purpose” test)[4] to include small businesses with less than $1 million in annual gross revenues. The Board could consider adding additional types of entities and activities to that list, such as minority-owned or -led small businesses, and financing provided in conjunction with a federal, state, or local program (such as PPP), etc.

- ***Question 58.*** *How could the Board establish clearer standards for economic development activities to ‘‘demonstrate LMI job creation, retention, or improvement’’?*

As explained above, UGF is a student-run venture capital fund created to give back to the community onseveral different levels. From inception (starting as early as 2004), the creators of both UGF and UOF worked with banks and their federal banking regulators, especially the FDIC, to ensure the funds would benefit LMI individuals and communities by “promoting economic development” and satisfy both the “size” test and the“purpose” test. The funds received the FDIC’s feedback on the appropriate data and documentation format that would confirm CRA qualification for the bank investors. Under the applicable CRA qualification requirements and based on the extensive job data documentation provided by the funds, the banks very rightly received CRA credit for their investments in UOF and later UGF (at both the fund level and also at the portfolio company level). During our time managing UOF, all of our bank investors received CRA credit for their investments based on the documentation we provided (see the highlighted portions of the CRA Performance Evaluations at Attachments A-C to UGF’s OCC comment letter).

After running UOF for many years, we launched UGF in late 2014 as a successor fund to UOF. Again, our bank investors confirmed the CRA qualification of the fund with their CRA regulators. In total, five banks invested a total of $22.5 million in UGF, and every bank’s investment has qualified for CRA. One of our bank’s regulators made special note of UGF (see highlighted portions of Attachment D to UGF’s OCC comment letter).

In summary, for over 16 years UOF and UGF provided its bank investors with comprehensive job data for the small businesses in which the funds invested, and the respective bank regulators from all three regulators (FDIC, OCC and the Federal Reserve) have accepted that documentation as satisfying the CRA requirement for showing “economic development.” In response to the Board’s specific questions regarding the establishment of clearer standards for economic development activities to “demonstrate LMI job creation, retention, or improvement,” UGF offers the following suggestions:

- The Board should retain the current provision that “examiners will employ appropriate flexibility in reviewing any information provided by a financial institution that reasonably demonstrates that the ‘purpose, mandate, or function of the activity meets the “purpose test”[5] – and it would be helpful for the Board to emphasize the “purpose, mandate, or function” consideration involved in the “purpose test.”
- Banks could provide documents for the purpose test in the form of a list of each small business financed, the number of employees (and income breakdown, as appropriate), the location of the small business, and other info pertaining to the “purpose” test (UGF typically provides this information to our investors on an annual basis).
- The Board could consider developing an optional template that could guide both banks and small businesses in documentation of both the “size” and “purpose” tests, and UGF would be happy to work with the Board on such a template for investments in funds such as ours.

- ***Question 59.*** *Should the Board consider workforce development that meets the definition of ‘‘promoting economic development’’ without a direct connection to the ‘‘size’’ test?*

[4] Interagency Q&A §___.12(g)(3) –1 sets forth the current list of such entities, and includes SBDCs, SBICs, RBICs, New Markets Venture Capital Companies, New Markets Tax Credit-eligible Community Development Entities, or CDFIs that finance small businesses.

[5] Interagency Q&A §___.12(g)(3) –1

We feel that workforce development is very important, and would support broadening the incentive for banks to support workforce development without regards to a "size" test.

We close by once again expressing the critical role that CRA and our bank investors have played in our innovative and extremely impactful student-run community development venture capital fund. We also encourage the Board to not eliminate any activities that would currently receive CRA credit. Our nation's small businesses have suffered horrific losses during this COVID-19 pandemic, and we encourage the Board to consider expanding what qualifies under "promotion of economic development by financing small businesses" rather than restricting those provisions.

We are grateful for this opportunity to comment on the Board's ANPR, and would be happy to answer any questions or provide additional information. You can contact us at (801) 410-5410.

Sincerely,

Tom Stringham
Managing Partner,
UGF

Peter Harris
Partner, UGF

List of Attachments:

- Attachment A: University Growth Fund Public Comment Letter dated April 8, 2020 (with its Attachments A-D).

ATTACHMENT 5

February 16, 2021

Via Electronic Mail

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Community Reinvestment Act (Regulation BB; Docket No. R-1723 and RIN 7100-AF94))

Dear Ms. Misback:

The Kickstart Seed Fund ("Kickstart" or "Fund") appreciates the opportunity to comment on the proposal by the Board of Governors of the Federal Reserve System for feedback to different approaches to modernizing the regulatory and supervisory framework for the Community Reinvestment Act (CRA). Kickstart is writing to respond to the request for feedback on Question 57 and 58 from the Advanced Notice of Proposed Rulemaking ("ANPR").

Background

In 2008, Kickstart began with a recognition that there was a lack of early-stage seed capital in Utah and the Intermountain West that was hurting entrepreneur's ability to get started, hire employees, and start on the journey to becoming a significant business that promotes economic development. That same year, Kickstart Seed Fund I ("Fund I")was launched with the backing of a CRA bank partner along with other local universities, angel investors, and entrepreneurs. Today, Kickstart manages over $250M across 5 funds and has invested in over 120 companies that have gone on to create thousands of jobs, the majority of which have supported low- and moderate-income ("LMI") geographies and/or people.

Kickstart Seed Fund I was created in partnership with a bank that was willing, through its CRA program, to work with other early-stage investors to innovate and create a new kind of community development venture capital fund. From the beginning, it has been cost-prohibitive for a small fund like Kickstart to go through the Small Business Administration's ("SBA") application process to become a licensed small business investment company (SBIC). From the very early days, Kickstart worked with its CRA bank partner and the FDIC to document that the majority of our investments met both the "size" and "purpose" tests to qualify under the CRA. Over the life of the Fund I, over 90% of the investments have met the size and purpose test. The robust data that our firm has collected and provided to its CRA bank partners has enabled them to receive CRA credit for their investments in Fund I, and all other investments in subsequent Kickstart funds.

Question 57

Over the last year Kickstart has seen the devastating impact the COVID-19 pandemic has had on the smallest segments of small business. We believe there are a few revisions that could be made to the definition of economic development that would provide incentives for engaging in activity with smaller businesses and/or minority-owned businesses. The ANPR suggests a modification to the CRA size test "to qualify economic development activity using only a gross annual revenue threshold." Based on the experience of the Fund, which has invested in d over 120 recently formed small businesses since inception, we believe this could end up severely restricting the number of small businesses that qualify for CRA credit. Many currently eligible activities would no longer qualify, as the ANPR acknowledges, including a bank's loans to/investments in SBICs or community development venture capital funds. Our experience is that SBICs and community development venture capital funds often lend to/invest in companies that have more than $1 million revenues but still easily meet the SBA's size standards. We believe this category of small business remains an important component of many banks' CRA Portfolios and are often an efficient way (i.e., through an intermediary) for banks to engage in small business lending or investing with significant job creation and economic benefit to communities.

We believe a better alternative would be to keep the current "size" test standards and to incent more loans/investments to the smallest businesses by expanding the list of activities that are "presumed to promote economic development" (full list is in Interagency Q&A §___.12(g)(3) – 1). The Board could add a category for small businesses with less than $1M in annual gross revenue. The Board could make other expansions to the list of activities "presumed to promote economic development," such as investments in minority-owned or -led small businesses. By expanding the list of activities that promote economic development, this could avoid any difficulties and added burden for the smallest segments of businesses as suggested in the ANPR of trying to "demonstrate that an activity meets both the "size test" and "purpose test"."

We would also encourage the Board to retain all of the current categories and provisions regarding the "purpose" test (Interagency Q&A §___.12(g)(3) – 1), especially the category of "supporting permanent job creation, retention, and/or improvement…by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses of small farms." We are such an intermediary, and it is our experience that many of the early stage (i.e., start- ups/recently formed) companies we invest in are the type of "smaller businesses" – with little or no gross annual revenues – that the ANPR seeks to support. We had been very disappointed when the OCC and FDIC put out their NPR that proposed to completely eliminate the entire category of "economic development by financing small businesses." We wrote a comment letter (*see attachment 1 to this email*) urging them to retain *all* of the current "economic development" categories rather than delete them, and many other letters expressed that same position. When the OCC issued its Final Rule, we were glad that they reinstated *some* of the previous "economic development" provisions, but were really disappointed that they appear to have eliminated the provisions regarding "financing intermediaries" such as Kickstart, along with other explicit provisions regarding job "improvement" (which is really important in the effort to help LMI individuals achieve economic mobility) and areas targeted for redevelopment. The OCC also offered no policy discussion or justification for restricting "economic development" when the three federal banking agencies had in fact just expanded those same provisions a few years earlier in the 2016 revisions to the CRA Interagency Q&A.

Question 58

Thank you for soliciting feedback on ways to establish clearer standards for economic development activities. Through our CRA bank partners we have been providing data around job creation, retention, and improvement for LMI geographies and individuals to examiners for over 10 years. We believe the Board could establish clearer standards to demonstrate LMI job creation, retention, or improvement. Specifically, having the Board provide a standard template could ensure uniformity in reporting and collecting the data. This would likely help the preparer and examiner. We have been tracking this data across our portfolio for many years. Kickstart would be happy to assist in giving a recommendation by sharing the template and methodology we have used to collect the data. To date, all of our bank investors have received CRA credit using the data and template we have been sharing.

Summary

As of today, Kickstart's small businesses employ 5,000+ people and have increased by a factor of 4x since our initial investment in these companies. We believe the fund has proven to be an incredible CRA success and has demonstrated strong economic development by financing hundreds of small businesses that, in turn, have created, retained, and/or improved thousands of jobs. With the countless challenges small business is facing, any change that could deter lending to or investing in small business would be very detrimental. We believe it is crucial to keep the current definition of "size" test standards and to retain and even expand the categories that qualify for "economic development" currently set forth in the CRA Interagency Q&A. Keeping these measures in place and possibly making it easier for bank partners to qualify for CRA credit will continue to lead to significant job creation, revenue generation, and the continued increase in the hiring of LMI employees and subsequent graduation from the LMI thresholds. Kickstart would be happy to provide any additional information helpful to the Board, or to meet in person to discuss or share our data and template we have created.

Sincerely,

Alex Soffe

Administrative Partner and CFO, Kickstart Seed Fund

ATTACHMENT 6

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

[Docket ID OCC–2014–0021]

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Docket No. OP–1497]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC).

ACTION: Guidance on the interpretation and application of the Community Reinvestment Act regulations.

SUMMARY: The OCC, Board, and FDIC (the Agencies) are adopting as final revisions to the Interagency Questions and Answers Regarding Community Reinvestment (Questions and Answers) based on the proposal issued on September 10, 2014 addressing alternative systems for delivering retail banking services; community development-related issues; and the qualitative aspects of performance, including innovative or flexible lending practices and the responsiveness and innovativeness of an institution's loans, qualified investments, and community development services. The Agencies are clarifying nine of the 10 proposed questions and answers (Q&A), revising four existing Q&As for consistency, and adopting two new Q&As. The Agencies are not adopting one of the proposed revisions to guidance that addressed the availability and effectiveness of retail banking services. Finally, the Agencies are making technical corrections to the Questions and Answers to update cross-references and remove references related to the Office of Thrift Supervision (OTS) as obsolete. The Agencies are publishing all of the new and revised Q&As, as well as those Q&As that were published in 2010 and 2013 and that remain in effect in this final guidance.

DATES: This document goes into effect on July 25, 2016.

FOR FURTHER INFORMATION CONTACT:
OCC: Bobbie K. Kennedy, Bank Examiner, Compliance Policy Division, (202) 649–5470; Vonda Eanes, National Bank Examiner and District Community Affairs Officer, Community Affairs, (202) 649–6420; or Margaret Hesse, Senior Counsel, Community and Consumer Law Division, (202) 649–6350, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Catherine M.J. Gates, Senior Project Manager, (202) 452–2099; or Theresa A. Stark, Senior Project Manager, (202) 452–2302, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, (202) 898–6859; Sharon B. Vejvoda, Senior Examination Specialist, Compliance and CRA Examinations Branch, (202) 898–3881; Surya Sen, Section Chief, Supervisory Policy Branch, (202) 898–6699, Division of Depositor and Consumer Protection; or Richard M. Schwartz, Counsel (202) 898–7424; or Sherry Ann Betancourt, Counsel, (202) 898–6560, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The Agencies implement the Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) through their CRA regulations. *See* 12 CFR parts 25, 195, 228, and 345. The CRA is designed to encourage regulated financial institutions to help meet the credit needs of their entire communities. The CRA regulations establish the framework and criteria by which the Agencies assess an institution's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations. The regulations provide different evaluation standards for institutions of different asset sizes and types.

The Agencies publish the Questions and Answers [1] to provide guidance on the interpretation and application of the CRA regulations to agency personnel, financial institutions, and the public.

The Agencies first published the Questions and Answers under the auspices of the Federal Financial Institutions Examination Council (FFIEC) in 1996 (61 FR 54647). The Questions and Answers were last published in full by the Agencies on March 11, 2010 (2010 Questions and Answers) (75 FR 11642). In 2013, the Agencies adopted revised guidance on community development topics that amended and superseded five Q&As and added two new Q&As (2013 Questions and Answers) (78 FR 69671), which supplemented the 2010 Questions and Answers. This document supplements, revises, republishes, and supersedes the 2010 Questions and Answers and the 2013 Questions and Answers.

The Questions and Answers are grouped by the provision of the CRA regulations that they discuss, are presented in the same order as the regulatory provisions, and employ an abbreviated method of citing to the regulations. For example, for thrifts, the small savings association performance standards appear at 12 CFR 195.26; for national banks, the small bank performance standards appear at 12 CFR 25.26; for Federal Reserve System member banks supervised by the Board, they appear at 12 CFR 228.26; and for state nonmember banks, they appear at 12 CFR 345.26. Accordingly, the citation would be to 12 CFR ____.26. Each Q&A is numbered using a system that consists of the regulatory citation and a number, connected by a dash. For example, the first Q&A addressing 12 CFR ____.26 would be identified as § ____.26–1.

Although a particular Q&A may provide guidance on one regulatory provision, *e.g.*, 12 CFR ____.22, which relates to the lending test applicable to large institutions, its content may also be applicable to, for example, small institutions, which are evaluated pursuant to small institution performance standards found at 12 CFR ____.26. Thus, readers with a particular interest in small institution issues, for example, should review Q&As relevant to other financial institutions as well.

A. The 2014 Proposal and Overview of Comments

On September 10, 2014, the Agencies proposed to revise six existing Q&As.[2] Two Q&As addressed the availability and effectiveness of retail banking services [3] and one Q&A addressed innovative or flexible lending practices.[4] The other three proposed

[1] Throughout this document, "Questions and Answers" refers to the "Interagency Questions and Answers Regarding Community Reinvestment" in its entirety; "Q&A" refers to an individual question and answer within the Questions and Answers.

[2] 75 FR 53838 (Sept. 10, 2014).

[3] Q&As § ____.24(d)–1 and § ____.24(d)(3)–1.

[4] Q&A § ____.22(b)(5)–1.

revised Q&As addressed community development-related issues, including economic development, community development loans, and activities that are considered to revitalize or stabilize an underserved nonmetropolitan middle-income geography.[5] The Agencies also proposed to add four new Q&As, two of which addressed community development services,[6] and two of which provided general guidance on responsiveness and innovativeness.[7]

Together, the Agencies received 126 different comment letters on the proposed Q&As, plus over 900 form letter submissions. The commenters included financial institutions and their trade associations (collectively, industry commenters), community development advocates and consumer organizations (collectively, community organization commenters), state bank supervisors, Federal agencies, and other interested parties.

Most commenters supported the Agencies' efforts to clarify the CRA guidance. Some commenters also suggested revisions to the proposed new and revised Q&As, as well as posed questions or stated concerns about the Q&As. Comments received by the Agencies on each revised or new proposed Q&A are discussed in further detail below in Parts II and III.

B. Summary of Final Q&As

The Agencies are adopting nine of the 10 proposed Q&As with clarifications to reflect commenters' suggestions. Parts II and III below discuss the clarifications made to these nine Q&As. Further, as discussed more fully below in Part II.C.i., in response to comments received, the Agencies are not adopting as final the proposed revisions to Q&A § ___.24(d)–1, one of the Q&As that addresses the availability and effectiveness of retail banking services.

The Agencies are also revising four additional existing Q&As[8] and adopting two new Q&As[9] based on questions and suggestions provided by the commenters. Finally, as discussed in Part IV, the Agencies have made technical corrections to 25 Q&As to update, for example, regulatory references, addresses, and references related to the former OTS.

As has been done in the past, the Agencies intend to provide training on all aspects of the new and revised Questions and Answers for examiners, as well as outreach for bankers and other interested parties.

II. Revisions to Existing Q&As

A. Community Development

Community development is an important component of community reinvestment and is considered in the CRA evaluations of financial institutions of all types and sizes. Community development activities are considered under the regulations' large institution, intermediate small institution, and wholesale and limited purpose institution performance tests. *See* 12 CFR ___.22(b)(4), ___.23, ___.24(e), ___.26(c), and ___.25. In addition, small institutions may use community development activities to receive consideration toward an outstanding rating. The Agencies believe that community development generally improves the circumstances for low- and moderate-income individuals and stabilizes and revitalizes the communities in which they live or work.

The Agencies proposed to provide additional clarification of three Q&As addressing community development-related topics.

i. Economic Development

The CRA regulations define community development to include "activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs (13 CFR 121.301) or have gross annual revenues of $1 million or less." *See* 12 CFR ___.12(g)(3). The Questions and Answers provide additional guidance on activities that promote economic development in Q&As § ___.12(g)(3)–1, § ___.12(i)–1, § ___.12(i)–3, and § ___.12(t)–4.

Existing Q&A § ___.12(g)(3)–1 explained the phrase "promote economic development." This Q&A stated that activities promote economic development by financing small businesses or farms if they meet two "tests": (i) A "size test" (the beneficiaries of the activity must meet the size eligibility standards of the SBDC or SBIC programs or have gross annual revenues of $1 million or less); and (ii) a "purpose test," which is intended to ensure that a financial institution's activities promote economic development consistent with the CRA regulations. Existing Q&A § ___.12(g)(3)–1 stated that activities promote economic development if they "support permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or support permanent job creation, retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment by Federal, state, local, or tribal governments." The Q&A further explained, "[t]he Agencies will presume that any loan to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, or New Markets Tax Credit-eligible Community Development Entity promotes economic development."

The Agencies proposed to revise existing Q&A § ___.12(g)(3)–1 to clarify what is meant by the phrase "promote economic development," and to better align this Q&A with other guidance provided in existing Q&As § ___.12(i)–1 and § ___.12(i)–3 regarding consideration of economic development activities undertaken by financial institutions. Further, the Agencies proposed to revise the guidance to add additional examples that would demonstrate a purpose of economic development, such as workforce development and technical assistance support for small businesses. In addition, the Agencies requested public comment on seven questions regarding the proposed revisions to the Q&A.

The Agencies received 40 comments addressing proposed revised Q&A § ___.12(g)(3)–1. Most commenters provided general comments about the proposed revised Q&A, with relatively few responding to the seven specific questions posed by the Agencies. Commenters generally supported the Agencies' efforts to clarify the types of activities that promote economic development. One industry commenter mentioned that changing the format to a bulleted list of activities that demonstrate a purpose of economic development is helpful.

A few industry commenters suggested eliminating the purpose test altogether, asserting that the regulations require only that activities relate to businesses that meet Small Business Administration (SBA) size-eligibility requirements. However, the Agencies note the intent of the purpose test is to explain what is meant by the phrase "promote economic development." The purpose test ensures that examiners consider only activities that promote economic development as activities with a primary purpose of community development. Other loans to small businesses and small farms are considered as retail loans if they meet certain loan-size standards (*see* 12 CFR

[5] Q&As § ___.12(g)(3)–1; § ___.12(h)–1; and § ___.12(g)(4)(iii)–4.

[6] Q&As § ___.24(a)–1 and § ___.24(e)–2.

[7] Q&As § ___.21(a)–3 and § ___.21(a)–4.

[8] Q&As § ___.12(g)–1, § ___.12(i)–3, § ___.12(t)–4, and § ___.26(c)(3)–1.

[9] Q&As § ___.12(g)–4 and § ___.24(d)(4)–1.

____.12(v) and (w)); larger loans to small businesses and small farms that do not meet the purpose test would not be considered in a CRA evaluation as small business or small farm loans. Furthermore, they would not be considered as community development loans, unless they have an alternate community development purpose as defined in 12 CFR ____.12(g).

The Agencies specifically asked what information is available to demonstrate that an activity meets the size and purpose tests. One community organization commenter suggested that examiners consider the size of the business by revenues or, alternatively, the mission statement of the intermediary lender, if the statement provides sufficient detail on the types of businesses served, to demonstrate an activity meets the size test. A few industry commenters suggested that all activities that support small businesses should be presumed to qualify and meet the purpose test.

As noted above, existing Q&A § ____.12(g)(3)–1 explained that the Agencies will presume that any loan to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, or New Markets Tax Credit-eligible Community Development Entity promotes economic development. The Agencies proposed a revision to the Q&A to add the following presumption: For loans to or investments in a Community Development Financial Institution (CDFI) that finances small businesses or small farms. As discussed below, the Agencies are adopting this proposed amendment to Q&A § ____.12(g)(3)–1 regarding CDFIs.

The Agencies also proposed to revise the existing Q&A § ____.12(g)(3)–1 by removing the reference to persons who are ''currently'' low- or moderate-income in order to clarify that banks can focus on community development activities that extend beyond support for low-wage jobs. The Agencies specifically requested input on whether the proposed revision would help to clarify what is meant by job creation, retention, or improvement for low- or moderate-income individuals. Commenters generally agreed with removing the reference to persons who are ''currently'' low- or moderate-income. However, most commenters indicated that the proposal did not sufficiently clarify what is meant by job creation, retention, or improvement for low- or moderate-income persons beyond the creation of low-wage jobs. Industry commenters reiterated concerns that the primary method to demonstrate that activities benefit low- or moderate-income individuals is to provide evidence of low-wage jobs, which is not consistent with the spirit or intent of the CRA. These commenters also expressed concerns that the proposal did not include examples of methods that could be used to demonstrate that the persons for whom jobs are created, retained, or improved are low- or moderate-income, and asked that the Agencies incorporate examples into the final Q&A.

The Agencies are adopting revisions to existing Q&A § ____.12(g)(3)–1 largely as proposed, but with additional clarifications.

First, the Agencies recognize that financial institutions may rely on a variety of methods to demonstrate that activities promote economic development. To make clear that financial institutions may provide various types of information to demonstrate that an activity meets the purpose test, the Agencies have added a statement in the final Q&A clarifying that examiners will employ appropriate flexibility in reviewing any information provided by a financial institution that reasonably demonstrates that the purpose, mandate, or function of an activity meets the purpose test.

In addition to the above revisions, the Agencies had proposed to add examples of types of activities that would meet the purpose test of promoting economic development. The Agencies are adopting these examples largely as proposed, but with some clarifications and revisions to address commenters' concerns, as discussed more fully below. Accordingly, the Agencies are adopting this final Q&A with reference to activities that are considered to promote economic development if they support permanent job creation, retention, and/or improvement:

• For low- or moderate-income persons;
• in low- or moderate-income geographies;
• in areas targeted for redevelopment by Federal, state, local, or tribal governments;
• by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms; or
• through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance.

The final Q&A also recognizes that Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate-income persons to jobs, or job training or workforce development programs, promote economic development.

The Agencies note that only one of the examples in the final Q&A explicitly refers to permanent job creation, retention, and/or improvement for low- or moderate-income persons. The Agencies encourage activities that promote economic development through opportunities for low- and moderate-income individuals to obtain higher wage jobs, such as through private industry collaborations with workforce development programs for unemployed persons and are clarifying that examiners will consider the qualitative aspects of performance related to all activities that promote economic development. In particular, activities will be considered more responsive to community needs if a majority of jobs created, retained, and/or improved benefit low- or moderate-income individuals.

The Agencies also note that Q&A § ____.12(g)(2)–1 provides examples of ways in which an institution could determine that community services and, therefore, other types of community development activities, including economic development, are targeted to low- or moderate-income individuals. In particular, the example explaining that an institution may use readily available data for the average wage for workers in a particular occupation or industry could be useful when determining whether an activity promotes economic development.

The Agencies specifically asked whether the proposed examples demonstrating that an activity promotes economic development for CRA purposes were appropriate, and whether there are other examples the Agencies should include. Most commenters generally agreed the proposed examples were appropriate. Several community organization commenters, as well as a state bank supervisory agency commenter, suggested the Q&A should also include a reference to the ''quality of jobs'' created, retained, or improved. Industry commenters, however, opposed a ''quality of jobs standard,'' expressing concerns related to increased subjectivity by examiners and the Agencies and documentation burden on institutions, small businesses or small farms, and examiners. The Agencies recognize that the term ''quality'' is subjective, not easily defined, and heavily influenced by local economic conditions, needs, and opportunities. The amount of time, resources, and expertise needed to fairly evaluate the quality of jobs created, retained, and/or improved for low- or moderate-income individuals could be overly burdensome for examiners, financial institutions, and small businesses or small farms. However, the Agencies note that examiners are not precluded from considering qualitative factors relative to a particular financial institution's performance context, including, at the institution's option, any information provided on the quality of jobs created, retained, or improved through any of the types of activities listed in the Q&A's description of the purpose test as promoting economic development.

The Agencies proposed that permanent job creation, retention, and/or improvement is supported ''through the creation or development of small businesses or farms'' and, therefore, such activity would be considered to promote economic development and meet the ''purpose test.'' The Agencies proposed this example in an effort to recognize the impact small businesses have on job creation in general, and to address industry concerns that activities in support of intermediary lenders or other service providers, such as business incubators that lend to start-up businesses and help businesses become bankable and sustainable, are often not considered under the purpose test. Industry commenters have previously indicated that such activities are not considered because it is not clear under the purpose test that these activities help promote economic development since any job creation, retention, or improvement would occur in the future—after the businesses are organized or more established. However, there were concerns that the proposed guidance stating that permanent job creation, retention, and/or improvement ''through the creation or development of small business or farms'' may be overly broad and could result in diffuse potential benefit to low- or moderate-income persons or geographies. The Agencies are adopting this example with revisions to clarify that examiners will consider activities that support permanent job creation, retention, and/or improvement by financing intermediaries that lend to, invest in, or provide technical assistance to *start-up or recently formed* small businesses or small farms. This example applies to loans to, investments in, or services to intermediaries that, in turn, lend to, invest in, or provide technical assistance to small businesses or small farms, and not to activities provided directly by an institution to small businesses or small farms. A loan to a small business or small farm would be considered under the lending test applicable to a particular institution—for example, for large institutions, under the retail lending evaluation criteria.

The Agencies also proposed to add activities that support permanent job creation, retention, and/or improvement ''[t]hrough workforce development and/or job or career training programs that target unemployed or low- or moderate-income persons'' to the list of activities that are considered to promote economic development under the purpose test. Two government agency commenters expressed concerns that these activities, in and of themselves, may not involve financing small businesses or small farms and, therefore, would not meet the size test. To address these concerns, the final Q&A does not incorporate this example in the list of those types of activities that promote economic development under the purpose test. However, the Agencies are amending existing Q&As § ____.12(g)–1 and § ____.12(t)–4 to clarify that activities related to workforce development or job training programs for low- or moderate-income or unemployed persons are considered qualified community development activities.

The last example of a type of activity that would be considered to promote economic development that the Agencies proposed referred to ''Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate-income persons, to jobs, affordable housing, financial services, or community services.'' Industry and community organization commenters suggested amending or eliminating this proposed activity altogether because it blurs the line between activities that support economic development and those that support other types of community development and could create confusion. Although the Agencies' original intention was to recognize all Federal, state, local, or tribal economic development initiatives, the Agencies agree with these commenters and have eliminated references to affordable housing, financial services, and community services, which would receive consideration under other prongs of the definition of ''community development.'' However, the Agencies have otherwise retained the example in the final Q&A being adopted, and have added a reference to governmental economic development initiatives that include job training or workforce development programs, because those initiatives are closely related to job creation, retention, and/or improvement.

Commenters overwhelmingly supported adding CDFIs that finance small businesses or small farms to the list of entities for which loans or investments are presumed to promote economic development; even so, some questioned limiting the presumption to CDFIs that finance small businesses or small farms. The Agencies are adopting this revision as proposed. In order for a CDFI to promote economic development by financing small businesses and small farms, it follows that any CDFI presumed to promote economic development would need to finance small businesses or small farms. Additionally, the Agencies are further revising the statement granting presumptions for activities related to the specified entities to include services provided to these entities, as well loans and investments.

Several commenters representing the Historic Tax Credit (HTC) industry suggested changes to the proposed Q&A that would expand and clarify the circumstances under which CRA consideration would be available for loans and investments related to projects involving HTCs. These commenters suggested the Agencies amend Q&A § ____.12(g)(3)–1 to create a presumption that activities related to HTC projects qualify for CRA consideration as promoting economic development by financing small businesses and small farms. Because not all HTC projects would meet the requirements to qualify for CRA consideration under 12 CFR ____.12(g)(3), the Agencies believe it would be inappropriate to grant such a presumption. Nonetheless, in instances in which loans to, or investments in, projects that receive HTCs do meet the regulatory definition of community development, including the geographic restrictions, the Agencies concur that CRA consideration should be provided. For example, a loan to, or investment in, an HTC project that does, in fact, relate to a facility that will house small businesses that support permanent job creation, retention, or improvement for low- or moderate-income individuals, in low- or moderate-income areas, or in areas targeted for redevelopment by Federal, state, local, or tribal governments may receive CRA consideration as promoting economic development. Further, a loan to or investment in an HTC project that will provide affordable housing or community services for low- or moderate-income individuals would meet the definition of community development as affordable housing or a community service targeted to low- or moderate-income individuals, respectively. Similarly, loans to or investments in HTC projects may also meet the definition of community development when the project revitalizes or stabilizes a low- or moderate-income geography, designated disaster area, or a designated distressed or underserved nonmetropolitan middle-income geography. Greater weight will be given to those HTC-related activities that are most responsive to community credit needs, including the needs of low- or moderate-income individuals or geographies. *See* Q&As § ____.12(g)–1, § ____.12(g)(2)–1, § ____.12(g)(4)–2, § ____.12(g)(4)(i)–1, and § ____.12(g)(4)(ii)–2 through–4.

In response to the Agencies' request for input on the types of information examiners should review when determining the performance context of an institution, some community organizations suggested consulting local studies and Federal Reserve Bank credit surveys; talking with CDFIs, local municipalities, and community organizations that work directly with small businesses; reviewing municipal needs assessments; and evaluating business and local demographic data. One industry commenter suggested examiners could review financial institution Consolidated Reports of Condition and Income (Call Reports) and academic or governmental economic development reports or adopted plans. Another industry commenter suggested that existing Q&As explain that an institution may provide examiners with any relevant information and, therefore, provide sufficient guidance without overlaying prescriptive changes that could be counter-productive to an institution's efforts to balance innovativeness and responsiveness with its unique business strategy. Also regarding performance context, community organization commenters called for examiners to conduct ''robust'' analyses of local needs, including localized data on employment needs and opportunities for low- or moderate-income individuals. The Agencies will consider commenters' suggestions going forward.

Finally, one community organization commenter noted that activities that support technical assistance may not involve ''financing'' small businesses or small farms and, therefore, may not be consistent with the size test. Providing technical assistance on financial matters to small businesses is currently cited as an example of a community development service in Q&A § ____.12(i)–3 and involves the provision of financial services. The Agencies long ago recognized that many small businesses, particularly start-up companies, are not immediately prepared for, or qualified to engage in, traditional bank financing and, therefore, included providing technical assistance to small businesses and small farms as a community development activity. However, the Agencies understand that reasoning may not be clear to examiners or financial institutions. To address this issue, the Agencies have amended the description of the ''size test'' in the final Q&A to explain that the term ''financing'' in this context is considered broadly and includes technical assistance that readies a business that meets the size eligibility standards to obtain financing. The Agencies intend this explanation to ensure that technical assistance that readies a small business or small farm to obtain financing is an activity that promotes economic development and, thus, would receive consideration as a community development activity.

ii. Revitalize or Stabilize Underserved Nonmetropolitan Middle-Income Geographies

The definition of ''community development'' includes ''activities that revitalize or stabilize . . . underserved nonmetropolitan middle-income geographies . . . .'' *See* 12 CFR ____.12(g)(4)(iii). The CRA regulations further provide that activities revitalize or stabilize underserved nonmetropolitan middle-income geographies if they help to meet essential community needs, including the needs of low- or moderate-income individuals. *See* 12 CFR ____.12(g)(4)(iii)(B). Existing Q&A § ____.12(g)(4)(iii)–4 provided further guidance by listing examples of activities that would be considered to help to revitalize or stabilize underserved nonmetropolitan middle-income geographies. The Agencies proposed to revise this guidance by adding a new example describing an activity related to a new or rehabilitated communications infrastructure in recognition that the availability of reliable communications infrastructure, such as broadband Internet service, is important in helping to revitalize or stabilize underserved nonmetropolitan middle-income geographies.

The Agencies received 66 comments addressing the proposed addition of the new example involving communications infrastructure. Commenters' views on whether the new example should be added to Q&A § ____.12(g)(4)(iii)–4 were mixed.

A number of commenters expressed concern regarding the addition of a new or rehabilitated communications infrastructure as an example of an activity that would be considered to revitalize or stabilize a nonmetropolitan middle-income geography. These commenters, primarily representing community organizations, generally expressed the view that CRA consideration should be used as a means of encouraging financial institutions to find more direct ways to meet the needs of low- or moderate-income individuals and geographies. One individual commenter that opposed the addition of the example expressed concern that ''regulatory creep'' was moving the focus of the CRA away from its original mission of helping to meet community credit needs.

In contrast, most industry commenters, as well as a few community organization commenters, supported the addition of the new example addressing communications infrastructure. These commenters stated that such an example would provide further clarity regarding what constitutes an activity that could revitalize or stabilize underserved nonmetropolitan middle-income geographies. Many commenters who supported the addition of the new example noted the importance of communications infrastructure, and in particular broadband access, to the economic viability of underserved nonmetropolitan middle-income geographies' residents and businesses in the current marketplace. Further, many of these commenters noted that the addition of the new example also may help to improve access to alternative systems of delivering retail banking services, which require reliable access to broadband.

The Agencies are adopting the new example describing a new or rehabilitated communications infrastructure because they continue to believe that, consistent with the CRA regulatory definition of ''community development,'' communications infrastructure is an essential community service. Specifically, the definition of ''community development'' provides that activities that help meet ''essential community needs'' revitalize and stabilize underserved nonmetropolitan middle-income geographies. Further, existing Q&A § ____.12(g)(4)(iii)–4 clarifies that ''financing for the construction, expansion, improvement, maintenance, or operation of essential infrastructure'' may qualify for revitalization or stabilization consideration. As noted above, in the Agencies' view, reliable communications infrastructure is increasingly essential to the economic provision in all four of the rules. However, 12 CFR 195.11(c), which is applicable to savings associations, includes one less paragraph than the rules applicable to national and state banks. As a result, the citation to section 11 of the rule in the related Q&As must separately mention the rule applicable to savings associations. Therefore, the Agencies have changed the references in the two Q&As addressing §§ ____.11(c)(3) & 563e.11(c)(2) to §§ ____.11(c)(3) & 195.11(c)(2), respectively.

B. Elimination of the Thrift Financial Report

In 2010, when the Questions and Answers were last updated, banks filed Call Reports and savings associations filed TFRs. Beginning with the first quarterly filing in 2012, all savings associations began filing Call Reports. The Agencies are removing the references to the TFR in 12 Q&As. One additional Q&A refers to the Uniform Thrift Performance Report (UTPR), which was phased out when savings associations began filing Call Reports. Uniform Bank Performance Reports are now produced for savings associations, so the Agencies have removed the reference to the UTPR in Q&A § ____.26(b)(1)–1. The Agencies have also adopted a consistent citation to the relevant sections of the Call Report and have made revisions to effect those changes where necessary throughout the Questions and Answers.

C. Home Mortgage Disclosure Act (HMDA) Regulation

The Dodd-Frank Act transferred exclusive rulemaking authority to the CFPB for certain consumer financial laws, including the HMDA. The CFPB subsequently published its own rule to implement HMDA, 12 CFR part 1003.[12] Four Q&As referred to home mortgage data collected under the HMDA and provided a citation to the Board's HMDA rule at 12 CFR part 203. The Agencies have updated those citations to refer to the CFPB's HMDA rule at 12 CFR part 1003.

D. Income Level Data Sources

Q&A § ____.12(m)–1 discusses the sources of income level data for geographies and individuals. Beginning with the FFIEC's geographic income data published in 2012, the FFIEC discontinued using decennial census data to calculate geographic income levels and began using the U.S. Census Bureau's American Community Survey (ACS) five-year estimate data. At the same time, the FFIEC announced that it would begin using ACS data to update geographic incomes every five years. Q&A § ____.12(m)–1 has been revised to reflect the current data sources used to calculate income level data for geographies and individuals.

E. Data Reporting

Q&As § ____.42–1, § ____.42–2, and § ____.42–6 address data submission, validation, and software, respectively. The Agencies have revised these Q&As to include updated data submission instructions and the correct Board contact information for submitting questions about CRA data submission, validation, and software.

F. Outdated Reference

Q&A § ____.12(g)(4)–1 advises that the revised definition of ''community development,'' which became effective in 2005 for banks and 2006 for savings associations, is applicable to all institutions. Because this revised definition has been in effect for around 10 years, it has been shortened to omit the historical information about its effective dates. The revised version merely affirms that the definition of ''community development'' is applicable to all institutions.

G. OCC Address Changes

Q&A Appendix B to Part ____–1 includes OCC-specific contact information. The OCC's headquarters moved in December 2012; thus, the Q&A has been revised to reflect the OCC's new street address, which is to be included in national banks' and Federal savings associations' public notices. In addition, a Web site URL has been added that national banks and Federal savings associations may include in their public notices that will allow interested parties to find information about planned OCC CRA evaluations in upcoming quarters. Similarly, an email address has been added that national banks and Federal savings associations may include in their public notices to which commenters may submit electronic comments about institutions' performance in helping to meet community credit needs.

The text of the final Interagency Questions and Answers follows:

Interagency Questions and Answers Regarding Community Reinvestment

§ ____.11—Authority, Purposes, and Scope

§ ____.11(c) Scope

§§ ____.11(c)(3) & 195.11(c)(2) Certain Special Purpose Institutions

§§ ____.11(c)(3) & 195.11(c)(2)—1: *Is the list of special purpose institutions exclusive?*

A1. No, there may be other examples of special purpose institutions. These institutions engage in specialized activities that do not involve granting credit to the public in the ordinary course of business. Special purpose institutions typically serve as correspondent banks, trust companies, or clearing agents or engage only in specialized services, such as cash management controlled disbursement services. A financial institution, however, does not become a special purpose institution merely by ceasing to make loans and, instead, making investments and providing other retail banking services.

§§ ____.11(c)(3) & 195.11(c)(2)—2: *To be a special purpose institution, must an institution limit its activities in its charter?*

A2. No. A special purpose institution may, but is not required to, limit the scope of its activities in its charter, articles of association, or other corporate organizational documents. An institution that does not have legal limitations on its activities, but has voluntarily limited its activities, however, would no longer be exempt from Community Reinvestment Act (CRA) requirements if it subsequently engaged in activities that involve granting credit to the public in the ordinary course of business. An institution that believes it is exempt from CRA as a special purpose institution should seek confirmation of this status from its supervisory Agency.

§ ____.12—Definitions

§ ____.12(a) Affiliate

§ ____.12(a)—1: *Does the definition of ''affiliate'' include subsidiaries of an institution?*

A1. Yes, ''affiliate'' includes any company that controls, is controlled by, or is under common control with another company. An institution's subsidiary is controlled by the institution and is, therefore, an affiliate.

§ ____.12(f) Branch

§ ____.12(f)—1: *Do the definitions of ''branch,'' ''automated teller machine (ATM),'' and ''remote service facility*

[12] *See* 80 FR 66127 (Oct. 28, 2015).

(RSF)'' include mobile branches, ATMs, and RSFs?

A1. Yes. Staffed mobile offices that are authorized as branches are considered ''branches,'' and mobile ATMs and RSFs are considered ''ATMs'' and ''RSFs.''

§ ____.12(f)—2: *Are loan production offices (LPO) branches for purposes of the CRA?*

A2. LPOs and other offices are not ''branches'' unless they are authorized as branches of the institution through the regulatory approval process of the institution's supervisory Agency.

§ ____.12(g) Community Development

§ ____.12(g)—1: *Are community development activities limited to those that promote economic development?*

A1. No. Although the definition of ''community development'' includes activities that promote economic development by financing small businesses or farms, the rule does not limit community development loans and services and qualified investments to those activities. Community development also includes community- or tribal-based child care, educational, health, social services, or workforce development or job training programs targeted to low- or moderate-income persons, affordable housing for low- or moderate-income individuals, and activities that revitalize or stabilize low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income geographies.

§ ____.12(g)—2: *Must a community development activity occur inside a low- or moderate-income area, designated disaster area, or underserved or distressed nonmetropolitan middle-income area in order for an institution to receive CRA consideration for the activity?*

A2. No. Community development includes activities, regardless of their location, that provide affordable housing for, or community services targeted to, low- or moderate-income individuals and activities that promote economic development by financing small businesses and farms. Activities that stabilize or revitalize particular low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas (including by creating, retaining, or improving jobs for low- or moderate-income persons) also qualify as community development, even if the activities are not located in these areas. One example is financing a supermarket that serves as an anchor store in a small strip mall located at the edge of a middle-income area, if the mall stabilizes the adjacent low-income community by providing needed shopping services that are not otherwise available in the low-income community.

§ ____.12(g)—3: *Does the regulation provide flexibility in considering performance in high-cost areas?*

A3. Yes, the flexibility of the performance standards allows examiners to account in their evaluations for conditions in high-cost areas. Examiners consider lending and services to individuals and geographies of all income levels and businesses of all sizes and revenues. In addition, the flexibility in the requirement that community development loans, community development services, and qualified investments have as their ''primary'' purpose community development allows examiners to account for conditions in high-cost areas. For example, examiners could take into account the fact that activities address a credit shortage among middle-income people or areas caused by the disproportionately high cost of building, maintaining or acquiring a house when determining whether an institution's loan to or investment in an organization that funds affordable housing for middle-income people or areas, as well as low- and moderate-income people or areas, has as its primary purpose community development. See also Q&A § ____.12(h)–8 for more information on ''primary purpose.''

§ ____.12(g)—4: *Can examples of community development activities discussed in a particular Q&A also apply to other types of community development activities not specifically discussed in that Q&A if they have a similar community development purpose?*

A4. Yes. The Interagency Questions and Answers Regarding Community Reinvestment (Questions and Answers) provide examples of particular activities that may receive consideration as community development activities. Because a particular Q&A often describes a single type of community development activity, such as a community development loan, the corresponding examples are of community development loans. However, because community development loans, qualified investments, and community development services all must have a primary purpose of community development, a qualified investment or community development service that supports a community development purpose similar to the activity described in the context of the community development loan would likely receive consideration under the applicable test. The same would be true if the community development activity described in a particular Q&A were a qualified investment or community development service. For example, Q&A § ____.12(h)–1 provides an example of a community development loan to a not-for-profit organization supporting primarily low- or moderate-income housing needs. Similarly, a grant to the same not-for-profit organization would be considered a qualified investment or technical assistance, such as writing a grant proposal for the not-for-profit organization, would be considered as a community development service. Further if a financial institution engaged in all of these activities, each would be considered under the applicable test. *See* Q&A § ____.23(b)–1.

Moreover, lists of examples included throughout the Questions and Answers are not exhaustive. A Q&A may include examples to demonstrate activities that may qualify under that Q&A, but the examples are not the only activities that might qualify. Financial institutions may submit information about activities they believe meet the definition of community development loan, qualified investment, or community development service to examiners for consideration.

§ ____.12(g)(1) Affordable Housing (Including Multifamily Rental Housing) for Low- or Moderate-Income individuals

§ ____.12(g)(1)—1: *When determining whether a project is ''affordable housing for low- or moderate-income individuals,'' thereby meeting the definition of ''community development,'' will it be sufficient to use a formula that relates the cost of ownership, rental, or borrowing to the income levels in the area as the only factor, regardless of whether the users, likely users, or beneficiaries of that affordable housing are low- or moderate-income individuals?*

A1. The concept of ''affordable housing'' for low- or moderate-income individuals does hinge on whether low- or moderate-income individuals benefit, or are likely to benefit, from the housing. It would be inappropriate to give consideration to a project that exclusively or predominately houses families that are not low- or moderate-income simply because the rents or housing prices are set according to a particular formula.

For projects that do not yet have occupants, and for which the income of the potential occupants cannot be determined in advance, or in other projects where the income of occupants cannot be verified, examiners will review factors such as demographic, economic, and market data to determine the likelihood that the housing will ''primarily'' accommodate low- or moderate-income individuals. For example, examiners may look at median rents of the assessment area and the project; the median home value of either the assessment area, low- or moderate-income geographies or the project; the low- or moderate-income population in the area of the project; or the past performance record of the organization(s) undertaking the project. Further, such a project could receive consideration if its express, bona fide intent, as stated, for example, in a prospectus, loan proposal, or community action plan, is community development.

§ ____.12(g)(2) Community Services Targeted to Low- or Moderate-Income Individuals

§ ____.12(g)(2)—1: *Community development includes community services targeted to low- or moderate-income individuals. What are examples of ways that an institution could determine that community services are offered to low- or moderate-income individuals?*

A1. Examples of ways in which an institution could determine that community services are targeted to low- or moderate-income persons include, but are not limited to:

- The community service is targeted to the clients of a nonprofit organization that has a defined mission of serving low- and moderate-income persons, or, because of government grants, for example, is limited to offering services only to low- or moderate-income persons.
- The community service is offered by a nonprofit organization that is located in and serves a low- or moderate-income geography.
- The community service is conducted in a low- or moderate-income area and targeted to the residents of the area.
- The community service is a clearly defined program that benefits primarily low- or moderate-income persons, even if it is provided by an entity that offers other programs that serve individuals of all income levels.
- The community service is offered at a workplace to workers who are low- and moderate-income, based on readily available data for the average wage for workers in that particular occupation or industry (*see, e.g., http://www.bls.gov/bls/blswage.htm* (Bureau of Labor Statistics)).
- The community service is provided to students or their families from a school at which the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture's National School Lunch Program.
- The community service is targeted to individuals who receive or are eligible to receive Medicaid.
- The community service is provided to recipients of government assistance programs that have income qualifications equivalent to, or stricter than, the definitions of low- and moderate-income as defined by the CRA Regulations. Examples include U.S. Department of Housing and Urban Development's section 8, 202, 515, and 811 programs or U.S. Department of Agriculture's section 514, 516, and Supplemental Nutrition Assistance programs.

§ ____.12(g)(3) Activities That Promote Economic Development by Financing Businesses or Farms That Meet Certain Size Eligibility Standards

§ ____.12(g)(3)—1: ''*Community development'' includes activities that promote economic development by financing businesses or farms that meet certain size eligibility standards. Are all activities that finance businesses and farms that meet the size eligibility standards considered to be community development?*

A1. No. The concept of ''community development'' under 12 CFR ____ .12(g)(3) involves both a ''size'' test and a ''purpose'' test that clarify what economic development activities are considered under CRA. An institution's loan, investment, or service meets the ''size'' test if it finances, either directly, or through an intermediary, businesses or farms that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of $1 million or less. For consideration under the ''size test,'' the term financing is considered broadly and includes technical assistance that readies a business that meets the size eligibility standards to obtain financing. To meet the ''purpose test,'' the institution's loan, investment, or service must promote economic development. These activities are considered to promote economic development if they support

- permanent job creation, retention, and/or improvement
  - for low- or moderate-income persons;
  - in low- or moderate-income geographies;
  - in areas targeted for redevelopment by Federal, state, local, or tribal governments;
  - by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms; or
  - through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance; or
- Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate-income persons to jobs or to job training or workforce development programs.

The agencies will presume that any loan or service to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, New Markets Tax Credit-eligible Community Development Entity, or Community Development Financial Institution that finances small businesses or small farms, promotes economic development. (See also Q&As § ____.42(b)(2)–2, § ____.12(h)–2, and § ____.12(h)–3 for more information about which loans may be considered community development loans.)

Examiners will employ appropriate flexibility in reviewing any information provided by a financial institution that reasonably demonstrates that the purpose, mandate, or function of the activity meets the ''purpose test.'' Examiners will also consider the qualitative aspects of performance. For example, activities will be considered more responsive to community needs if a majority of jobs created, retained, and/or improved benefit low- or moderate-income individuals.

§ ____.12(g)(4) Activities That Revitalize or Stabilize Certain Geographies

§ ____.12(g)(4)—1: *Is the definition of ''community development'' applicable to all institutions?*

A1. The definition of ''community development'' is applicable to all institutions, regardless of a particular institution's size or the performance criteria under which it is evaluated.

§ ____.12(g)(4)–2: *Will activities that provide housing for middle-income and upper-income persons qualify for favorable consideration as community development activities when they help to revitalize or stabilize a distressed or underserved nonmetropolitan middle-income geography or designated disaster areas?*

A2. An activity that provides housing for middle- or upper-income individuals qualifies as an activity that revitalizes or

ATTACHMENT 7

OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 4, 2014.

Stuart Feldstein,

Director, Legislative and Regulatory Activities Division.

[FR Doc. 2014–21493 Filed 9–9–14; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2014–0021]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1497]

FEDERAL DEPOSIT INSURANCE CORPORATION

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The OCC, Board, and FDIC (the Agencies) propose to clarify and supplement their Interagency Questions and Answers Regarding Community Reinvestment to address questions raised by bankers, community organizations, and others regarding the Agencies' Community Reinvestment Act (CRA) regulations. The Agencies propose to revise three questions and answers that address (i) alternative systems for delivering retail banking services and (ii) additional examples of innovative or flexible lending practices. In addition, the Agencies propose to revise three questions and answers addressing community development-related issues, including economic development, community development loans, and activities that are considered to revitalize or stabilize an underserved nonmetropolitan middle-income geography. The Agencies also propose to add four new questions and answers, two of which address community development services, and two of which provide general guidance on responsiveness and innovativeness.

DATES: Comments on the proposed questions and answers must be received on or before November 10, 2014.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Please use the title "Community Reinvestment Act: Interagency Questions and Answers Regarding Community Reinvestment" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Mail Stop 9W–11, 400 7th Street SW., Washington, DC 20219.
- *Fax:* (571) 465–4326.
- *Hand Delivery/Courier:* 400 7th Street SW., Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC–2014–0021" in your comment. In general, the OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. OP–1497 by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW., Washington, DC) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC:

- *Mail:* Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the agency Web site.
- *Email:* You may also electronically mail comments to *comments@fdic.gov.*

FOR FURTHER INFORMATION CONTACT:

OCC: Bobbie K. Kennedy, Bank Examiner, Compliance Policy Division, (202) 649–5470; or Margaret Hesse, Senior Counsel, Community and Consumer Law Division, (202) 649–6350, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Catherine M.J. Gates, Senior Project Manager, (202) 452–2099; or Theresa A. Stark, Senior Project Manager, (202) 452–2302, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6958; Pamela A. Freeman, Senior Examination Specialist, Compliance & CRA Examinations Branch, Division of Depositor and Consumer Protection, (202) 898–3656; Surya Sen, Section Chief, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6699; or Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

The OCC, Board, and FDIC implement the CRA (12 U.S.C. 2901 *et seq.*) through their CRA regulations. *See* 12 CFR parts 25, 195, 228, and 345. The Agencies also issue the ''Interagency Questions and Answers Regarding Community Reinvestment'' (Questions and Answers) to provide further guidance to agency personnel, financial institutions, and the public. The Agencies first published the Questions and Answers under the auspices of the Federal Financial Institutions Examination Council (FFIEC) in 1996 (61 FR 54647), and last published the Questions and Answers in their entirety on March 11, 2010 (2010 Questions and Answers) (75 FR 11642). In 2013, the Agencies adopted revised guidance on community development topics that amended and superseded five questions and answers (Q&A) and added two new Q&As (2013 Guidance). *See* 78 FR 69671 (Nov. 20, 2013).

The Questions and Answers are grouped by the provision of the CRA regulations that they discuss, are presented in the same order as the regulatory provisions, and employ an abbreviated method of citing to the regulations. For example, the small bank performance standards for national banks appear at 12 CFR 25.26; for savings associations, the small savings association performance standards appear at 12 CFR 195.26; for Federal Reserve System member banks supervised by the Board, they appear at 12 CFR 228.26; and for state nonmember banks, they appear at 12 CFR 345.26. For ease of reference, the citation to those regulatory provisions in the Questions and Answers is set forth in a simplified format as 12 CFR __.26. Each individual Q&A is numbered using a system that consists of the regulatory citation and a number, connected by a dash. For example, the first Q&A addressing 12 CFR __.26 would be identified as § __.26–1.

In accordance with their statutory responsibilities, the Agencies regularly review examination policies, procedures, and guidance to better serve the goals of the CRA. To achieve these goals, the Agencies regularly conduct outreach with, and review comments from, industry, community organizations, and examiners, including public hearings held in 2010.[1] Many of the comments reviewed raised issues relating to examiners' consideration given to access to banking services and community development services and, more generally, on the need for additional guidance on performance criteria under the lending, investment, and service tests. The Agencies reviewed the Questions and Answers and identified areas that may warrant clarification or additional guidance to address and clarify some of the issues raised by commenters.

Overview of Comments

Some commenters raised questions and concerns related to access to banking services and alternative systems for delivering retail banking services. For example, commenters stated that examiners place too much weight on the distribution of branching under the service test. These commenters suggested that the Agencies should ensure that financial institutions are evaluated in a manner that is responsive to changes in the financial services marketplace. Other commenters added that examiners should place more emphasis on providing access to, and promoting usage of, financial services that enable individuals and families to build wealth. Other commenters urged the Agencies to evaluate alternative delivery systems based on their actual effectiveness and availability, not just the fact that they are offered. In addition, commenters asserted that community development services are not given appropriate consideration in the service test and, by extension, in the overall CRA evaluation, relative to retail banking services.

Some commenters indicated that the Agencies should increase their focus on qualitative factors when considering an institution's lending, investment, or services, particularly related to community development, and that the Agencies should encourage more strongly the delivery of high-impact products and services. Other commenters stated that the Agencies should encourage financial institutions to be flexible in designing products and services targeted to low- and moderate-income and underbanked individuals and geographies.

Commenters also have urged the Agencies to provide incentives for financial institutions to offer fair and affordable credit products, such as amortizing small dollar loans that are sustainable for both borrowers and financial institutions. Some of these commenters urged the Agencies to adopt guidance that would encourage financial institutions to offer sustainable consumer loans, including alternatives to payday loans. In connection with small dollar and home mortgage lending, a number of commenters stressed the importance of financial literacy education activities and counseling.

Commenters also addressed economic development. Some commenters stated that the Agencies should adopt guidance that would support the creation or expansion of technical assistance intermediaries that help new or existing small businesses access micro-enterprise or small business lending opportunities. Commenters also requested additional examples of CRA-eligible small business-related loans, investments, and services, particularly related to increasing small business lending to underbanked entrepreneurs.

A number of commenters suggested that the Agencies should address whether alternative energy facilities and energy efficiency enhancements that are responsive to local needs are eligible for CRA consideration. The Agencies have also been asked whether financing that enables the expansion of communication technology in rural areas and in Native American communities would be eligible for CRA consideration.

The Agencies propose to clarify the CRA regulations to address these questions and concerns. This notice proposing additional clarifications to the Agencies' CRA regulations builds upon the Agencies' 2013 Guidance addressing community development-related issues. After the Agencies have considered comments received on this proposal, the Agencies plan to formally adopt and republish the new and revised Q&As.

[1] *See* 75 FR 35686 (June 23, 2010).

Proposed Revisions to Existing Q&As

I. Access to Banking Services

A. Availability and Effectiveness of Retail Banking Services

The CRA regulations identify the performance criteria examiners consider when evaluating the availability and effectiveness of an institution's systems for delivering retail banking services under the service test. *See* 12 CFR __.24(d). Specifically, the regulations provide that the Agencies evaluate the availability and effectiveness of a large institution's systems for delivering retail banking services pursuant to the following criteria:

(1) The current distribution of the institution's branches among low-, moderate-, middle-, and upper-income geographies;

(2) in the context of the current distribution of the institution's branches, the institution's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) the availability and effectiveness of alternative systems for delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) the range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies. *See* 12 CFR __.24(d).

Existing Q&As § __.24(d)–1 and § __.24(d)(3)–1 provide further guidance related to the evaluation of retail banking services in the service test applicable to large financial institutions.

Existing Q&A § __.24(d)–1 provides guidance regarding how examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services. The Q&A states, in part, that "the service test performance standards place primary emphasis on full service branches while still considering alternative systems, such as automated teller machines ('ATM')." The Q&A further states that alternative systems, such as ATMs, will be considered "only to the extent that they are effective alternatives in providing services to low- and moderate-income areas and individuals." Based on this guidance, examiners have focused primarily on an institution's branching activities when evaluating the institution's service test performance. The emphasis on branch distribution continues despite technological advances in the retail banking industry, such as Internet or online banking, mobile banking, remote deposit capture, and 24-hour Internet banking kiosks, which provide financial institutions new methods to deliver retail banking services to consumers.

Some commenters contend that the primary emphasis on evaluating access to, and distribution of, physical branches to deliver retail banking services undervalues other means of providing these services, such as alternative delivery systems. Some of these commenters contended that this emphasis on the existence and distribution of retail bank branches is unwarranted, especially as financial institutions increasingly use alternative delivery systems to deliver financial services to all consumers. These commenters suggested that alternative delivery systems should receive greater consideration under the regulations' service test when they are effective in delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals. Other commenters, however, still believe that branches should be the primary emphasis of the service test.

The Agencies agree with commenters that additional clarification of the extent to which alternative delivery systems will be considered is necessary in order to recognize an institution's use of such systems to make products and services available to benefit low- and moderate-income geographies and individuals. Given the extent of technological innovation in the delivery of banking services, alternative delivery systems can create opportunities for institutions to better reach and serve low- and moderate-income geographies and individuals. Nonetheless, the Agencies recognize that, under the CRA regulations, alternative delivery systems supplement the services provided by a financial institution's branch and deposit-taking ATM structure because assessment areas are delineated around the institution's branches and ATMs.

Therefore, the Agencies propose to revise existing Q&A § __.24(d)–1 to clarify how examiners should evaluate and consider alternative systems for delivering retail banking services in an institution's assessment area(s).

The Agencies propose deleting language that states "performance standards place primary emphasis on full service branches" and further deleting the statement that provides that alternative systems are considered "only to the extent" that they are effective alternatives in providing needed services to low- and moderate-income geographies and individuals. Changes in technology and the financial market increasingly provide opportunities for financial institutions to use alternative delivery systems effectively to provide needed services in low- and moderate-income geographies and to low- and moderate-income individuals. The Agencies encourage the use of all types of delivery systems to help meet the needs of low- and moderate-income geographies and individuals and, therefore, believe that this language should be removed to provide certainty among financial institutions that such activities should be considered during a CRA evaluation.

The Agencies believe that the proposed revisions to existing guidance would encourage broader availability of alternative delivery systems to low- and moderate-income geographies and individuals without diminishing the value full-service branches provide to communities. The text of proposed revised Q&A § __.24(d)–1 follows:

Q&A § __.24(d)–1. *How do examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services?*

A1. Convenient access to full-service branches and effective alternative systems to deliver retail banking services within a community are important factors in determining the availability of credit and non-credit services. Examiners evaluate an institution's current distribution of branches and its record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals. However, an institution is not required to expand its branch network or operate unprofitable branches. Examiners also consider the availability and effectiveness of an institution's alternative systems for expanding the delivery of retail banking services by evaluating factors that demonstrate consumer accessibility and use of such systems in low- and moderate-income geographies and by low- and moderate-income individuals. These factors used in evaluating alternative systems for delivering retail banking services are discussed in Q&A § __.24(d)(3)–1.

The Agencies solicit comments on all aspects of this proposed revised Q&A. In addition, the Agencies specifically request commenters' views on the following question.

1. Does the proposed revised guidance strike the appropriate balance between consideration of traditional delivery systems (e.g., branches) and alternative systems for serving low- and moderate-income geographies and individuals?

B. Alternative Systems for Delivering Retail Banking Services

As discussed above, the availability and effectiveness of alternative systems for delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals is one of four performance criteria that examiners consider when evaluating the availability and effectiveness of a financial institution's systems for delivering retail banking services. *See* 12 CFR __.24(d)(3). Existing Q&A § __.24(d)(3)–1 is intended to provide additional guidance on how examiners evaluate alternative systems for delivering retail banking services. This Q&A currently states that there are a ''multitude of ways in which an institution can provide services'' and lists ATMs, banking by telephone or computer, and bank-by-mail as examples of alternative delivery systems. The answer further states, in part, that delivery systems ''other than branches will be considered under the regulation to the extent that they are effective alternatives to branches in providing needed services to low- and moderate-income areas and individuals.''

Commenters noted that the existing Q&A should be updated to include examples that reflect technological advances in delivering retail banking services. These commenters also noted that the existing Q&A does not discuss the regulations' requirement that examiners consider the availability of alternative systems, provide examples of how to measure their effectiveness in reaching low- and moderate-income geographies or individuals, or provide insight into how an institution can demonstrate that its alternative delivery systems are effectively reaching low- and moderate-income geographies or individuals located in the institution's assessment area.

The Agencies agree with commenters' observation that additional guidance regarding how examiners will evaluate the availability and effectiveness of alternative delivery systems is warranted. In addition, the Agencies agree that it would be helpful to update the list of examples of alternative delivery systems even though the examples provided in the existing Q&A were not intended to limit consideration of new methods as technology evolves.

To address commenters concerns, the Agencies propose to revise Q&A § __.24(d)(3)–1 to recognize the broad range of alternative systems that financial institutions use to deliver retail banking services to low- and moderate-income geographies and individuals. The revised Q&A would also include examples of alternative delivery systems that reflect current technological advances in the industry, but also note that such examples are not intended to limit consideration of systems that have yet to be created.

In addition, to recognize the industry's broader use of alternative systems for delivering retail banking services, the Agencies propose to provide further guidance on factors that examiners use to evaluate whether alternative delivery systems are an available and effective means of providing retail banking services to low- and moderate-income geographies and individuals. Specifically, the Agencies propose to revise existing Q&A § __.24(d)(3)–1 to further clarify how examiners can assess the availability and effectiveness of an institution's alternative delivery systems by evaluating factors that demonstrate consumer accessibility and the use of those systems in low- and moderate-income geographies and by low- and moderate-income individuals. The Agencies propose that examiners evaluate the following factors when assessing the availability and effectiveness of an institution's alternative delivery systems: (i) The ease of access, whether physical or virtual; (ii) the cost to consumers, as compared with other delivery systems; (iii) the range of services delivered; (iv) the ease of use; (v) the rate of adoption; and (vi) the reliability of the system. The Agencies do not intend that every feature or factor would need to be satisfied for an institution's alternative systems for delivering retail banking services to be considered available and effective. Further, as is currently the case, alternative systems for delivering retail banking services are considered only when they are offered, which assumes that the necessary infrastructure or technology supporting their use is available.

The proposed revised Q&A would also state that financial institutions could provide available data on consumer usage or transactions and the other factors outlined above to demonstrate the availability and effectiveness of the institution's alternative delivery systems. To provide flexibility to financial institutions, the proposed revised guidance would clarify that examiners will consider any information an institution maintains and provides demonstrating that the institution's alternative delivery systems are available to, and used by, low- and moderate-income individuals.

The text of proposed revised Q&A § __.24(d)(3)–1 follows:

Q&A § __.24(d)(3)–1. *How do examiners evaluate alternative systems for delivering retail banking services?*

A1. There are a number of alternative systems used by financial institutions to deliver retail banking services to customers. Non-branch delivery systems, such as ATMs, online and mobile banking, and other means by which banks provide services to their customers evolve over time. No matter the means of delivery, examiners evaluate the extent to which the alternative delivery systems are available and effective in providing financial services to low- and moderate-income geographies and individuals. For example, a system may be determined to be effective based on the accessibility of the system to low- and moderate-income geographies and low- and moderate-income individuals.

To determine whether a financial institution's alternative delivery system is an available and effective means of delivering retail banking services in low- or moderate-income geographies and to low- or moderate-income individuals, examiners may consider a variety of factors, including

- The ease of access, whether physical or virtual;
- the cost to consumers, as compared with other delivery systems;
- the range of services delivered;
- the ease of use;
- the rate of adoption; and
- the reliability of the system.

Examiners will consider any information an institution maintains and provides to examiners demonstrating that the institution's alternative delivery systems are available to, and used by, low- or moderate-income individuals, such as data on customer usage or transactions.

The Agencies solicit comments on all aspects of this proposed revised Q&A. In addition, the Agencies specifically request commenters' views on the following questions.

2. Are the factors listed for consideration when examiners evaluate the availability and effectiveness of alternative delivery systems sufficiently flexible to be used by examiners as the financial services marketplace evolves? Are there other factors that should be included?

3. What types of information are financial institutions likely to routinely maintain that may be used to demonstrate that an institution's alternative delivery systems are available to, and used by, low- and moderate-income individuals?

4. What other sources of data and quantitative information could examiners use to evaluate the ease of

access; cost to consumers, as compared with other delivery systems; range of services delivered; ease of use; rate of adoption; and reliability of alternative delivery systems? Do financial institutions have such data readily available for examiners to review?

5. When considering cost to consumers, as compared with other delivery systems, and the range of services delivered, should examiners evaluate these features relative to other delivery systems (i) offered by the institution, (ii) offered by institutions within the institution's assessment area(s), or (iii) offered by the banking industry generally?

6. Do the proposed revisions adequately address changes in the way financial institutions deliver products in the context of assessment area(s) based on the location of a financial institution's branches and deposit-taking ATMs?

II. Innovative or Flexible Lending Practices

Under the performance standards applicable to large financial institutions, an institution's use of innovative or flexible lending practices is one of five factors examiners review as part of the lending test. *See* 12 CFR __.22(b)(5). Examiners evaluate an institution's ''use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.'' *See* 12 CFR __.22(b)(5). Existing Q&A § __.22(b)(5)–1 provides guidance regarding the range of practices that examiners may consider in evaluating the innovativeness or flexibility of an institution's lending practices, and lists two examples of such practices.

Existing Q&A § __.22(b)(5)–1 states that examiners are not limited to reviewing the overall variety and specific terms and conditions of credit products when evaluating innovativeness, but that an evaluation may also include consideration of related innovations that augment the success and effectiveness of the institution's community development loan program or lending programs that address the credit needs of low- or moderate-income geographies or individuals. The existing guidance provides two examples of practices that may or may not be innovative or flexible on their own, but are viewed as innovative practices when considered in conjunction with related activity. The current examples include (i) a technical assistance program for loan recipients administered in conjunction with a community development loan program, and (ii) a contracting program for small business borrowers established in connection with a small business lending program. These examples emphasize that practices receive consideration under the lending test as being innovative when they augment the success and effectiveness of particular lending programs that address the credit needs of low- or moderate-income geographies or individuals.

The Agencies believe that, when implemented correctly, innovative or flexible practices can help meet the credit needs of low- or moderate-income geographies or individuals. The Agencies believe existing guidance would benefit from additional examples of innovative or flexible lending practices that reflect advancement in lending. Including more recent examples may help examiners and institutions think more broadly about the types of practices that could encourage additional lending that would benefit low- or moderate-income geographies or individuals.

The Agencies propose to revise existing Q&A § __.22(b)(5)–1 to expand the list of examples of innovative or flexible lending practices. The proposed revised Q&A would explain that examiners will consider whether, and to what extent, the innovative or flexible practices augment the success and effectiveness of the institution's lending program. The proposed Q&A also would emphasize that an innovative or flexible lending practice is not required to obtain a specific rating, but rather is a qualitative consideration that, when present, can enhance a financial institution's CRA performance.

In addition, the Agencies propose to revise the Q&A by adding two new examples of innovative or flexible lending practices. The first example describes small dollar loan programs as an innovative practice when such loans are made in a safe and sound manner with reasonable terms, and are offered in conjunction with outreach initiatives that include financial literacy or a savings component. The Agencies are including small dollar loan programs as an example of an innovative or flexible lending practice to encourage such programs as alternatives to higher-cost credit products that many low- or moderate-income individuals currently may depend upon to meet their small dollar credit needs.

The Agencies note that small dollar loan programs currently receive consideration under the lending test, and that these programs are already referenced in Q&A § __.22(a)–1 as a type of lending activity that is likely to be responsive in helping to meet the credit needs of many communities. *See* Q&A § __.22(a)–1. However, including small dollar loan programs as an example of an innovative or flexible lending practice acknowledges that banks may employ outreach initiatives in conjunction with financial literacy education or offer linked savings programs to improve the success of affiliated lending programs in meeting the credit needs of their communities. The Agencies believe that ensuring proper consideration for such initiatives as innovative or flexible lending practices is consistent with the goals of the regulations because they facilitate institutions' abilities to meet the credit needs of their communities.

The second example of an innovative or flexible lending practice that the Agencies propose to add to existing Q&A § __.22(b)(5)–1 describes mortgage or consumer lending programs that utilize alternative credit histories in a manner that would benefit low- or moderate-income individuals. The Agencies understand that low- or moderate-income individuals with limited conventional credit histories face challenges in obtaining access to credit. Alternative credit histories supplement conventional trade line information with additional information about the borrower, such as rent and utility payments. For individuals who do not qualify for credit based on the use of conventional credit reports, but who have a positive payment history with regard to obligations such as a rental agreement or utility account, such additional information may supplement an assessment of a borrower's risk profile, consistent with safe and sound underwriting practices. The Agencies believe that considering alternative credit histories to supplement conventional underwriting practices may provide an opportunity for some additional creditworthy low- or moderate-income individuals to gain access to credit.

Finally, the Agencies propose to revise the existing question's reference to a ''range of practices,'' to conform the question to the existing and proposed revised answers.

The text of proposed revised Q&A § __.22(b)(5)–1 follows:

§ __.22(b)(5)–1: *What do examiners consider in evaluating the innovativeness or flexibility of an institution's lending under the lending test applicable to large institutions?*

A1. In evaluating the innovativeness or flexibility of an institution's lending practices (and the complexity and innovativeness of its community development lending), examiners will not be limited to reviewing the overall variety and specific terms and conditions of the credit products themselves. Examiners also consider whether, and the extent to which, innovative or flexible terms or products augment the success and effectiveness of the institution's community development loan programs or, more generally, of its loan programs that address the credit needs of low- or moderate-income geographies or individuals. Although examiners evaluate how innovative or flexible lending practices address the credit needs of low- or moderate-income geographies or individuals, an innovative or flexible lending practice is not required in order to obtain a specific rating. Examples of innovative or flexible lending practices include:

- In connection with a community development loan program, an institution may establish a technical assistance program under which the institution, directly or through third parties, provides affordable housing developers and other loan recipients with financial consulting services. Such a technical assistance program may, by itself, constitute a community development service eligible for consideration under the service test of the CRA regulations. In addition, the technical assistance may be considered favorably as an innovative or flexible practice that augments the success and effectiveness of the related community development loan program.
- In connection with a small business lending program in a low- or moderate-income area and consistent with safe and sound lending practices, an institution may implement a program under which, in addition to providing financing, the institution also contracts with the small business borrowers. Such a contracting arrangement would not, itself, qualify for CRA consideration. However, it may be favorably considered as an innovative or flexible practice that augments the loan program's success and effectiveness, and improves the program's ability to serve community development purposes by helping to promote economic development through support of small business activities and revitalization or stabilization of low- or moderate-income geographies.
- In connection with a small dollar loan program offered in a safe and sound manner and with reasonable terms, an institution may establish outreach initiatives or financial counseling targeted to low- or moderate-income individuals or communities. The institution's efforts to encourage the availability, awareness, and use of the small dollar loan program to meet the credit needs of low- and moderate-income individuals, in lieu of higher-cost credit, should augment the success and effectiveness of the lending program. Such loans may be considered responsive under Q&A § __.22(a)–1, and the use of such outreach initiatives in conjunction with financial literacy education or linked savings programs also may be favorably considered as an innovative or flexible practice to the extent that they augment the success and effectiveness of the related loan program. Such initiatives may receive consideration under other performance criteria as well. For example, an initiative to partner with a nonprofit organization to provide financial counseling that encourages responsible use of credit may, by itself, constitute a community development service eligible for consideration under the service test.
- In connection with a mortgage or consumer lending program targeted to low- or moderate-income geographies or individuals, consistent with safe and sound lending practices, an institution may establish underwriting standards that utilize alternative credit histories, which would benefit low- and moderate-income individuals who lack sufficient conventional credit histories to be evaluated under the bank's underwriting standards. The use of such underwriting standards may be favorably considered as an innovative or flexible practice that augments the success and effectiveness of the lending programs.

The Agencies solicit comments on all aspects of this proposed revised Q&A. In addition, the Agencies specifically request commenters' views on the following questions.

7. Is the proposed revised guidance sufficient to encourage institutions to design more innovative or flexible lending programs that are responsive to community needs?

8. Are the new examples described in the proposed revised guidance useful? Do the benefits of using alternative credit histories in underwriting standards that benefit low- or moderate-income persons outweigh any concerns raised by the use of alternative credit histories of which the Agencies should be aware?

9. Is there additional guidance that the Agencies should provide to better enable examiners and institutions to identify those circumstances in which the use of alternative credit histories will benefit low- or moderate-income individuals?

III. Community Development

Community development is an important component of community reinvestment and is considered in the CRA evaluations of financial institutions of all types and sizes. Community development activities are considered under the regulations' large institution, intermediate small institution, and wholesale and limited purpose institution performance tests. *See* 12 CFR §§ __.22(b)(4), __.23, ____ .24(e), ____.26(c), and ____.25, respectively. In addition, small institutions may use community development activity to receive consideration toward an outstanding rating.

The Agencies believe that community development generally improves the circumstances for low- and moderate-income individuals and stabilizes and revitalizes the communities in which they live or work. The 2013 Guidance addressed several aspects of community development. The Agencies propose to further refine the Questions and Answers to provide additional clarification about community development-related topics that were not addressed in the 2013 Guidance.

A. Economic Development

The CRA regulations at 12 CFR ____ .12(g)(3) define community development to include ''activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less.'' The Questions and Answers provide additional guidance on activities that promote economic development in Q&As § ____.12(g)(3)–1, § ____.12(i)–1, § ____.12(i)–3, and § ____.12(t)–4.

Existing Q&A § ____.12(g)(3)–1 further explains what is meant by the phrase ''promote economic development.'' The guidance provides that activities promote economic development by financing small businesses or farms if they meet two ''tests'': (i) A ''size test'' (e.g., the recipient of the activity must meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) or have gross annual revenues of $1 million or less); and (ii) a ''purpose test,'' which is intended to ensure that a financial institution's activities promote economic development consistent with the CRA regulations. Existing Q&A § ____.12(g)(3)–1 states that activities meet the purpose test if they ''support permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or support permanent job creation, retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment by Federal, state, local, or tribal governments.'' The Q&A further explains, ''[t]he Agencies will presume that any loan to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, or New Markets Tax Credit-eligible Community Development Entity promotes economic development.''

Some bankers contend that existing Q&A § ____.12(g)(3)–1 narrows the scope and intent of the regulations, which do not define ''economic development'' beyond the ''size test.'' They believe 12 CFR ____.12(g)(3) provides that all activities that finance businesses or farms that meet the size eligibility standards have a purpose of promoting economic development, and that no additional consideration beyond financing is necessary to demonstrate the promotion of economic development.

In addition, others have stated that the existing guidance on whether an activity promotes economic development is unclear and leads to the inconsistent treatment by examiners of economic development activities under the CRA regulations. For example, the purpose test in existing Q&A § ____.12(g)(3)–1 refers to ''permanent job creation, retention, and/or improvement for persons who are *currently* low- or moderate-income.'' (Emphasis added.) The Agencies have learned through discussions with bankers and others that the use of the word ''currently'' may lead some examiners to recognize only activities that support low-wage jobs. Because bankers often are unable to demonstrate that employees were low- or moderate-income when hired, they often track the number of jobs at wages commensurate with incomes that are low or moderate for the area. As a result, the guidance may create incentives inconsistent with its own stated purpose of promoting job improvement opportunities for low- or moderate-income persons. Bankers and others also have indicated that the purpose test in the existing Q&A may have a dampening effect on economic development and related job creation. Notably, statistics show that small businesses are responsible for roughly one-half of all private sector employment and create a significant number of jobs. However, financial institutions' activities with micro-lenders and financial intermediaries that provide assistance to start-up businesses may not receive consideration because those institutions cannot demonstrate that the loans made by those entities are to, or will create jobs for, persons who are currently low- or moderate-income, or to businesses located in low- or moderate-income areas, until the micro-lender or financial intermediary makes loans to start-up businesses with the institutions' funds. As a result, financial institutions may hesitate to provide assistance to such entities, potentially reducing the resources available to micro-lenders and other financial intermediaries and the potential new businesses that would depend on their support.

In addition, some Q&As provide examples of activities that promote economic development under the CRA regulations that are not mentioned in the purpose test as outlined in Q&A § ____.12(g)(3)–1. Specifically, both Q&As § ____.12(i)–1 and § ____.12(i)–3 note that providing technical assistance to small businesses is a community development service that involves the ''provision of financial services'' and Q&A § ____.12(t)–4 lists examples of qualified investments, including some that promote economic development. These examples do not refer to the narrower scope of the purpose test and, as a result, if read and applied independently from the guidance in Q&A § ____.12(g)(3)–1, could lead to inconsistent application of the guidance on examinations.

The Agencies note that the existing guidance provides that to meet the purpose test, the institution's activity must promote economic development. However, the Agencies agree that the guidance may benefit from additional clarification to facilitate consistent application of the ''purpose test'' and to ensure that all activities promoting economic development are considered.

Accordingly, the Agencies propose several revisions to Q&A § ____.12(g)(3)–1 to clarify what is meant by ''promote economic development'' and to better align this Q&A with other guidance, including Q&As § ____.12(i)–1 and § ____.12(i)–3, regarding consideration for economic development activities undertaken by financial institutions. First, the Agencies propose to revise the statement that activities promote economic development if they ''support permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income'' by removing the word ''currently.'' The Agencies believe that, as currently drafted, the statement may unnecessarily focus bank community development activities on supporting low-wage jobs.

Second, the Agencies propose to add additional examples that would demonstrate a purpose of economic development. The Agencies propose to revise the guidance to add that activities promote economic development if they support (1) permanent job creation, retention, and/or improvement through (i) workforce development and/or job or career training programs that target unemployed or low- or moderate-income persons; or (ii) the creation or development of small businesses or farms; or (iii) technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance; or (2) Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate-income persons, to jobs, affordable housing, financial services, or community services.

The Agencies also propose to re-format the guidance to list the various types of activities that demonstrate a purpose of economic development separately. Finally, the proposed revised Q&A would include Community Development Financial Institutions that finance small businesses or small farms in the list of entities for which the Agencies will presume that any loan to or investment in promotes economic development.

The text of proposed revised Q&A § ______.12(g)(3)–1 follows:

§ ____.12(g)(3)–1: *''Community development'' includes activities that promote economic development by financing businesses or farms that meet certain size eligibility standards. Are all activities that finance businesses and farms that meet the size eligibility standards considered to be community development?*

A1. No. The concept of ''community development'' under 12 CFR ____.12(g)(3) involves both a ''size'' test and a ''purpose'' test that clarify what economic development activities are considered under CRA. An institution's loan, investment, or service meets the ''size'' test if it finances, either directly, or through an intermediary, businesses or farms that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of $1 million or less. To meet the ''purpose test,'' the institution's loan, investment, or service must promote economic development. These activities are considered to promote economic development if they support:

• Permanent job creation, retention, and/or improvement

○ For low- or moderate-income persons;

○ In low- or moderate-income geographies;

○ In areas targeted for redevelopment by Federal, state, local, or tribal governments;

○ Through workforce development and/or job or career training programs that target unemployed or low- or moderate-income persons;

○ Through the creation or development of small businesses or farms; or

○ Through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance; or

• Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate income persons, to jobs, affordable housing, financial services, or community services.

The agencies will presume that any loan to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, New Markets Tax Credit-eligible Community Development Entity, or Community Development Financial Institution that finances small businesses or small farms promotes economic development. (See also Q&As § ____.42(b)(2)–2, § ____.12(h)–2, and § ____.12(h)–3 for more information about which loans may be considered community development loans.)

The Agencies solicit comments on all aspects of this proposed revised Q&A. In addition, the Agencies specifically request commenters' views on the following questions.

10. Does the proposed revised guidance clarify what economic development activities are considered under CRA?

11. What information should examiners use to demonstrate that an activity meets the size and purpose tests described in the proposed revised guidance?

12. Does the proposed revised guidance help to clarify what is meant by job creation for low- or moderate-income individuals?

13. Are the proposed examples demonstrating that an activity promotes economic development for CRA purposes appropriate? Are there other examples the Agencies should include that would demonstrate that an activity promotes economic development for CRA purposes?

14. What information should examiners review when determining the performance context of an institution seeking CRA consideration for its economic development activities?

15. What information is available that could be used to evaluate the local business environment and economic development needs in a low- or moderate-income geography or among low- or moderate-income individuals within the institution's assessment area(s)?

16. Are there particular measurements of impact that examiners should consider when evaluating the quality of jobs created, retained, or improved?

B. Community Development Loans

The Agencies' CRA regulations at 12 CFR ____.12(h) define ''community development loan'' to mean a loan that has community development as its primary purpose. Existing Q&A § ____.12(h)–1 provides examples of community development loans. The Agencies propose to add an example to clarify how examiners may consider loans related to renewable energy or energy-efficient technologies that also have a community development component. These activities commonly are referred to as ''green'' activities and are not specifically addressed under existing guidance.

Community organizations, examiners, and bankers have stated that affordable housing providers may install renewable energy or energy-efficient technologies to help reduce operational costs and maintain the affordability of single- and multi-family rental housing. Additionally, affordable housing developers may incorporate energy-efficient equipment into new and rehabilitated housing units or common area facilities to reduce utility costs and improve long-term affordability for low- and moderate-income homeowners. Further, communities may use sustainable energy sources to reduce the cost of providing services. Communities also may incorporate the development of related industries into local economic development plans to support job creation initiatives.

Bankers have commented that examiners do not always give consideration for projects or initiatives that incorporate ''green'' components because the concept is not specifically addressed in either the CRA regulations or the Questions and Answers. In addition, examiners may be hesitant to provide consideration because the benefit to low- or moderate-income residents, borrowers, or communities may not be easily quantified, particularly in cases in which the benefit is indirect. For example, renewable energy savings may reduce operating costs for an affordable housing development overall, without necessarily accruing a direct benefit to individual residents. Another example of such indirect benefit might be a loan to facilitate the installation of a solar power system, when the reduction in utility costs due to the sale of electricity generated by the solar panels is allocated to cover the expense of providing electricity to common areas of an affordable housing development.

The Agencies have learned of examples in which financial institutions helped finance energy-efficiency initiatives related to the rehabilitation or development of affordable housing projects and were not given CRA consideration for their activities. The Agencies have also heard from bankers that having specific examples in guidance helps to create incentives within their financial institutions to pursue such projects. The Agencies concur that loans that enable energy initiatives that help to reduce the cost of operating or maintaining affordable housing, even if the benefit to residents is indirect, qualify for consideration as community development loans.

To address these comments and concerns, the Agencies propose to revise Q&A § ____.12(h)–1 to incorporate a new example of a community development loan that would illustrate how a loan that finances renewable energy or energy-efficient technologies and that also has a community development component may be considered in a financial institution's performance evaluation.

All loans considered in an institution's CRA evaluation, including loans that finance renewable energy or energy-efficient technologies, must be consistent with the safe and sound operation of the institution and should not include features that could compromise any lender's existing lien position.

The text of proposed revised Q&A § ____.12(h)–1 follows:

§ ____.12(h)–1: *What are examples of community development loans?*

A1. Examples of community development loans include, but are not limited to, loans to

• Borrowers for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons;

• not-for-profit organizations serving primarily low- and moderate-income housing or other community development needs;

• borrowers to construct or rehabilitate community facilities that are located in low- and moderate-income areas or that serve primarily low- and moderate-income individuals;

• financial intermediaries including Community Development Financial Institutions, New Markets Tax Credit-eligible Community Development Entities, Community Development Corporations, minority- and women-owned financial institutions, community loan funds or pools, and low-income or community development credit unions that primarily lend or facilitate lending to promote community development;

• local, state, and tribal governments for community development activities;

• borrowers to finance environmental clean-up or redevelopment of an industrial site as part of an effort to revitalize the low- or moderate-income community in which the property is located;

• businesses, in an amount greater than $1 million, when made as part of the Small Business Administration's 504 Certified Development Company program; and

• borrowers to finance renewable energy or energy-efficient equipment or projects that support the development, rehabilitation, improvement, or maintenance of affordable housing or community facilities, such as a health clinic, even if the benefit to low- or moderate-income individuals from reduced cost of operations is indirect, such as reduced cost of providing electricity to common areas of an affordable housing development.

The rehabilitation and construction of affordable housing or community facilities, referred to above, may include the abatement or remediation of, or other actions to correct, environmental hazards, such as lead-based paint, that are present in the housing, facilities, or site.

The Agencies solicit comments on all aspects of this proposed revised Q&A. In addition, the Agencies specifically request commenters' views on the following questions.

17. Should loans for renewable energy or energy-efficient equipment or projects that support the development, rehabilitation, improvement, or maintenance of community facilities that serve low- or moderate-income individuals be considered under the CRA regulations?

18. Do the proposed revisions make clear which energy-efficiency activities would be considered under the CRA regulations?

C. Revitalize or Stabilize Underserved Nonmetropolitan Middle-Income Geographies

The Agencies' CRA regulations at 12 CFR __.12(g)(4) define community development to include activities that revitalize or stabilize particular areas. Existing Q&A § __.12(g)(4)(iii)–4 provides further guidance by listing examples of activities that help to revitalize or stabilize underserved nonmetropolitan middle-income geographies. The Agencies propose to revise this guidance by adding an example of a qualified activity related to communications infrastructure.

The Federal government actively promotes the expansion of broadband infrastructure into rural and tribal areas due to its importance to global competitiveness, job creation, innovation, and the expansion of markets for American businesses. Yet many areas continue to lack adequate access to this crucial resource.[2] Further, the availability of broadband is essential to access banking services, particularly as financial institutions shift away from branch-based delivery systems. Currently, consumers and small businesses in many rural and tribal areas may not have reliable access to Internet-based alternative delivery systems for banking services because they do not have access to broadband service. In addition, improved broadband access supports economic development, as small businesses and farms increasingly use broadband-reliant technologies for payment processing systems, remote deposit capture, to access credit facilities, and to market and arrange delivery of products.

The Agencies agree that the availability of a reliable communications infrastructure is important to help to revitalize or stabilize underserved nonmetropolitan middle-income geographies. It is particularly important as banking services, as well as services such as credit and housing counseling, are increasingly delivered online.

To address these concerns, the Agencies propose to add a new example involving communication infrastructure as an activity that would be considered to ''revitalize or stabilize'' an underserved nonmetropolitan middle-income geography. Additionally, in order to improve readability, the format of the answer has been revised to include a bulleted list containing the examples of activities. The text of proposed revised Q&A § __.12(g)(4)(iii)—4 follows:

[2] *See* ''Accelerating Broadband Infrastructure Deployment,'' Exec. Order No. 13,616, 77 FR 36903 (June 20, 2012).

§ __.12(g)(4)(iii)–4: *What activities are considered to ''revitalize or stabilize'' an underserved nonmetropolitan middle-income geography, and how are those activities evaluated?*

A4. The regulation provides that activities revitalize or stabilize an underserved nonmetropolitan middle-income geography if they help to meet essential community needs, including needs of low- or moderate-income individuals. Activities, such as financing for the construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, affordable housing, or communication services, will be evaluated under these criteria to determine if they qualify for revitalization or stabilization consideration. Examples of the types of projects that qualify as meeting essential community needs, including needs of low- or moderate-income individuals, would be

• A new or expanded hospital that serves the entire county, including low- and moderate-income residents;

• an industrial park for businesses whose employees include low- or moderate-income individuals;

• a new or rehabilitated sewer line that serves community residents, including low- or moderate-income residents;

• a mixed-income housing development that includes affordable housing for low- and moderate-income families;

• a renovated elementary school that serves children from the community, including children from low- and moderate-income families; or

• a new or rehabilitated communication infrastructure, such as broadband internet service, that serves the community, including low- and moderate-income residents.

Other activities in the area, such as financing a project to build a sewer line spur that connects services to a middle- or upper-income housing development while bypassing a low- or moderate-income development that also needs the sewer services, generally would not qualify for revitalization or stabilization consideration in geographies designated as underserved. However, if an underserved geography is also designated as distressed or a disaster area, additional activities may be considered to revitalize or stabilize the geography, as explained in Q&As § __.12(g)(4)(ii)–2 and § __.12(g)(4)(iii)–3.

The Agencies solicit comments on all aspects of this proposed revised Q&A. In addition, the Agencies specifically request commenters' views on the following questions.

19. Should communications infrastructure, such as broadband internet service, that serves an institution's community, including low- and moderate-income residents, be considered an activity that revitalizes or stabilizes a community? Should CRA consideration be given to such activities?

20. Does the proposed revised guidance sufficiently clarify which activities related to communications infrastructure would be considered under the CRA?

Proposed New Questions and Answers

I. Community Development Services

A. Evaluating Retail Banking and Community Development Services

Community development services are an important component of community reinvestment. These services promote credit and affordable product availability, technical assistance to community development organizations, and financial education programs for low- and moderate-income individuals. The performance criteria for the large institution service test are comprised of two parts: (i) Retail banking services, and (ii) community development services. Pursuant to the regulations, examiners analyze both the availability and effectiveness of a financial institution's systems for delivering retail banking services and the extent and innovativeness of its community development services.

Despite the benefits of community development services, and regulatory language requiring their consideration, as discussed above, commenters have asserted that community development services are not given sufficient consideration in the service test relative to retail banking services. To address this concern, the Agencies are proposing a new Q&A § __.24(a)–1 that would clarify how retail banking services and community development services are evaluated. In addition, the proposed new Q&A would explain the importance of the community development service criterion of the service test.

The CRA regulations define a community development service as a service that (i) has as its primary purpose community development; (ii) is related to the provision of financial services; and (iii) has not been considered in the evaluation of the institution's retail banking services under 12 CFR § __.24(d). Examples of community development services noted in the Questions and Answers include retail services that benefit or serve low- or moderate-income consumers. Consequently, many examiners consider services that benefit low- and moderate-income consumers, such as low-cost transaction or savings accounts and electronic benefit transfers, under the retail performance criteria of the service test rather than as community development services.

Under the regulations, the Agencies evaluate community development services pursuant to two criteria: (i) The extent to which the institution provides community development services, and (ii) the innovativeness and responsiveness of community development services. *See* 12 CFR § __.24(e). However, commenters contend that there seems to be little emphasis placed on determining whether products and services, which are intended to improve or increase access by low- or moderate-income individuals to financial services, are effective or responsive to community needs as required under the regulation.

Accordingly, the Agencies propose a new Q&A § __.24(a)—1 to clarify how retail banking services and community development services are evaluated. The Agencies intend this clarification to improve consistency and reduce uncertainty regarding the performance criteria in the service test and encourage additional community development services by affirming the importance of community development services. The text of proposed new Q&A § __.24(a)–1 follows:

§ __.24(a)–1: *How do examiners evaluate retail banking services and community development services under the large institution service test?*

A1. In evaluating retail services, examiners consider the availability and effectiveness of an institution's systems to deliver banking services, particularly in low- and moderate-income geographies and to low- and moderate-income individuals, the range of services provided in low-, moderate-, middle-, and upper-income geographies, and the degree to which the services are tailored to meet the needs of those geographies.

In evaluating community development services, examiners consider the extent of community development services offered, and the responsiveness and effectiveness of those retail services deemed community development services under Q&A § __.12(i)—3 because they improve or increase access to financial services by low- and moderate-income individuals or in low- or moderate-income geographies. Examiners will consider any information provided by the institution that demonstrates community development services are responsive to those needs.

The Agencies solicit comments on all aspects of this proposed new Q&A. In addition, the Agencies specifically request commenters' views on the following questions.

21. Does the proposed new guidance sufficiently clarify how examiners evaluate retail and community development services under the large institution service test? If not, why not? How could the answer be made clearer?

22. What types of information are financial institutions likely to maintain that may be used to demonstrate that an institution's community development services are responsive to the needs of low- and moderate-income individuals or in low- and moderate-income geographies?

B. Quantitative and Qualitative Measures of Community Development Services

As noted earlier, the regulations require the evaluation of (i) the extent to which an institution provides community development services, and (ii) the innovativeness and responsiveness of community development services when considering community development service performance under the service test. *See* 12 CFR __.24(e). However, commenters assert that it is often difficult to quantitatively or qualitatively evaluate community development services and that the difficulty appears to impede consideration of community development services in the service test.

Bankers note inconsistencies in how community development services are evaluated quantitatively. For instance, some performance evaluations reflect the number of hours that financial institution employees spend in board meetings, delivering workshops, or providing financial counseling services, while other performance evaluations reflect the range of services provided and/or the number of organizations or individuals served. In addition, commenters contend that there is inadequate consideration of whether products and services, which are intended to improve or increase access by low- and moderate-income individuals to financial services, are effective or responsive to community needs, as required under the CRA regulations.

The Agencies agree with commenters that further guidance would promote consistency in the quantitative evaluation of community development services. In particular, the Agencies believe that it is important to clarify that examiners need not look at any one specific quantitative factor when evaluating community development services.

In order to address these concerns, the Agencies are proposing a new Q&A § __.24(e)—2 that would address the quantitative and qualitative factors that examiners review when evaluating community development services to determine whether community development services are effective and responsive. The text of proposed new Q&A § __.24(e)–2 follows:

§ __.24(e)–2: *In evaluating community development services, what quantitative and qualitative factors do examiners review?*

A2. The community development services criteria are important factors in the evaluation of a large institution's service test performance. Both quantitative and qualitative aspects of community development services are considered during the evaluation. Examiners assess the extent to which community development services are offered and used. The review is not limited to a single quantitative factor, for example, the number of hours financial institution staff devotes to a particular community development service. Rather, the evaluation also assesses the degree to which community development services are responsive to community needs. Examiners will consider any relevant information provided by the institution and from third parties to quantify the extent and responsiveness of community development services.

The Agencies solicit comments on all aspects of this proposed new Q&A. In addition, the Agencies specifically request commenters' views on the following questions.

23. Does the proposed new guidance sufficiently explain the importance of the qualitative factors related to community development services?

24. What types of information are financial institutions and relevant third parties likely to maintain that may be used to demonstrate the extent to which community development services are offered and used?

II. Responsiveness and Innovativeness

A. Responsiveness

The term ''responsive'' is found throughout the CRA regulations and the Questions and Answers. Generally, the Agencies' regulations and guidance promote an institution's responsiveness to credit and community development needs by providing that the greater an institution's responsiveness to credit and community development needs in its assessment area(s), the higher the CRA rating that is assigned to that institution.[3] For example, Q&A § __.21(a)–2 explains that responsiveness is meant to lend a qualitative element to the rating system. Other Q&As explain that examiners should give greater weight to those activities that are most responsive to community needs, including the needs of low- and moderate-income individuals or neighborhoods. *See, e.g.,* Q&As § __.12(g)(4)(ii)–2 and § __.12(g)(4)(iii)–3. Other Q&As mention various types of activities that may be considered responsive to community needs. *See, e.g.,* Q&As § __.12(g)(3)–1 and § __.12(t)–8. Many of the Q&As addressing ''responsiveness'' also indicate that an institution's performance context influences assessment of the responsiveness of a given activity. Further, Q&A § __.12(h)–6, which was revised as part of the 2013 Guidance, also placed emphasis on an institution's responsiveness to community development needs and opportunities in its assessment area(s).

When the Agencies revised their CRA rules to adopt the concept of ''intermediate small'' institutions and added a community development test for those institutions in 2005, one performance factor in the new community development test evaluated the institution's responsiveness through community development activities to community development lending, investment, and service needs. To elaborate on this factor, the agencies also adopted Q&A § __.26(c)(4)–1 to describe ''responsiveness to community development needs'' in the context of the community development test for intermediate small institutions.

Because the concept of ''responsiveness'' is utilized in the CRA regulations and Questions and Answers applicable to all covered institutions, the Agencies propose a new Q&A § __.21(a)–3 that sets forth general guidance on how examiners evaluate whether a financial institution has been responsive to credit and community development needs. The proposed Q&A is intended to encourage institutions to think strategically about how to best meet the needs of their communities based on their performance context.

[3] For example, Appendix A—Ratings states, ''The [Agency] rates [an institution's] investment performance 'outstanding' if, in general, it demonstrates: . . . (C) Excellent responsiveness to credit and community development needs.'' 12 CFR __app. A(b)(2)(i). Responsiveness is generally a consideration in all of the ratings.

The new Q&A indicates that examiners will look at not only the volume and types of an institution's activities, but also how effective those activities have been. Examiners always evaluate responsiveness in light of an institution's performance context. The proposed Q&A suggests several information sources that may inform examiners' evaluations of performance context and responsiveness. The text of proposed new Q&A § __.21(a)–3 follows:

§ __.21(a)–3: *''Responsiveness'' to credit and community development needs is either a criterion or otherwise a consideration in all of the performance tests. How do examiners evaluate whether a financial institution has been ''responsive'' to credit and community development needs?*

A1. Examiners evaluate the volume and type of an institution's activities, i.e., retail and community development loans and services and qualified investments, as a first step in evaluating the institution's responsiveness to community credit needs. In addition, an assessment of ''responsiveness'' encompasses the qualitative aspects of performance, including the effectiveness of the activities. For example, some community development activities require specialized expertise or effort on the part of the institution or provide a benefit to the community that would not otherwise be made available. In some cases, a smaller loan may have more benefit to a community than a larger loan. Activities are considered particularly responsive to community development needs if they benefit low- and moderate-income individuals, low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies.

Examiners evaluate the responsiveness of an institution's activities to credit and community development needs in light of the institution's performance context. That is, examiners consider the institution's capacity, its business strategy, the needs of the community, and the opportunities for lending, investments, and services in the community. To inform their evaluation, examiners may consider information from many sources, including

- Demographic and other information compiled by local, state, and Federal government entities;
- public comments received by the Agency, for example, in response to its publication of its planned examination schedule;
- information from community leaders or organizations; and

• the results of an assessment, prepared by an institution in the normal course of business, of the credit and community development needs in the institution's assessment area(s) and how the institution's activities respond to those needs.

The Agencies solicit comments on all aspects of this proposed new Q&A. In addition, the Agencies specifically request commenters' views on the following questions.

25. Does this proposed new guidance appropriately highlight the importance of responsiveness to credit and community development needs and provide a flexible, yet clear, standard for determining how financial institutions will receive consideration?

26. Are there other sources of information that examiners should consider when evaluating an institution's responsiveness to credit and community development needs?

27. In connection with community development activities that will not directly benefit a financial institution's assessment area(s), as described in Q&A § __.12(h)–6 in the 2013 Guidance, would the proposed new Q&A help a financial institution in making decisions about the community development activities in which to participate? Note that Q&A § __.12(h)–6 addresses two categories of community development activities that will not directly benefit a financial institution's assessment area(s): (i) Those that have a purpose, mandate, or function to serve the assessment area(s); and (ii) those that do not directly benefit the assessment area(s) but that do benefit geographies or individuals in the broader statewide or regional area that includes the institution's assessment area(s).

B. Innovativeness

Innovativeness, like responsiveness, is a standard that is found throughout the CRA regulations. For example, ''innovativeness'' is included as a standard throughout the performance tests for large financial institutions. The large institution lending test evaluates the innovativeness of community development lending and the institution's use of innovative lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies. *See* 12 CFR __.22(b)(4) and (b)(5). The large institution investment test evaluates the innovativeness or complexity of qualified investments. *See* 12 CFR __.23(e)(2). Similarly, the large institution service test evaluates the innovativeness and responsiveness of community development services. *See* 12 CFR __.24(e)(2).

The three-part performance criteria in the community development test for wholesale or limited purpose banks includes an evaluation of the use of innovative or complex qualified investments, community development loans, or community development services. *See* 12 CFR __.25(c)(2). Finally, when evaluating a strategic plan, the Agencies evaluate a plan's measurable goals according to the regulatory criteria, all of which mention innovativeness. *See* 12 CFR __.27(g)(3).[4]

The Questions and Answers also provide further guidance on what is meant by ''innovativeness.'' For example, under the large institution lending test, the Agencies state that in evaluating the innovativeness of an institution's lending practices (and the innovativeness of its community development lending), examiners are not limited to reviewing the overall variety and specific terms and conditions of the credit products themselves. In connection with the evaluation of an institution's lending, examiners also may give consideration to related innovations when they augment the success and effectiveness of the institution's lending under community development loan programs or, more generally, its lending under its loan programs that address the credit needs of low- and moderate-income geographies or individuals. *See* Q&A § __.22(b)(5)–1.

In addition, the Questions and Answers provide that innovative lending practices, innovative or complex qualified investments, and innovative community development services are not required for a ''satisfactory'' or ''outstanding'' CRA rating, even for large institutions or wholesale and limited purpose institutions. *See* Q&A § __.28–1. However, under these tests, the use of innovative lending practices, qualified investments, and community development services may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance rating. *Id.*

Bankers have sought further guidance, reporting that there are inconsistencies in the types of activities that have been considered innovative. For instance, bankers have mentioned that some examiners consider community development services innovative only if they are new to a particular market or to the assessment area, while others consider an activity innovative if it is new to the institution.

The Agencies agree that additional clarification regarding the meaning of ''innovativeness'' would benefit both examiners and institutions. Therefore, the Agencies are proposing a new Q&A § __.21(a)–4 that would address what is meant by ''innovativeness.'' First, the proposed new guidance discusses innovativeness based on the institution, stating that an innovative practice or activity will be considered when an institution implements meaningful improvements to products, services, or delivery systems that respond more effectively to customer and community needs, particularly those segments enumerated in the definition of community development. Then, the proposed new Q&A addresses innovativeness in terms of an institution's market and customers, specifically stating that innovation includes the introduction of products, services, or delivery systems by institutions, which do not have the capacity to be market leaders in innovation, to their low- or moderate-income customers or segments of consumers or markets not previously served. The Agencies' proposal stresses that institutions should not innovate simply to meet this criterion of the applicable test, particularly if, for example, existing products, services, or delivery systems effectively address the needs of all segments of the community. Finally, the proposed new Q&A indicates that practices that cease to be innovative may still receive qualitative consideration for being flexible, complex, or responsive. A practice typically ceases to be innovative for an institution when the once innovative practice has become a standard, everyday practice of the institution.

The text of proposed new Q&A § __.21(a)–4 follows:

§ __.21(a)–4: *What is meant by ''innovativeness''*

A. Innovativeness is one of several qualitative considerations under the lending, investment, and service tests. The community development test for wholesale and limited purpose institutions similarly considers ''innovative'' loans, investments, and services in the evaluation of performance. Under the CRA regulations, an innovative practice or activity will be considered when an institution implements meaningful improvements to products, services, or delivery systems that respond more effectively to customer and community needs, particularly those segments enumerated in the definition of community development.

[4] ''Innovativeness'' is not a factor in the community development test applicable to intermediate small institutions. *See* Q &A § __.21(a)–2.

Institutions should not innovate simply to meet this criterion of the applicable test, particularly if, for example, existing products, services, or delivery systems effectively address the needs of all segments of the community. Innovative activities are especially meaningful when they emphasize serving, for example, low- or moderate-income consumers or distressed or underserved non-metropolitan middle-income geographies in new or more effective ways. Innovation also includes the introduction of existing types of products, services, or delivery systems by institutions, which do not have the capacity to be market leaders in innovation, to their low- or moderate-income customers or segments of consumers or markets not previously served. Practices that cease to be innovative may still receive qualitative consideration for being flexible, complex, or responsive.

The Agencies solicit comments on all aspects of this proposed new Q&A. In addition, the Agencies specifically request commenters' views on the following questions.

28. Does the proposed new guidance clarify what is meant by innovativeness?

29. Does the proposed new guidance appropriately explain innovations that may occur at financial institutions of different sizes and types?

30. Is it clear that innovative activities are not required?

General Comments

The Agencies invite comments on any aspect of this proposal. The Agencies particularly would like comments addressing those questions specifically noted at the end of the discussion of each of the proposed revised and new Q&As in this supplementary information section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), the Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The proposed revisions to the Questions and Answers would not involve any new collections of information pursuant to the PRA. Consequently, no information will be submitted to OMB for review.

Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999, 12 U.S.C. 4809, requires the Agencies to use "plain language" in all proposed and final rules published after January 1, 2000. Although this guidance is not a proposed or final rule, comments nevertheless are invited on whether the proposed revised interagency Q&As are stated clearly, and how the guidance might be revised to make it easier to read.

Dated: August 6, 2014.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 4, 2014.

Secretary of the Board.

Dated at Washington, DC, this 14th day of August, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–21560 Filed 9–9–14; 8:45 am]

BILLING CODE 4810–33–6210–01– 6714–01–P