DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 05-17]

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 and request for comment.

SUMMARY: This proposal would revise guidance of the staffs of the OCC, Board, and FDIC (collectively, "the agencies") relating to the Community Reinvestment Act ("the Act" or "CRA") to address topics related to the revisions the agencies made to their regulations that implement the CRA. After reviewing comments on this proposal, these questions and answers will be added to the Interagency Questions and Answers, an existing document that contains informal staff guidance for examiners and other agency personnel, financial institutions, and the public. Public comment is invited on the proposed guidance, as well as any other community reinvestment issues.

DATE: Comments on the proposed questions and answers are requested by January 9, 2006.

ADDRESSES: Comments should be directed to:

OCC: You should include OCC and Docket Number 05–17 in your comment. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- OCC Web Site: http://www.occ.treas.gov. Click on ‘‘Contact the OCC,’’ scroll down and click on ‘‘Comments on Proposed Regulations.’’
- E-mail Address: regs.comments@occ.treas.gov.
- Fax: (202) 874–4448.
- Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- Hand Delivery/Courier: 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number for this notice. In general, the OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review comments and other related materials by any of the following methods:

- Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC’s Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.

- Viewing Comments Electronically: You may request e-mail or CD–ROM copies of comments that the OCC has received by contacting the OCC's Public Information Room at regs.comments@occ.treas.gov.
- Docket: You may also request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. OP-1240, 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.
- E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- Fax: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, except as necessary for technical reasons. Accordingly, your 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.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN number 3064-AC97 by any of the following methods:

- Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html. Follow instructions for submitting comments on the Agency Web Site.
- E-mail: Comments@FDIC.gov. Include the RIN number in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN number. All comments received will be posted without change to http://www.fdic.gov/regulations/laws/federal/propose.html including any personal information provided.

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 Department, (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, Senior Attorney, (202) 452-2412, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Robert W. Mooney, Chief, (202) 898-3911, or Pamela Freeman, Policy Analyst, (202) 898-6568, CRA and Fair Lending Policy Section, Division of Supervision and Consumer Protection; Richard M. Schwartz, Counsel, Legal Division, (202) 898-7424; 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 imposed on small banks with an asset size between $250 million and $1 billion by exempting them from CRA loan data collection and reporting obligations. It also exempted such banks from the large bank lending, investment, and service tests, and made them eligible for evaluation under the small bank lending test and a flexible new community development test. 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 activities to revitalize and stabilize distressed or underserved nonmetropolitan middle-income areas and designated disaster areas. Finally, the rule adopted amendments to the regulations to address 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 is intended to provide informal staff guidance for use by examiners and other agency personnel, financial institutions, and the public, and is supplemented periodically. The staffs of the OCC, Board, and FDIC are jointly issuing these 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.

Just as in the Interagency Questions and Answers currently in effect (65 FR 36620 (July 12, 2001)), the proposed questions and answers are grouped by the provision of the CRA regulations that they discuss and are presented in the same order as the regulatory provisions. The proposed questions and answers employ the same abbreviated method to cite to the regulations that the agencies used in the Interagency Questions and Answers. Because the regulations of the three agencies are substantially identical, corresponding sections of the different regulations usually bear the same suffix. Therefore, the proposed questions and answers cite only to the suffix. 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 proposed 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 recent revisions mentioned above, some of the numbering in the existing 2001 Interagency Questions and Answers does not correspond to the appropriate sections of the revised regulation. However, in the proposed questions and answers, if a reference is made to an existing question and answer, the number of the existing question and answer, as published in the 2001 Interagency Questions and Answers, is given, even if the old reference does not accurately describe the current provision in the regulations. When the proposed questions and answers are adopted as final and the rest of the questions and answers are updated to reflect the revisions to the regulations made by the three agencies, as discussed above, the references in the questions and answers will be updated.

Proposed Questions and Answers

Because the agencies made several significant revisions to the regulations, new Interagency Questions and Answers addressing those revisions are necessary. Therefore, thirteen new questions and answers addressing the new revisions are being published for comment.

Revised “community development” definition

Of the thirteen proposed new questions and answers, seven questions and answers address the revised definition of “community development,” which includes activities that revitalize or stabilize a distressed or underserved nonmetropolitan middle-income geography or a designated disaster area. First, the proposed guidance clarifies that the revised definition of “community development” applies to all banks, and not only to intermediate small banks. It also discusses what is meant by a designated disaster area. Disaster areas are designated by federal agencies or states, and these designations are made public. Therefore, the agencies do not intend to maintain a separate list of all government-designated disaster areas. The guidance also proposes a one-year “lag period” during which a bank may continue to receive consideration for activities in a disaster area for which the Federal or state designation has expired. The lag will help promote investments that may take an extended period of time to arrange and that have extended periods of duration that may continue to provide meaningful benefits to the community after the government designation has ended. During the proposed lag period, community development activities will continue to receive consideration just as they would have if the area were still designated as a disaster area. Comment is specifically requested on the appropriateness of a one-year lag period. Is one extra year generally long enough for a bank to finish the preparations for a community development project investment or loan, the development of which was commenced while the area was still a designated disaster area? Should a longer or shorter period be selected? If so, how long and why?

Comment is also requested on the appropriate description of a disaster designation's duration. The proposed guidance would recognize the revitalization and stabilization efforts in disaster areas during such time that federal, state, or local governments have determined that the area continues to be affected by the disaster event, and provides a one-year period after the expiration of the disaster designation in which revitalization and stabilization activities targeted to those areas will receive favorable recognition. The agencies specifically seek comment on this aspect of the proposal. In particular, the agencies seek comment on whether the period starting with "designation" and ending with "expiration" of the designation is the most appropriate and meaningful way to describe the duration of the effect of the disaster for CRA purposes. Or, should the guidance be more broadly worded to reflect other relevant governmental measures of the duration of a disaster event? For example, should the guidance also refer to "periods of assistance," "registration periods," or other relevant timeframes?

The proposed guidance next explains that all revitalization activities in designated disaster areas are not considered equally – those that are most responsive to community needs, including the needs of low- or moderate-income individuals, may be given more weight than other revitalization and stabilization activities in designated disaster areas. Bank activities to revitalize and stabilize a designated disaster area will be evaluated, as appropriate, based on the particular circumstances and needs of the area. The guidance also includes a statement regarding loans to individuals displaced by a disaster and refers to relevant existing guidance.

The proposed guidance also describes the criteria that the agencies use to identify distressed or underserved nonmetropolitan middle-income geographies and states that the list of such geographies will be reviewed and updated annually. Additional detail about the data sources used in developing the list of distressed and underserved geographies will be posted on the FFIEC Website (www.ffiec.gov) with the list.

Similar to the "lag period" proposed in connection with activities in designated disaster areas, a one-year lag period also is proposed during which a bank may continue to receive consideration for activities in a distressed or underserved middle-income nonmetropolitan area that has been removed from the list. Because some community development projects take an extended amount of time to arrange and fund, the staffs of the agencies believe that it is important to lessen the impact on a bank's investment planning and implementation that will occur once a distressed or underserved geography has been removed from the designated list. During the proposed lag period, community development activities will continue to receive consideration just as they would have if the geography were still designated as a distressed or underserved area. Comment is specifically requested on the appropriateness of a one-year lag period. Is one extra year generally long enough for a bank to finish the preparations for a community development project investment or loan, the development of which was commenced while the geography was a designated distressed or underserved geography? Should a longer period be selected? If so, how long and why?

The proposed guidance also clarifies that revitalization and stabilization activities in middle-income nonmetropolitan distressed geographies are evaluated differently than those in middle-income nonmetropolitan underserved geographies. Generally, a revitalization or stabilization activity in a distressed middle-income nonmetropolitan geography that helps to attract and retain businesses and residents or is part of a bona fide revitalization or stabilization plan will receive positive consideration. In contrast, in an underserved middle-income nonmetropolitan area, revitalization or stabilization activities are 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. These activities generally will 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.

Finally, the proposed guidance explains when housing for middle- and upper-income persons in distressed or underserved nonmetropolitan middle-income geographies or designated disaster areas may be considered as a community development activity.

<u>Community development test applicable to intermediate small banks</u>

Three questions and answers are proposed to address the community development test applicable to intermediate small banks and how these banks will be evaluated under it. First, the proposed guidance discusses what examiners will consider when they review the responsiveness of an intermediate small bank's community development activities to the community development needs of the area. Next, the proposed guidance addresses how the community development test for intermediate small banks will be applied flexibly so that banks can address community development needs in their assessment areas in the most responsive manner. Finally, the proposed guidance includes a question and answer that explains what examiners will consider when evaluating the provision of community development services by an intermediate small bank in the community development test.

Treatment of small banks' affiliates' activities

The proposed guidance clarifies that any small bank (including an intermediate small bank) may request that activities of an affiliate in the small bank's assessment area(s) be considered in its performance evaluation. Those activities will be considered in the small bank's performance evaluation subject to the same constraints that apply to large institutions' affiliate activities, including that the activities have not also been considered in the CRA evaluation of another institution.

Small bank asset threshold adjustments

One question and answer is proposed that explains that the asset size thresholds for "small bank" and "intermediate small bank" will be adjusted annually based on changes to the Consumer Price Index. Any changes in the asset size thresholds will be published in the Federal Register.

Consideration of prior-period qualified investments

A new question and answer is proposed that would apply to banks of all sizes. It explains how examiners evaluate qualified investments that were made during the prior evaluation period but that are still outstanding during the current evaluation period.

Revisions to Existing Guidance

Three revisions to existing questions and answers are also proposed. The first proposed revision adds a bullet to the existing question and answer that provides examples of community development services (existing §§ __.12(j) & 563e.12(i) – 3). The new bullet clarifies that the provision of financial services to low- and moderate-income individuals through branches and other facilities located in low- and 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 the service test.

The second proposed revision is consistent with guidance the agencies provided in a letter responding to a question from a member of Congress. This revision would add another new bullet to the existing question and answer providing examples of community development services (existing §§ __.12(j) & 563e.12(i) – 3) that states that a community development service may include "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)."

The last proposed revision would revise the existing question and answer that provides examples of qualified investments (existing §§ __.12(s) & 563e.12(r)-4) to also include banks' investments in Rural Business Investment Companies (RBICs). The Rural Business Investment Program (RBIP), which is a joint initiative between the U.S. Small Business Administration and the U.S. Department of Agriculture, is intended to promote economic development by financing small businesses located primarily in rural areas.

General Comments

Public comment is invited on the new and revised questions and answers. Public comment is also invited on a continuing basis on any issues raised by the CRA and the Interagency Questions and Answers. If, after reading this proposed guidance and the existing Interagency Questions and Answers, banks, examiners, community organizations, or other interested parties have unanswered questions or comments about the agencies' community reinvestment regulations, they should submit them to the agencies. Staffs of the agencies will consider addressing such questions in future revisions to the Interagency Questions and Answers.

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 proposed guidance is not a proposed rule, comments are nevertheless invited on whether the proposed interagency questions and answers are stated clearly and effectively organized, and how the guidance might be revised to make it easier to read.

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 the 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 proposed Interagency Questions and Answers Regarding Community Reinvestment follows:

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

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

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

§ __.12(g)(4) – 2 (proposed): When do 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 designated distressed or underserved middle-income nonmetropolitan geographies or designated disaster areas?

A2 (proposed): A bank activity that provides housing, but not necessarily for low- or moderate-income individuals, may qualify as an activity that revitalizes or stabilizes a designated distressed nonmetropolitan middle-income geography or a designated disaster area if the housing helps to revitalize or stabilize the community by attracting and retaining businesses and residents, providing benefits to the entire community, including to low- and moderate-income individuals and neighborhoods. For example, a bank activity that provides housing for middle- or upper-income individuals in a designated distressed nonmetropolitan, middle-income geography or disaster area that is part of a bona fide plan to revitalize or stabilize the community by attracting a major new employer that will offer significant long-term employment opportunities, including to low- and moderate-income individuals, qualifies as community development. See existing Q&As §§___ .12(h)(4) & 563e.12(g)(4)-1 and §§ __.12(i) & 563e.12(h) – 4.

In underserved middle-income nonmetropolitan geographies, activities that provide housing for middle- and upper-income individuals may also 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, middle-income, nonmetropolitan 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 (proposed): What is a "designated disaster area"?

A1 (proposed): A "designated disaster area" is a disaster area designated by federal or state government. Such designations include, for example, Major Disaster Declarations administered by the Federal Emergency Management Agency (http://www.fema.gov).

When a disaster area's designation expires pursuant to the applicable law under which it was declared, the agencies will adopt a one-year "lag period." This lag period will be in effect for the twelve months immediately following the expiration of the disaster area declaration. 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 area in which they were located were still designated as a disaster area.

§ __.12(g)(4)(ii) – 2 (proposed): How are revitalization activities in a designated disaster area considered?

A2 (proposed): A bank's revitalization or stabilization activities in a designated disaster area will be evaluated in the same way such activities are evaluated in a low- or moderate-income area or in a nonmetropolitan middle-income distressed geography. Examiners will 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 agencies will consider all activities that revitalize or stabilize a designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including those of low- or moderate-income individuals or neighborhoods. (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 (see, e.g., existing 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 (proposed): What criteria are used to identify distressed or underserved nonmetropolitan, middle-income geographies?

A1 (proposed): 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.

A middle-income, nonmetropolitan 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 middle-income, nonmetropolitan 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 rural census tracts on the Federal Financial Institutions Examination Council Website (www.ffiec.gov).

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

A2 (proposed): The agencies will review and update the list annually. The list will be published on the Federal Financial Institutions Examination Council Website (www.ffiec.gov).

To the extent that changes to the designated census tracts occur, the agencies will 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 (proposed): How are "revitalization or stabilization" activities in middle-income, nonmetropolitan, distressed geographies and in middle-income, nonmetropolitan, underserved geographies evaluated?

A3 (proposed): A bank's revitalization or stabilization activities in a middle-income, nonmetropolitan, distressed geography will be evaluated in the same way such activities are evaluated in a low- or moderate-income area. For activities in a middle-income, nonmetropolitan, distressed geography, examiners will 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 a long-term direct benefit to the entire community, including low- and moderate-income individuals and neighborhoods. See existing Q&As §§ __.12(h)(4) & 563e.12(g)(4) – 1 and §§ __.12(i) and 563e.12(h) – 4.

In a middle-income, nonmetropolitan, underserved geography, however, 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 will 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. Examples of the types of projects that meet essential community needs and serve low- or moderate-income individuals could 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 bank activities in the area, such as financing a project to build a sewer line spur to connect services to a housing development affordable only to middle- and upper-income residents, generally would not qualify for revitalization or stabilization consideration in geographies designated as underserved. However, if an underserved geography is also designated as distressed, such activities are considered to revitalize and stabilize the geography if the activity helps to attract and retain residents and businesses, or are part of a bona fide revitalization or stabilization plan as further explained in existing Q&A §§ ___.12(h)(4) & 563e.12(g)(4) – 1.

§ __.12(i) Community Development Service

§ __.12(i) –3 (existing Q&A § __.12(j) & 563e.12(i) – 3 proposed revision): What are examples of community development services?

A3 (proposed revision): Examples of community development services include, but are not limited to, the following:

- 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 (proposed): When evaluating a qualified investment, what consideration will be given for prior-period investments?

A1 (proposed): 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 (existing Q&A §§ __.12(s) & 563e.12(r) – 4 proposed revision): What are examples of qualified investments?

A4 (proposed revision). 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 (proposed): How often will the asset size thresholds for small banks and intermediate small banks be changed, and how will these adjustments be communicated?

A1 (proposed): The asset size thresholds for "small bank" and "intermediate small bank" 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 (proposed): When evaluating a small or intermediate small bank's performance, will examiners consider, at the institution's request, retail and community development loans, qualified investments, or community development services originated or purchased by affiliates?

A1 (proposed): 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 existing 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 (proposed): How will the community development test be applied flexibly for intermediate small banks?

A1 (proposed): 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 (proposed): What will examiners consider when evaluating the provision of community development services by an intermediate small bank?

A1 (proposed): 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.

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

§ __.26(c)(4) – 1 (proposed): 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 (proposed): 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 middle-income nonmetropolitan 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 proposed Interagency Questions and Answers Regarding Community Reinvestment.

Dated: October 31, 2005.

_____/signed/___________

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System,

November 4, 2005.

_____/signed/______

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, D.C., this third day of November, 2005.

FEDERAL DEPOSIT INSURANCE CORPORATION

_________/signed/_____________________________

Robert E. Feldman,

Executive Secretary.