

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency

[Docket No. 06- 03]

FEDERAL RESERVE SYSTEM

[Docket No. OP-1240]

FEDERAL DEPOSIT INSURANCE CORPORATION

[RIN No. 3064-AC97]

Community Reinvestment Act; Interagency Questions and Answers Regarding

Community Reinvestment; Notice

AGENCIES: 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.

SUMMARY: The OCC, Board, and FDIC (collectively, “the Agencies”) are publishing revised guidance (Questions and Answers) relating to the Community Reinvestment Act (“the Act” or “CRA”). The Questions and Answers primarily addresses topics included in the revisions that the Agencies made to their CRA regulations, which became effective September 1, 2005.

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: OCC: Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874-5750; or Karen Tucker, National Bank Examiner, Compliance Policy Division, (202) 874-4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Anjanette M. Kichline, Supervisory Consumer Financial Services Analyst, (202) 785-6054; Catherine M.J. Gates, Senior Supervisory Consumer Financial Services Analyst, (202) 452-3946; Kathleen C. Ryan, Counsel, (202) 452-3667; or Dan S. Sokolov, Counsel, (202) 452-2412, Division of Consumer and Community Affairs, Board

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FDIC: Pamela Freeman, Policy Analyst, (202) 898-6568, CRA and Fair Lending Policy Section, Division of Supervision and Consumer Protection; or Susan van den Toorn, Counsel, Legal Division, (202) 898-8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2005, the OCC, Board, and FDIC published in the Federal Register a joint final rule revising their Community Reinvestment Act regulations (70 FR 44256). The joint final rule became effective September 1, 2005.

The joint final rule addressed regulatory burden on banks with assets between \$250 million and \$1 billion by exempting them from CRA loan data collection and reporting obligations. It also made such banks, called intermediate small banks, eligible for evaluation under the small bank lending test and a flexible new community development test, rather than the lending, investment and service tests that are used to evaluate larger banks. Holding company affiliation is no longer a factor in determining which CRA evaluation standards apply to a bank.

The joint final rule also revised the term “community development” to include banks’ activities that revitalize or stabilize designated distressed or underserved nonmetropolitan middle-income areas or designated disaster areas. Finally, the rule addressed the impact on a bank’s CRA rating of evidence of discrimination or other credit practices that violate an applicable law, rule, or regulation.

To help financial institutions meet their responsibilities under the CRA and to increase public understanding of the CRA regulations, the staffs of the OCC, Board, FDIC, and Office of Thrift Supervision have previously published answers to the most frequently asked questions about the community reinvestment regulations of the four federal financial regulatory agencies. This guidance has been intended to provide informal staff guidance for use by examiners and other agency personnel, financial institutions, and the public, and is supplemented periodically. The four agencies’ Interagency Questions and Answers Regarding Community Reinvestment (2001 Interagency Questions and Answers) were last published July 12, 2001 (65 FR 36620).

On November 10, 2005, the staffs of the OCC, Board, and FDIC jointly published for comment in the Federal Register proposed Questions and Answers to provide additional guidance specific to the new OCC, Board, and FDIC rules issued on August 2, 2005, that apply to their institutions. (Because the OTS’s CRA regulation varies from the OCC’s, Board’s, and FDIC’s CRA regulations, the proposed Questions and Answers were not, and this final guidance is not, applicable to thrifts regulated by OTS.)

In response to the Agencies' request for comment on the proposed Questions and Answers, the OCC received 193 letters, the Board received 182 letters, and the FDIC received 183 letters. Most commenters submitted letters to all three Agencies. Comment letters were submitted by community organizations, individuals, banks and financial institution trade organizations, and state and local governments.

The Agencies carefully considered the comments received. As discussed below, some of the proposed questions and answers have been revised in this final guidance to address suggestions by commenters, while other questions and answers are being adopted as proposed.

The Questions and Answers that are being adopted today are grouped by the provision of the CRA regulations that they discuss, are presented in the same order as the regulatory provisions, and employ the same abbreviated method to cite to the regulations. For example, the small bank performance standards for national banks 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 nonmember state banks, at 12 CFR 345.26. Accordingly, the citation in this document would be to § __.26. Each question is numbered using a system that consists of the regulatory citation (as described above) and a number, connected by a dash. For example, the first question addressing § __.12(g)(4) would be identified as § __.12(g)(4) – 1.

As a result of technical changes made to the Agencies' regulations (70 FR 15570 (March 28, 2005)) and the substantive regulatory revisions mentioned above (70 FR 44256 (Aug. 2, 2005)), some of the citation numbering in the 2001 Interagency Questions and Answers does not correspond to the current section citations of the revised regulations. In this final guidance, if a reference is made to guidance in the 2001 Interagency Questions and Answers, the number of the question and answer, as published in the 2001 Interagency Questions and Answers, is given, even if that reference does not reflect the current regulatory citation. The Agencies' staffs are working to update the 2001 Interagency Questions and Answers to reflect the revisions to the regulations made by the three Agencies, as discussed above, and will correct the citation references in the next publication of the Interagency Questions and Answers. When the 2001 Interagency Questions and Answers document is revised and republished later this year, the Agencies will publish an integrated document containing the questions and answers that are being published in this final guidance and the revised 2001 interagency guidance.

Discussion of Final Guidance and Comments Received

All of the questions and answers that were proposed in November are being adopted today, either as proposed or with revisions. In addition, one of the proposed questions and answers (§ __.12(g)(4)(iii) – 3) has been divided into two questions and answers for purposes of clarity.

§ __.12(g)(4) – 1:

This proposed question and answer stated that the new definition of “community development” applies to all banks, and not to intermediate small banks only. The Agencies received very few comments on this proposed question and answer; all commenters were in agreement with the proposed guidance. The guidance is adopted as proposed.

§ __.12(g)(4) – 2:

This proposed question and answer addressed whether activities that provide housing for middle- and upper-income individuals may qualify for favorable consideration as community development activities when they help to revitalize or stabilize designated disaster areas or designated distressed or underserved nonmetropolitan middle-income geographies. The Agencies received comments primarily from representatives of community organizations in connection with this guidance. These commenters opposed aspects of the proposed guidance. Commenters asserted that projects that provided housing for only middle- and upper-income individuals should not receive favorable consideration for CRA purposes in designated disaster areas or designated distressed nonmetropolitan middle-income geographies even when such development was part of a bona fide revitalization plan that would provide long-term benefits to the entire community, such as in connection with attracting a new employer that would provide jobs to low- and moderate-income individuals. Some of the community organization commenters stated that it would be appropriate to provide favorable consideration to mixed-income housing, which may include housing for middle- or upper-income individuals. Only one commenter from an industry trade organization commented on this proposed guidance. That commenter supported the proposed guidance. No commenters disagreed with the guidance addressing the provision of housing in underserved nonmetropolitan middle-income areas.

The Agencies have carefully considered these comments and revised the proposed question and answer to address the concerns that have been raised. The question and answer, as adopted, clarifies that an activity that provides housing for middle- or upper-income individuals qualifies as an activity that revitalizes or stabilizes a distressed nonmetropolitan middle-income geography or a designated disaster area if the housing directly helps to revitalize or stabilize the community by attracting new, or retaining existing, businesses or residents and, in the case of a designated disaster area, is related to disaster recovery. The Agencies generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography or designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods. Thus, for example, a loan solely for middle- or upper-income housing in a community in need of financing for low- and moderate-income housing would be given very little weight if there is only a short-term benefit to low- and moderate-income individuals in the community through the creation of temporary construction jobs. An activity will be presumed to revitalize or stabilize such a geography or area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan.

The portion of the answer addressing underserved nonmetropolitan middle-income geographies is adopted as proposed.

§ __.12(g)(4)(ii) – 1:

This proposed question and answer provided guidance on what is meant by a “designated disaster area.” The proposed guidance stated that a “designated disaster area” would be a disaster area designated by federal or state government. The Agencies have further reviewed how, when, and for what purposes disaster areas are designated. State disasters or emergencies are usually declared as a prerequisite for federal disaster assistance. Thus, the Agencies have determined that restricting the term “designated disaster area” to federally designated disaster areas would not limit the scope of that term in any meaningful way. Some federal disaster area designations are solely for the purpose of providing short-term public assistance to address debris removal or emergency protective measures immediately following an incident – specifically, Federal Emergency Management Agency (FEMA) Public Assistance Emergency Work Category A (Debris Removal) and Category B (Emergency Protective Measures). The Agencies believe that designations for these purposes do not exhibit the type of conditions that would require sustained disaster recovery-related revitalization or stabilization activities.

Therefore, based on comments received and information from FEMA staff, the Agencies are revising the guidance to state that a “designated disaster area” is a major disaster area designated by the federal government. Such disaster designations include, in particular, Major Disaster Declarations administered by FEMA, but exclude counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures).

The proposed guidance also described a “lag period” following the expiration of a “designated disaster,” during which a bank’s revitalization and stabilization activities would continue to receive consideration as community development activities. The Agencies asked for specific comment on the description of the duration of a designated disaster and the appropriateness of the proposed lag period.

Most community organization commenters agreed that a one-year lag period would be appropriate, particularly if a bank’s revitalization or stabilization activity commenced during the duration of the disaster period. Some other commenters, including some banks and bank trade organizations, believed a longer lag period, generally three years or longer, would be appropriate because it often takes a number of years for a community to recover from the economic impact of a disaster, particularly a major disaster.

As to the description of the disaster designation, several community organization commenters and one industry trade organization commenter believed that the proposed use of the official governmental designation of the start and expiration of the disaster would be appropriate. On the other hand, one bank commenter indicated that, after looking at government websites, it was impossible to determine when a local disaster

designation expired. This commenter suggested that, at a minimum, the Agencies should provide guidance on specific reference sites where at least the federal disaster designation information could be located.

Although FEMA makes a public announcement of a disaster designation, FEMA generally does not announce an “expiration” of the disaster designation, nor do its regulations provide for the designation’s “expiration.” FEMA’s regulations and practices entail different stages relevant to a disaster designation period, such as the incident period, the application period, the work completion deadlines, and the period that a joint field office is open, but these periods may vary from incident to incident, and may not be relevant to all designated disasters. FEMA’s regulations establish a requirement that permanent public assistance work relating to a major disaster must be completed within 18 months of the disaster designation (44 CFR 206.204(c)) unless FEMA grants an extension.

After carefully considering this information and the comments received, the Agencies have revised the proposed guidance addressing the period of time that a bank’s activities will receive consideration in a designated disaster area. The final guidance states that the Agencies have determined to consider disaster recovery-related activities that help to revitalize or stabilize a designated disaster area for 36 months following the date of designation by the federal government. The Agencies believe that providing a uniform 36-month period following disaster designation, during which a bank will receive CRA consideration of disaster recovery-related activities that help to revitalize or stabilize a disaster area, generally should be adequate to address the variety of community revitalization or stabilization needs that may arise depending on the nature, extent and severity of the particular disaster. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this time period may be extended.

Finally, the Agencies plan to extend substantially the time periods for recovery-related activities in the Gulf Coast areas designated as disaster areas because of hurricanes Katrina and Rita beyond 36 months from the dates of the disaster designations because of the demonstrated community need for long-term involvement by financial institutions in helping to address the widespread devastation caused by these hurricanes.

§ __.12(g)(4)(ii) – 2:

This proposed question and answer discussed how revitalization or stabilization activities in a designated disaster area would be considered. The proposed guidance stated that bank activities in designated disaster areas would be evaluated in the same manner as they would be evaluated in a low- or moderate-income geography or a designated distressed nonmetropolitan middle-income geography. It explained that examiners would determine whether the activities have a primary purpose of community development by helping to attract and retain residents and businesses (including by providing jobs) or are part of a bona fide plan to revitalize or stabilize the geography.

The proposed guidance also stated that examiners would give greater weight to those activities that are most responsive to community needs, including those of low- or moderate-income individuals or neighborhoods. The proposed guidance also clarified that investments in entities that provide community services for, and direct loans and financial services provided to, individuals in designated disaster areas and to individuals who are displaced by disasters also receive consideration under the CRA and cited previous interagency guidance.

Many commenters addressed this proposed guidance. Community organizations generally urged the Agencies to give the greatest weight to activities that benefit low- and moderate-income individuals and neighborhoods.

Two financial institution trade organizations, on the other hand, emphasized that the entire community, without regard to income, is affected by most natural disasters and the recovery of the entire community through housing, job creation, and investments is critical. These commenters urged the Agencies not to unnecessarily restrict CRA consideration of recovery-related efforts to those activities that benefit only low- and moderate-income individuals or communities.

Finally, several commenters favorably addressed the portion of the answer stating that bank activities that provide assistance to persons displaced by disasters would receive consideration.

The Agencies have revised this question and answer to address commenters' concerns and to provide consistent guidance on the standards that apply to what qualifies as revitalization or stabilization activities. The revised answer states that the Agencies generally will consider an activity to revitalize or stabilize a designated disaster area if it helps to attract new, or retain existing, businesses or residents and is related to disaster recovery. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization and stabilization plan or disaster recovery plan. The Agencies generally will consider all activities related to disaster recovery that revitalize or stabilize a designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods.

In response to commenters, the question and answer provides additional examples of activities that will be considered to revitalize or stabilize a designated disaster area. Qualifying activities may include, for example, providing financing to help retain businesses in the area that employ local residents, including low- and moderate-income individuals; providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals; activities that provide financing or other assistance for essential community-wide infrastructure, community services, and rebuilding needs; and activities that provide housing, financial assistance, and services to individuals in designated disaster areas and to individuals who have been displaced from those areas, including low- and moderate-income individuals.

§ __.12(g)(4)(iii) – 1:

This proposed question and answer explained what criteria the Agencies would use to designate nonmetropolitan middle-income geographies that are “distressed” or “underserved.” The proposed guidance also stated that the Agencies will publish data source information along with the list of designated census tracts on the Federal Financial Institutions Examination Council (FFIEC) website (<http://www.ffiec.gov>).

The Agencies received very few comments on this proposed guidance. One commenter suggested that the distressed areas designated for CRA purposes should be the same as Community Development Financial Institution (CDFI) Fund distressed areas. Although the Agencies considered using CDFI Fund distressed areas, the Agencies learned that the CDFI Fund designates distressed areas based on data that is not updated annually. Because data sources are available that provide updated data annually, the Agencies decided to designate distressed nonmetropolitan middle-income geographies based on the more current data.

Another commenter suggested that the criteria used to identify distressed or underserved areas would serve to exclude needy areas because they are based on a relatively large geographic unit, the census tract. This commenter pointed out that rural census tracts are relatively large and contain a wide variety of types of populations, with pockets of distress encompassed within relatively better-off areas. The commenter suggested that basing the distressed or underserved designation at the block group level, rather than at the census tract level, would be more effective in identifying distressed areas. This suggestion is not adopted because the regulation refers to “distressed or underserved nonmetropolitan middle-income geographies” (§ __.12(g)(4)(iii)), and a “geography” is defined in the Agencies’ regulations as “a census tract delineated by the United States Bureau of the Census in the most recent decennial census.”

The question and answer is adopted as proposed.

§ __.12(g)(4)(iii) – 2:

This proposed question and answer stated that the Agencies will update the list of designated distressed and underserved nonmetropolitan middle-income geographies annually and will publish the list on the FFIEC website (<http://www.ffiec.gov>). The Agencies also proposed a twelve-month “lag period” immediately after a census tract is reclassified as no longer distressed or underserved. During the lag period, revitalization and stabilization activities would receive consideration as community development if the activities would have been considered to have a primary purpose of community development if the census tract in which they were located were still designated as distressed or underserved. The Agencies specifically asked for comment on the appropriateness of the lag period.

The Agencies received several comments on this proposed guidance. One commenter believed that no lag period was necessary, but if a lag period were adopted,

then one year should be the maximum length considered. Several commenters believed that a one-year lag period would be appropriate, while several other commenters, including representatives of financial institutions, urged the Agencies to provide a lag period of three or more years.

One commenter asked whether the Agencies would publish the list of designated distressed or underserved nonmetropolitan middle-income geographies more frequently than annually. The Agencies will update the list annually based on annual changes in source data; the list will be published continuously on the FFIEC website.

The proposed question and answer is being adopted with a twelve-month lag period. In addition, the Agencies will indicate which designated census tracts are in their lag periods.

§ __.12(g)(4)(iii) – 3:

This proposed question and answer explained how revitalization and stabilization activities in designated distressed or underserved nonmetropolitan middle-income geographies would be evaluated.

Several commenters asserted that the proposed question and answer was too complicated because there was one answer for designated distressed nonmetropolitan middle-income areas and another answer for designated underserved nonmetropolitan middle-income areas. To help clarify the guidance, the issues are addressed in separate questions and answers – one addressing designated distressed nonmetropolitan middle-income areas (§ __.12(g)(4)(iii) – 3), and the other addressing designated underserved nonmetropolitan middle-income areas (§ __.12(g)(4)(iii) – 4).

As proposed, in designated distressed nonmetropolitan middle-income geographies, examiners would determine whether the activities have a primary purpose of community development by helping to attract and retain residents and businesses (including by providing jobs) or are part of a bona fide plan to revitalize or stabilize the geography. The activities must have had a long-term direct benefit to the entire community, including low- and moderate-income individuals and neighborhoods.

Similar to the comments addressing the proposed guidance dealing with revitalization or stabilization activities in designated disaster areas, some community organization commenters were concerned that not enough emphasis was placed on benefits to low- and moderate-income individuals in designated distressed nonmetropolitan middle-income geographies. The question and answer as adopted revises and clarifies the guidance addressing revitalization or stabilization activities in distressed nonmetropolitan middle-income geographies to make it consistent with the similar guidance applicable to banks' revitalization and stabilization activities in designated disaster areas. The guidance specifically states that examiners will give greater weight to those activities that are most responsive to community needs, including the needs of low- or moderate-income individuals or neighborhoods.

The proposed guidance addressing evaluation of revitalization or stabilization activities in underserved nonmetropolitan middle-income geographies stated that bank activities that facilitate the construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, or affordable housing generally would be considered to meet essential community needs and qualify for consideration as a community development activity, so long as the infrastructure, facility, or affordable housing serves low- and moderate-income individuals. One commenter asked how much benefit to low- or moderate-income individuals there must be for an activity in an underserved nonmetropolitan middle-income area to qualify for consideration. Another commenter suggested that a significant percentage of the people that benefit from the activity should be low- or moderate-income. Other commenters suggested that the Agencies should give more weight to revitalization or stabilization activities that benefit low- or moderate-income individuals in underserved nonmetropolitan middle-income geographies.

The question and answer has been revised to include a restatement of the standard that appears in the regulations, that is, that activities revitalize or stabilize an underserved nonmetropolitan middle-income geography if they help to meet essential community needs, including the 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, or affordable housing, will be evaluated under these criteria to determine if they qualify for revitalization or stabilization consideration.

§ __.12(i) – 3:

The proposal would have revised the existing question and answer from the 2001 Interagency Questions and Answers, which lists examples of community development services, to add two new examples. The first new example stated that providing financial services to low- or moderate-income individuals through branches and other facilities in low- or moderate-income areas is a community development service (unless the provision of such services has been considered in the evaluation of a bank's retail banking services under § __.24(d)).

Commenters were generally in favor of this revision and the Agencies are adopting this revision as proposed.

The second example of a community development service that was proposed was providing international remittances services that increase access to financial services by low- and moderate-income persons (for example, by offering reasonably priced international remittances services in connection with a low-cost account). Commenters were generally in favor of this proposed revision. Therefore, the revision to this guidance is adopted as proposed.

§ __.12(t) – 1:

This proposed question and answer addressed consideration for prior-period investments when examiners evaluate qualified investments. It stated that examiners would consider investments that were made prior to the current examination, but are still outstanding. Qualitative factors would affect the weight given to both current period and outstanding prior-period qualified investments.

Several community organizations and affiliates of community organizations commented on this proposed guidance. These commenters stressed that banks should not be able to compensate for low levels of current-period qualified investments with prior-period investments. Some of these commenters also believed that consideration of prior period investments should be limited to investments that are particularly innovative, complex, or responsive to community needs.

The guidance is adopted as proposed. Although prior-period investments may receive consideration in a bank's current evaluation, examiners typically distinguish between current-period and prior-period investments when listing the amounts of a bank's investments in the institution's performance evaluation. Further, examiners use qualitative factors to determine how much consideration a bank receives for any given qualified investment. Greater weight is given to investments that are responsive to community needs, innovative, or complex, as applicable.

One commenter stated that this guidance should apply to all sizes and types of banks because some investments not only have significant impact, they also continue to utilize bank assets and represent a continuing financial commitment by the bank to the community. This question and answer clarifies that the guidance applies to all banks.

§ __.12(t) – 4:

The proposal would have added investments in Rural Business Investment Companies to the question and answer from the 2001 Interagency Questions and Answers that lists examples of qualified investments. The Agencies received only a few comments on this proposal. All of the comments favored the proposed addition. Therefore, the guidance is adopted as proposed.

§ __.12(u)(2) – 1:

This proposed question and answer stated that adjustments to the asset-size thresholds for small banks and intermediate small banks will be made annually based on changes to the Consumer Price Index. It also stated that changes in the asset-size thresholds would be published in the Federal Register.

The Agencies received very few comments on this proposed guidance. One financial institution trade organization commented that publication of adjustments in the Federal Register is important.

The question and answer is adopted as proposed.

§ __.26 – 1:

This proposed question and answer stated that, when evaluating a small bank or intermediate small bank, examiners will consider, at the bank's request, retail and community development loans originated or purchased by an affiliate, qualified investments made by an affiliate, or community development services provided by an affiliate. The bank must maintain sufficient information so that examiners may evaluate these activities under the appropriate performance criteria and ensure that another institution does not claim the activities. The constraints applicable to affiliate activities claimed by large institutions would also apply to affiliate activities claimed by small banks and intermediate small banks. In addition, examiners would not include affiliate lending in calculating the percentage of loans and, as appropriate, other lending-related activities located in a bank's assessment area.

Very few comments addressing this proposed guidance were received. All comments were favorable. Although the question has been rephrased for purposes of clarity, the answer is adopted as proposed.

§ __.26(c) – 1:

This proposed question and answer discussed how the community development test would be applied flexibly for intermediate small banks. It described how intermediate small banks engage in a combination of community development loans, qualified investments, and community development services that are evaluated under the community development test. It stated that a bank may not simply ignore one or more of these categories of community development, nor do the regulations prescribe a required threshold for community development loans, qualified investments, or community development services. A bank would have the flexibility to allocate its resources among community development loans, qualified investments, and community development services in amounts it reasonably determines are most responsive to community development needs and opportunities.

The Agencies received several letters commenting on this proposed guidance. Most of the comments were from community organizations, although a few were from financial industry trade organizations.

Community organization commenters agreed that intermediate small banks should not ignore any category of community development activities. Many of these commenters expressed concern that qualitative factors, such as those considered in a bank's performance context, would be used to excuse low levels of community development lending, qualified investments, or community development services. One bank trade organization, on the other hand, asserted that appropriate levels of each type of

community development activity would depend on the bank, the community, and the local needs and opportunities.

A number of community organization commenters discussed the difference between community needs and opportunities for community development activities. Generally, these commenters stressed that community needs, rather than opportunities for engaging in community development activities, must be the main consideration.

The question and answer is adopted as proposed. The guidance provides appropriate balance between the flexibility of banks to allocate their resources in a manner that is most responsive to community needs with the expectation that banks will engage in community development activities (loans, investments, and services) consistent with those needs and opportunities.

One financial institution trade organization expressed concern that the proposed guidance imposed a “needs assessment” requirement on intermediate small banks. The Agencies do not intend that intermediate small banks prepare a particular “needs assessment” solely for purposes of its CRA evaluation under the community development test. If intermediate small banks prepare business plans and market analyses that reflect community needs and opportunities, they may rely on such information, as well as other currently available information, when assessing community development needs in their assessment areas.

§ __.26(c)(3) – 1:

This proposed question and answer stated that examiners will consider not only the types of services provided to benefit low- and moderate-income individuals, but also the provision and availability of services to low- and moderate-income individuals, including through branches and other facilities located in low- and moderate-income areas.

A large number of letters from community organizations commented on this proposed guidance. Most of these commenters asserted that intermediate small banks should be evaluated on the number and percent of branches located in low- and moderate-income geographies. The revised regulations do not include a retail banking service test for intermediate small banks that evaluates the number and percent of an intermediate small bank’s branches located in low- and moderate-income geographies.

However, in response to the commenters, the guidance is being revised to clarify that the presence of branches located in low- and moderate-income geographies helps to demonstrate the availability of banking services to low- and moderate-income individuals.

§ __.26(c)(4) – 1:

This proposed question and answer discussed what examiners would consider when reviewing the responsiveness of community development lending, qualified investments, and community development services by an intermediate small bank to the community development needs of the area. It stated that, in addition to quantitative measures such as the number and amount of community development loans, qualified investments, and community development services, examiners would also consider qualitative aspects of performance. In particular, examiners would evaluate the responsiveness of the bank's community development activities in light of the bank's capacity, business strategy, the needs of the community, and the number and types of opportunities for each type of community development activity. The proposed guidance also stated that activities would be considered particularly responsive to community development needs if they benefit low- and moderate-income individuals in low- and moderate-income areas, designated disaster areas, or designated distressed or underserved nonmetropolitan middle-income geographies.

Only a few commenters addressed this proposed guidance. Most of these comments were generally in agreement with the proposed question and answer. One commenter was concerned, however, that qualitative factors might be used to explain a bank's low numbers and amounts of community development activities and that "lack of opportunity" may be used to excuse limited performance even when community needs exist.

The question and answer is adopted as proposed. Agency examiners will apply the qualitative factors in the context of intermediate small banks in a manner that appropriately considers the needs of the community, as well as other relevant information, including the expertise of the bank, its business plan, the bank's capacity, and any constraints that would prevent the bank from engaging in community development activities.

Other Comments

The Agencies requested comments on any issues raised by the CRA and the 2001 Interagency Questions and Answers. Commenters provided comments on a number of topics that were unrelated to the proposed questions and answers. The Agencies' staffs will consider these comments in their general review of the 2001 Interagency Questions and Answers.

The Agencies received a number of comments suggesting specific types of investments and services that should be listed in the questions and answers as examples of qualified investments and community development services. The Agencies will consider these suggestions during their general update of the 2001 Interagency Questions and Answers.

One issue that the Agencies anticipate addressing in proposed revisions to the 2001 Interagency Questions and Answers concerns whether intermediate small banks' small business loans, small farm loans, or home mortgage loans may be considered as

community development loans, if the loans have a primary purpose of “community development,” as that term is defined in the regulations. Under the regulations’ definition of “community development loan,” a loan that has been reported as a small business loan or small farm loan as required by the CRA regulations, or as a mortgage loan under the Home Mortgage Disclosure Act (HMDA), is not a community development loan, even if the loan has a primary purpose of community development. Small banks, however, are not required by the CRA regulations to report small business loans or small farm loans; and some small banks, as well as some large banks, are not required by HMDA to report home mortgage loans. Thus, after the definition of “community development loan” was adopted, a question arose as to its application to banks that are not required to report home mortgage loans, small business loans, or small farm loans. In response to that question, the Agencies adopted Q&A §§ __.12(i) & 563e.12(h) – 2, which indicates that examiners will not consider a loan by a small bank that meets the definition of either a “small business loan” or a “small farm loan” as a community development loan regardless of the purpose of the loan, even though the regulation does not require a small bank to report small business or small farm loans. Similarly, the question and answer also states that examiners will not treat any loan that meets the definition of a HMDA-reportable mortgage loan as a community development loan even if the bank that made the loan is not required by HMDA to report mortgage loans (with the exception of multifamily dwelling loans). The Agencies anticipate that they will seek comment on whether this guidance is appropriate for intermediate small banks, which, unlike large banks, are not required to report small business or small farm loans and, unless they opt to be evaluated as large banks, have their community development activities, including community development loans, evaluated in a separate community development test. Meanwhile, evaluations of small banks, including intermediate small banks, will continue to be governed by the guidance in Q&A §§ __.12(i) & 563e.12(h) – 2.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The SBREFA requires an agency, for each rule for which it prepares a final regulatory flexibility analysis, to publish one or more compliance guides to help small entities understand how to comply with the rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC and FDIC certified that their proposed CRA rule would not have a significant economic impact on a substantial number of small entities and invited comments on that determination. The Board did not so certify, and requested comments in several areas. See 70 FR 12148, 12154 (March 11, 2005). In connection with the joint final rule, the FDIC and OCC certified that the joint final rule would not have a significant impact on a substantial number of small entities. In response to public comments it received, the Board prepared a final regulatory flexibility analysis and described how the final rule minimizes the economic impact on small entities by making the twelve affected state member banks eligible for the streamlined CRA process. See 70 FR at 44264-65 (August 2, 2005).

In accordance with section 212 of the SBREFA and the Agencies' continuing efforts to provide clear, understandable regulations, staffs of the Agencies have compiled these interagency Questions and Answers. The interagency Questions and Answers serve the same purpose as the compliance guide described in the SBREFA by providing guidance on a variety of issues of particular concern to small banks.

The text of the Interagency Questions and Answers Regarding Community Reinvestment follows:

§ __.12(g)(4) Activities That Revitalize or Stabilize –

§ __.12(g)(4) – 1: Is the revised definition of community development, effective September 1, 2005, applicable to all banks or only to intermediate small banks?

A1: The revised definition of community development is applicable to all banks.

§ __.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 stabilizes a distressed nonmetropolitan middle-income geography or a designated disaster area if the housing directly helps to revitalize or stabilize the community by attracting new, or retaining existing, businesses or residents and, in the case of a designated disaster area, is related to disaster recovery. The Agencies generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography or designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods. Thus, for example, a loan solely to develop middle- or upper-income housing in a community in need of low- and moderate-income housing would be given very little weight if there is only a short-term benefit to low- and moderate-income individuals in the community through the creation of temporary construction jobs. (A housing-related loan is not evaluated as a “community development loan” if it has been reported or collected by the institution or its affiliate as a home mortgage loan, unless it is a multifamily dwelling loan. See § __.12(i)(2)(i) and Q&A §§ __.12(i) & 563e.12(h) – 2.) An activity will be presumed to revitalize or stabilize such a geography or area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan. See Q&As §§ __.12(h)(4) & 563e.12(g)(4)-1 and §§ __.12(i) & 563e.12(h) – 4.

In underserved nonmetropolitan middle-income geographies, activities that provide housing for middle- and upper-income individuals may qualify as activities that revitalize or stabilize such underserved areas if the activities also provide housing for

low- or moderate-income individuals. For example, a loan to build a mixed-income housing development that provides housing for middle- and upper-income individuals in an underserved nonmetropolitan middle-income geography would receive positive consideration if it also provides housing for low- or moderate-income individuals.

§ __.12(g)(4)(ii) Activities That Revitalize or Stabilize Designated Disaster Areas

§ __.12(g)(4)(ii) – 1: What is a “designated disaster area” and how long does it last?

A1: A “designated disaster area” is a major disaster area designated by the federal government. Such disaster designations include, in particular, Major Disaster Declarations administered by the Federal Emergency Management Agency (FEMA) (<http://www.fema.gov>), but excludes counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures).

Examiners will consider bank activities related to disaster recovery that revitalize or stabilize a designated disaster area for 36 months following the date of designation. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this time period may be extended.

§ __.12(g)(4)(ii) – 2 : What activities are considered to “revitalize or stabilize” a designated disaster area, and how are those activities considered?

A2: The Agencies generally will consider an activity to revitalize or stabilize a designated disaster area if it helps to attract new, or retain existing, businesses or residents and is related to disaster recovery. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan. The Agencies generally will consider all activities relating to disaster recovery that revitalize or stabilize a designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including the needs of low- or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to help retain businesses in the area that employ local residents, including low- and moderate-income individuals; providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals; providing financing or other assistance for essential community-wide infrastructure, community services, and rebuilding needs; and activities that provide housing, financial assistance, and services to individuals in designated disaster areas and to individuals who have been displaced from those areas, including low- and moderate-income individuals (see, e.g., Q&As § __.12(j) & 563e.12(i) – 3; § __.12(s) & 563e.12(r) – 4; § __.22(b)(2) & (3) – 4; § __.22(b)(2) & (3) – 5; and § __.24(d)(3) – 1).

§ __.12(g)(4)(iii) Activities That Revitalize or Stabilize Distressed or Underserved

Nonmetropolitan Middle-income Geographies

§ __.12(g)(4)(iii) – 1: What criteria are used to identify distressed or underserved nonmetropolitan middle-income geographies?

A1: Eligible nonmetropolitan middle-income geographies are those designated by the Agencies as being in distress or that could have difficulty meeting essential community needs (underserved). A particular geography could be designated as both distressed and underserved. As defined in § __.12(k), a geography is a census tract delineated by the United States Bureau of the Census.

A nonmetropolitan middle-income geography will be designated as distressed if it is in a county that meets one or more of the following triggers: (1) an unemployment rate of at least 1.5 times the national average, (2) a poverty rate of 20 percent or more, or (3) a population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The Agencies will use as the basis for these designations the "urban influence codes," numbered "7," "10," "11," and "12," maintained by the Economic Research Service of the United States Department of Agriculture.

The Agencies will publish data source information along with the list of eligible nonmetropolitan census tracts on the Federal Financial Institutions Examination Council Website (<http://www.ffiec.gov>).

§ __.12(g)(4)(iii) – 2: How often will the Agencies update the list of designated distressed and underserved nonmetropolitan middle-income geographies?

A2: The Agencies will review and update the list annually as needed. The list will be published on the Federal Financial Institutions Examination Council Website (<http://www.ffiec.gov>).

To the extent that changes to the designated census tracts occur, the Agencies have determined to adopt a one-year "lag period." This lag period will be in effect for the twelve months immediately following the date when a census tract that was designated as distressed or underserved is removed from the designated list. Revitalization or stabilization activities undertaken during the lag period will receive consideration as community development activities if they would have been considered to have a primary

purpose of community development if the census tract in which they were located were still designated as distressed or underserved.

§ __.12(g)(4)(iii) – 3: What activities are considered to “revitalize or stabilize” a distressed nonmetropolitan middle-income geography, and how are those activities evaluated?

A3: An activity revitalizes or stabilizes a distressed nonmetropolitan middle-income geography if it helps to attract new, or retain existing, businesses or residents. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization or stabilization plan. The Agencies generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals, and activities that provide financing or other assistance for essential infrastructure or facilities necessary to attract or retain businesses or residents. See Q&As §§ __.12(h)(4) & 563e.12(g)(4) – 1 and §§ __.12(i) and 563e.12(h) – 4.

§ __.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, or affordable housing, 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; or a renovated elementary school that serves children from the community, including children from low- and moderate-income families. 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.

§ __.12(i) Community Development Service

§ __.12(i) –3: What are examples of community development services?

A3: Examples of community development services include, but are not limited to:

- Providing financial services to low- and moderate-income individuals through branches and other facilities located in low- and moderate-income areas, unless the provision of such services has been considered in the evaluation of a bank's retail banking services under § __.24(d);
- Providing technical assistance on financial matters to nonprofit, tribal or government organizations serving low- and moderate-income housing or economic revitalization and development needs;
- Providing technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks' Affordable Housing Program;
- Lending employees to provide financial services for organizations facilitating affordable housing construction and rehabilitation or development of affordable housing;
- Providing credit counseling, home-buyer and home-maintenance counseling, financial planning or other financial services education to promote community development and affordable housing;
- Establishing school savings programs and developing or teaching financial education curricula for low- or moderate-income individuals;
- Providing electronic benefits transfer and point of sale terminal systems to improve access to financial services, such as by decreasing costs, for low- or moderate-income individuals;
- Providing international remittances services that increase access to financial services by low- and moderate-income persons (for example, by offering reasonably priced international remittances services in connection with a low-cost account); and

- Providing other financial services with the primary purpose of community development, such as low-cost bank accounts, including “Electronic Transfer Accounts” provided pursuant to the Debt Collection Improvement Act of 1996, or free government check cashing that increases access to financial services for low- or moderate-income individuals.

Examples of technical assistance activities that might be provided to community development organizations include:

- Serving on a loan review committee;
- Developing loan application and underwriting standards;
- Developing loan processing systems;
- Developing secondary market vehicles or programs;
- Assisting in marketing financial services, including development of advertising and promotions, publications, workshops and conferences;
- Furnishing financial services training for staff and management;
- Contributing accounting/bookkeeping services; and
- Assisting in fund raising, including soliciting or arranging investments.

§ __.12(t) Qualified Investment

§ __.12(t) – 1: When evaluating a qualified investment, what consideration will be given for prior-period investments?

A1: When evaluating a bank’s qualified investment record, examiners will consider investments that were made prior to the current examination, but that are still outstanding. Qualitative factors will affect the weighting given to both current period and outstanding prior-period qualified investments. For example, a prior-period outstanding investment with a multi-year impact that addresses assessment area community development needs may receive more consideration than a current period investment of a comparable amount that is less responsive to area community development needs.

§ __.12(t) – 4 : What are examples of qualified investments?

A4. Examples of qualified investments include, but are not limited to, investments, grants, deposits or shares in or to:

- Financial intermediaries (including, Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds, and low-income or community development credit unions) that primarily lend or facilitate lending in low- or moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation;
- Organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing;
- Organizations, including for example, Small Business Investment Companies (SBICs), specialized SBICs, and Rural Business Investment Companies (RBICs), that promote economic development by financing small businesses;
- Facilities that promote community development in low- and moderate-income areas for low- and moderate-income individuals, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's centers, and alcohol and drug recovery centers;
- Projects eligible for low-income housing tax credits;
- State and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development;
- Not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as counseling for credit, home-ownership, home maintenance, and other financial services education; and
- Organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development, such as, for example, day care operations and job training programs that enable people to work.

§ __.12(u)(2): Small Bank Adjustment

§ __.12(u)(2) – 1: How often will the asset size thresholds for small banks and intermediate small banks be changed, and how will these adjustments be communicated?

A1: The asset size thresholds for “small banks” and “intermediate small banks” will be adjusted annually based on changes to the Consumer Price Index. More specifically, the dollar thresholds will be adjusted annually based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted for each twelve-month period ending in November, with rounding to the nearest million. Any changes in the asset size thresholds will be published in the Federal Register.

§ __.26 Small Bank Performance Standards

§ __.26 – 1: When evaluating a small or intermediate small bank’s performance, will examiners consider, at the institution’s request, retail and community development loans originated or purchased by affiliates, qualified investments made by affiliates, or community development services provided by affiliates?

A1: Yes. However, a small institution that elects to have examiners consider affiliate activities must maintain sufficient information that the examiners may evaluate these activities under the appropriate performance criteria and ensure that the activities are not claimed by another institution. The constraints applicable to affiliate activities claimed by large institutions also apply to small and intermediate small institutions. See Q&A § __.22(c)(2) and related guidance provided to large institutions regarding affiliate activities. Examiners will not include affiliate lending in calculating the percentage of loans and, as appropriate, other lending-related activities located in a bank’s assessment area.

§ __.26(c) Intermediate Small Bank Community Development Test

§ __.26(c) – 1: How will the community development test be applied flexibly for intermediate small banks?

A1: Generally, intermediate small banks engage in a combination of community development loans, qualified investments, and community development services. A bank may not simply ignore one or more of these categories of community development, nor do the regulations prescribe a required threshold for community development loans, qualified investments, and community development services. Instead, based on the bank’s assessment of community development needs in its assessment area(s), it may engage in different categories of community development activities that are responsive to those needs and consistent with the bank’s capacity.

An intermediate small bank has the flexibility to allocate its resources among community development loans, qualified investments, and community development services in amounts that it reasonably determines are most responsive to community development needs and opportunities. Appropriate levels of each of these activities would depend on the capacity and business strategy of the bank, community needs, and number and types of opportunities for community development.

§ __.26(c)(3) Community Development Services under Intermediate Small Bank

Community Development Test

§ __.26(c)(3) – 1: What will examiners consider when evaluating the provision of community development services by an intermediate small bank?

A1: Examiners will consider not only the types of services provided to benefit low- and moderate-income individuals, such as low-cost bank checking accounts and low-cost remittance services, but also the provision and availability of services to low- and moderate-income individuals, including through branches and other facilities located in low- and moderate-income areas. Generally, the presence of branches located in low- and moderate-income geographies will help to demonstrate the availability of banking services to low- and moderate-income individuals.

§ __.26(c)(4) Responsiveness to Community Development Needs under Intermediate

Small Bank Community Development Test

§ __.26(c)(4) – 1: When evaluating an Intermediate Small Bank’s community development record, what will examiners consider when reviewing the responsiveness of community development lending, qualified investments, and community development services to the community development needs of the area?

A1: When evaluating an Intermediate Small Bank’s community development record, examiners will consider not only quantitative measures of performance, such as the number and amount of community development loans, qualified investments, and community development services, but also qualitative aspects of performance. In particular, examiners will evaluate the responsiveness of the bank’s community development activities in light of the bank’s capacity, business strategy, the needs of the community, and the number and types of opportunities for each type of community development activity (its performance context). Examiners also will consider the results of any assessment by the institution of community development needs, and how the bank’s activities respond to those needs.

An evaluation of the degree of responsiveness considers the following factors: the volume, mix, and qualitative aspects of community development loans, qualified investments, and community development services. Consideration of the qualitative aspects of performance recognizes that community development activities sometimes require special expertise or effort on the part of the institution or provide a benefit to the community that would not otherwise be made available. (However, “innovativeness” and “complexity,” factors examiners consider when evaluating a large bank under the lending, investment, and service tests, are not criteria in the intermediate small banks’ community development test.) In some cases, a smaller loan may have more qualitative 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 in low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies. Activities are also considered particularly responsive to community development needs if they benefit low- or moderate-income geographies.

This concludes the text of the Interagency Questions and Answers Regarding Community Reinvestment.

[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE ENTITLED
“COMMUNITY REINVESTMENT ACT; INTERAGENCY QUESTIONS AND
ANSWERS REGARDING COMMUNITY REINVESTMENT.”]

Dated: March 1, 2006.

John C. Dugan,
Comptroller of the Currency.

[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE ENTITLED
“COMMUNITY REINVESTMENT ACT; INTERAGENCY QUESTIONS AND
ANSWERS REGARDING COMMUNITY REINVESTMENT.”]

By order of the Board of Governors of the Federal Reserve System,
March 1, 2006.

Jennifer J. Johnson,
Secretary of the Board.

[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE ENTITLED
“COMMUNITY REINVESTMENT ACT; INTERAGENCY QUESTIONS AND
ANSWERS REGARDING COMMUNITY REINVESTMENT.”]

Dated at Washington, D.C., this second day of March, 2006.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman,
Executive Secretary.