Questions and Answers Pertaining to the 2011 Final Rule on Assessments, Dividends, Assessment Base and Large Bank Pricing, Including the 2012 Changes to the Definitions of Higher-Risk Assets Effective as of April 1, 2013

These Q&As are a merger of relevant Q&As from the Final Rule on Assessments, Dividends, Assessment Base and Large Bank Pricing that became effective April 1, 2011 as well as the Q&As related to the Final Rule on Assessments, Large Bank Pricing Changes to the Definitions of subprime loans (now called higher-risk consumer loans), leveraged loans (now called higher-risk C&I loans) and higher-risk securitizations that became effective on April 1, 2013. Relevant questions are those that remain applicable after April 1, 2013. If a question that was included in the Q&As to the 2011 Final Rule is addressed and answered in the text of the 2012 Final Rule, that question is not included in this Q&A document; please consult the 2012 Final Rule for answers to those questions.

General

1. Where can I find a copy of the FDIC's Final Rule on Assessments and Large Bank Pricing (2011 final rule) and the Final Rule on Changes to the Definitions of Higher-Risk Assets (2012 final rule)?

   Response: http://www.fdic.gov/deposit/insurance/11RuleAD35.pdf and http://www.fdic.gov/regulations/laws/federal/2012/2012-10-31_final-rule.pdf.

2. When will an insured depository institution (bank) see a change in its assessment as a result of the 2011 final rule?

   Response: The Final Rule on Assessments and Large Bank Pricing took effect for the quarter beginning on April 1, 2011 (except where specifically noted in the final rule). The 2011 final rule will govern assessments due September 30, 2011.

3. Will the Call Report be changed?

   Response: Yes, changes were necessary to the Call Report and TFR as a result of the new assessment base required by the Dodd-Frank Act, and in order to collect the necessary information to complete the scorecard for large banks and highly complex banks. The reporting changes became effective beginning with the June 30, 2011 Call Report and TFR.

4. Is a document available that defines the scorecard elements in terms of the Call Report and Thrift Financial Report line items?

   Response: Yes. The mapping document is included in the zip file containing the assessment rate calculators for large and highly complex institutions. Calculators can be found at: http://www.fdic.gov/deposit/insurance/calculator.html.

5. What is the effect of the 2011 final rule on a bank's prepaid assessments?

   Response: The FDIC will continue to offset regular insurance assessments until the earlier of the exhaustion of the institution's prepaid assessment or June 30, 2013. Any prepaid assessment remaining after collection of the amount due on June 30, 2013, shall be returned to the institution. (Once an institution's prepaid assessments are exhausted, it will resume paying its insurance assessments via ACH).

6. How are new institutions treated under the 2011 final rule?

   Response:
   New Small Institutions

   - New small banks in Risk Category I will be assessed at the Risk Category I maximum initial base assessment rate for the relevant assessment period.
   - No new small institution in any Risk Category is subject to the unsecured debt adjustment.
   - All new small institutions in any Risk Category are subject to the depository institution debt adjustment (DIDA).
   - All new small institutions in Risk Categories II, III, and IV are subject to the brokered deposit adjustment.

   New Large Institutions and New Highly Complex Institutions:

   - All new large banks and all new highly complex banks will be assessed consistent with the method used for all other large banks and highly complex banks.
   - If a large or highly complex institution has not received CAMELS ratings, it will be given a weighted average CAMELS rating of 2 for assessment purposes until actual CAMELS ratings are assigned.
   - No new large bank or highly complex bank is subject to the unsecured debt adjustment.
   - All new large banks and all new highly complex banks are subject to the DIDA.
   - All large banks and all highly complex banks (including new large banks and new highly complex banks), except those that are well capitalized and have a CAMELS composite rating of 1 or 2, are subject to the brokered deposit adjustment.

7. Is the assessment base used to calculate payments on the Financing Corporation (FICO) Bonds changing?

   Response: Yes, the FICO assessment base will be defined consistent with the assessment base definition under the 2011 final rule.

8. Since the FICO base is increasing, will the FICO assessment rate decrease?

   Response: Yes. The FICO assessment rate is derived using the assessment base and amount needed to pay the FICO bondholders. Since the amount needed to pay the bondholders remains relatively constant, increasing the FICO base has the effect of decreasing the FICO assessment rate. The FICO assessments billed each quarter use the previous quarter's Call Report information for the assessment calculation. For instance, the March assessment is calculated using December data. Therefore, the effect of the change in the assessment base will first affect the FICO assessment due in September 2011.

Assessment Rate Adjustments

1. What is included in the Depository Institution Debt Adjustment (DIDA)?

   Response: The 2011 final rule provides for an adjustment to an institution's assessment rate for unsecured debt held that is issued by another depository institution to the extent that such debt exceeds 3 percent of the institution's Tier 1 capital. Unsecured debt for purposes of the DIDA is defined the same as it is for the unsecured debt adjustment and includes senior unsecured liabilities and subordinated debt. Debt held that is issued by a holding company is not subject to the DIDA.

2. What institutions are subject to the brokered deposit adjustment?

   Response: All small insured depository institutions in Risk Categories II, III, and IV, and all large banks and highly complex banks (including new large banks and new highly complex banks), except those that are well capitalized and have a CAMELS composite rating of 1 or 2, are subject to the brokered deposit adjustment.

3. What deposits are included in the definition of brokered deposit for the purposes of the brokered deposit adjustment under the final rule?

   Response: Brokered deposits include any deposit that is obtained, directly or indirectly, from or through a deposit broker, including reciprocal deposits, and deposits that consist of balances swept into a bank from another institution. Note that the definition of "deposit broker" is subject to certain exceptions, including the primary purpose exception (see 12 C.F.R. § 337.6(a)(5)(ii)).

Changes in an Institution's Designation

1. Is a notice provided to a bank when it changes from a small bank to a large or highly complex bank?

   Response: Yes. The FDIC will provide the bank with a letter notifying them of a change in their designation. This letter will be included with the bank's deposit insurance pricing invoice received by the bank 15 days prior to the end of the quarter in which the change becomes effective. The bank's first deposit insurance pricing invoice under the new designation will be received approximately 90 days after the notice date.

Request for Review of Assessment Rates

1. Please describe the process for submitting a request for review of a bank's assessment rate.

   Response: The following procedures for submitting a request for review of a bank's assessment rate are detailed in Part 327.4(c) of the FDIC Rules and Regulations. A bank must submit a written request for review of its assessment rate. A bank cannot request review of its CAMELS ratings as part of an assessment rate review; each primary federal regulator has procedures for that purpose. Assessment rate review requests must be made within 90 days from the date that the assessment rate assignment being challenged appears on the institution's invoice. The request should be submitted to the Corporation's Director of the Division of Insurance and Research in Washington, DC and must include documentation sufficient to support the change sought by the institution. If FDIC requests additional information, the bank has 21 days to respond to the request. Upon completion of a review, the Director of the Division of Insurance and Research (or designee) or the Director of the Division of Risk Management Supervision (or designee), will promptly notify the bank in writing of his or her determination of whether a change is warranted. If the bank requesting review disagrees with that determination, it has 30 days to appeal to the FDIC's Assessment Appeals Committee.

Determination of Higher-Risk Assets

1. Will higher-risk assets information be publically disclosed or remain confidential?

   Response: As noted in both the 2011 and 2012 final rules, this information will remain confidential. However, the FDIC may publish aggregate statistics using this data, as long as the data of individual institutions cannot be identified.

Higher-Risk Consumer Loans

Portfolio Reassessment

1. Will large and highly complex banks have to reassess their entire consumer loan portfolio to determine which loans meet the higher-risk consumer loan definition for the second quarter of 2013?

   Response: Yes. Large and highly complex banks will be required to reassess their entire consumer loan portfolio so that they can report consumer loans on their Call Reports beginning on June 30, 2013 in accordance with Appendix C to Subpart A to Part 327. No consumer loans will be grandfathered, including loans that were not identified as "subprime" under the February 2011 rule definition. Instead, as of June 30, 2013, large and highly-complex banks will be required to identify the probability of default of all consumer loans in their loan portfolios and report consumer loans with a probability of default of 20 percent or greater as higher-risk consumer loans.

Securitizations of subprime consumer loans that were reported as subprime consumer loans before April 1, 2013 should continue to be reported as higher risk after April 1, 2013. Banks will need to review all securitizations of consumer loans that are issued on or after April 1, 2013 to determine if these securitizations meet the definition of a higher-risk securitization.

Evaluating Individual Consumer Loans

1. Is the credit score of an authorized user (i.e. someone that is not an obligor/borrower) or guarantor on a credit card loan required to be considered in the test to determine if the loan is higher-risk? For example, a college student is authorized to use his/her parent's credit card, but is not obligated to re-pay the debt.

   Response: No, the bank would not have to analyze the authorized user or guarantor to determine if he/she meets the higher-risk consumer loan criteria, but must analyze the credit score of the obligor/borrower.

2. How would a bank evaluate a consumer loan for higher-risk if there are multiple borrowers or co-signors and some borrowers' credit scores exceed the 20 percent PD threshold but others do not?

   Response: If each co-borrower or co-signor has joint and several liability for the loan, the PD may be determined using the most favorable individual credit score.

3. In cases where a bank obtains multiple credit scores on a borrower when underwriting a consumer loan, which credit score would the bank use to determine whether or not the loan has exceeded the 20 percent PD threshold?

   Response: When two credit scores are obtained, consistent with standard industry practice, use the lower of the two scores to calculate the two-year probability of default. If three credit scores are obtained, use the middle score when performing the calculation.

4. If a bank determines at origination or refinancing that a particular loan meets the definition of a higher-risk consumer loan, is the bank required to make the additional determination as to whether the loan also meets the definition of a nontraditional mortgage loan, and if so, how should the bank report such loan on the Call Report?

   Response: Yes. At origination or refinancing, banks should evaluate mortgage loans to determine whether they meet the characteristics of a higher-risk consumer loan and/or a nontraditional mortgage loan. Mortgage loans displaying one or more characteristics of both higher-risk consumer loans and nontraditional mortgage loans should be reported as nontraditional mortgage loans. When a loan that meets the criteria of both a nontraditional mortgage loan and a higher-risk consumer loan ceases to be a nontraditional mortgage loan but continues to meet the criteria of a higher-risk consumer loan, the bank should begin reporting the loan as a higher-risk consumer loan.

Probability of default (PD) calculations and mapping tables

1. For consumer loans originated prior to April 1, 2013 where a credit score at origination is available but either (1) the bank is unable to determine, without going to extraordinary lengths, which version of a vendor model or which credit bureau produced the credit score, or (2) a generic mapping table (i.e., mapping table produced by a third party such as a credit bureau that meets the requirements of the final rule) is not available for the specific version of the vendor model that produced the credit score, what options does a bank have?

   Response: For consumer loans originated prior to April 1, 2013 in which the bank is unable to determine, without going to extraordinary lengths, which version of a vendor model or which credit bureau was used to produce a credit score, or cannot obtain a vendor mapping table for that specific model version, a bank can use the vendor mapping table that is associated with the current version of the vendor model that they are using for newly originated or refinanced consumer loans.

   Credit bureaus have produced score-to-default-rate mappings for current and older versions of a vendor model. A score from one bureau using the current version of a vendor model may not in some cases represent a similar likelihood of default as the same score from either the same bureau or another bureau using an older version of the vendor model. Therefore, for consumer loans originated on or after April 1, 2013, it is expected that banks will collect and retain information on applicable model versions and credit bureaus so that banks can ensure they are using the appropriate mapping tables for these loans.

2. How should the PD be determined if a bank does not have 1,200 observations in each of the 15 PD bands, for example for a product created after April 1, 2013?

   Response: Estimates of PDs must be based on the observed stress period default rate for loans of a similar product type. For a bank to generate its own internal PD mapping, it is required to have 1,200 observations per product type, per credit score band. Consequently, the minimum number of observations a bank must have per product type is 18,000 (1,200 times 15). If a bank does not have this data, it can use either mappings provided by a third party (as long as the mappings conform to the requirements in the final rule) or an alternative methodology. The bank must follow the guidance in the final rule about alternative methodologies and send a written request to: Scott Ciardi, Chief, Large Bank Pricing Section, 550 17th Street NW, Room MB-4002, Washington, DC 20429-0002.

   If a new loan product is similar to an existing product type, the bank may use the score to default rate mappings used for the existing product type. If it is significantly different from existing product types, the bank may use the generic score to default rate mappings provided by credit reporting bureaus for a similar loan product type.

3. With respect to the definition of default for consumer loans, is delinquency (which is one of the criteria used to determine if a loan is in default) to be measured on an Office of Thrift (OTS) or Mortgage Banker's Association (MBA) basis? Per the OTS basis, which is also known as the OTS/FFIEC rule, a loan is delinquent if a monthly payment is not received by the loan's due date in the following month. Per the MBA method, a loan is delinquent if a

monthly payment is not received by the end of the day immediately preceding the loan's next due date.

Response: For the purpose of calculating historical default rates in accordance with the requirements in the final rule, banks may measure delinquency using either the OTS or MBA method.

4. Do banks (or credit bureaus that are preparing mapping tables) need to exclude loans, such as most student loans, that are guaranteed by the U.S. government (and are, therefore, excluded from higher-risk loans) from their default rate calculations to generate the standard PD mapping tables?

   Response: There is nothing in the 2012 rule that explicitly requires loans that are guaranteed by the U.S. government to be excluded from the PD mapping tables since guarantees affect the severity of loss but not (strictly speaking) the likelihood of loss. But there is a general requirement that the borrowers in the sample must have credit risk comparable to the loan being evaluated. Therefore, if there was reason to believe that the default behavior of guaranteed loans of a certain type differed materially from the non-guaranteed group, it would be best to exclude the guaranteed loans.

5. Of the requirements for estimating PDs, what is meant by the statement: "The loans should be sampled based on the credit score as of the observation date"?

   Response: Banks should use the credit score on file that the consumer had as of the beginning of the two year performance period (July 2007 to June 2009 or July 2009 to June 2011). Banks should then track the performance (*i.e.*, default or no default) over the two years. For example, the credit score should be as of June or early July of 2007 and June or early July of 2009.

6. When determining a sample of loans to use in estimating PDs, should a bank include loans that were sold within the two two-year performance periods (July 2007 to June 2009 or July 2009 to June 2011)?

   Response: If a loan was sold during the performance period, such that the bank cannot make a determination as to whether the borrower defaulted at any time within the two year period, then it should exclude the loan from the estimation of PDs.

Probability of default reporting table for Call Report purposes

1. Should the balances reported in the PD reporting table by consumer loan category reconcile to those reported on the associated Call Report Schedule RC-C lines?

   Response: It is likely that the PD reporting table for consumer loans will not reconcile to the line items on RC-C because the PD table will not include loans guaranteed by the U.S. government, loans secured by cash, or loans acquired within the prior 6 months. Banks should be allocating items such as payment clearing items, deferred origination costs, and items in process to individual loans for Call Report purposes so that they can accurately file schedule RC-C. Since banks are required to allocate these items to individual loans for schedule RC-C, they should be able to include these amounts in the PD table as well.

2. Should purchased credit-impaired (PCI) loans that meet the "higher-risk" criteria be reported net of the purchase accounting marks? What if the loans are in pools?

   Response: The loan balance that is reported on Schedule RC-C of the Call Report is the amount that should be reported in the PD reporting table under the applicable PD column for that particular loan. In cases where an entire loan pool is evaluated and a mark (or a discount) is applied to the entire pool to determine the resulting fair value of the pool, the bank must determine the percentage mark (or discount) taken on the entire pool of loans that were evaluated. This percentage mark (or discount) must then be applied to individual loans in the pool for reporting in the PD table. Banks have six months from the date of acquisition to determine the PD of consumer loans acquired on or after April 1, 2013. Loans without a credit score should be reported consistent with the method for reporting unscorable loans outlined in the final rule.

3. Will nontraditional residential mortgage loans be placed into the PD bands or reported as a single number?

   Response: Banks will be required to report the total volume of nontraditional mortgage loans on line item 7 of Schedule RC-O. In addition, in the PD reporting table, banks would be required to segment and report the total volume of nontraditional mortgage loans by PD band.

Definition of foreign consumer loan

1. What is the definition of a "foreign consumer loan?"

   Response: For purposes of the 2012 final rule, a foreign consumer loan is a consumer loan made to a customer whose principal residence address is outside of the United States, Puerto Rico, District of Columbia and any U.S. territories or possessions. If a bank can estimate the PD of a foreign consumer loan following the specifications included in Appendix C of the final rule, it must do so. However, if a bank cannot follow the specifications for estimating a PD in accordance with the final rule, the bank must use the alternative options, also outlined in Appendix C of the final rule.

Definition of refinance of a consumer loan

1. A refinance of a consumer loan is defined in the 2012 rule to include an extension of the legal maturity date by more than six months. Would multiple extensions over time of less than six months each but more than six months in aggregate be considered a refinance?

   Response: The maturity date is defined as the maturity date assigned as of the origination date of the loan or, if the loan has been refinanced, the maturity date assigned as of refinance. Multiple extensions which in aggregate exceed the maturity date by more six months would be considered a refinance.

2. A bank offers a number of interest rate discounts to borrowers in connection with its mortgage loan programs if a borrower meets certain criteria. The underlying agreement discloses either the discounted and undiscounted rates or margins, as applicable, and that when the client no longer meets the qualification requirements for preferred banking, the discount will be discontinued. When the discounted rate is discontinued and the non-discounted rate or margin is imposed, is such a rate considered to be a change in terms and considered a refinanced loan?

   Response: No, provided the discount was removed consistent with the language in the loan agreement, the change would not be considered a refinancing.

3. A bank offers a rate modification program to existing borrowers where the borrower may request a reduction in the interest rate on his/her existing mortgage loan with the bank to match a rate that is currently offered for the mortgage type to other borrowers for new loans, subject to the payment of a modification fee. This program was developed to be used in lieu of a true loan refinance (where new loan documents are drawn and a new loan replaces the existing loan in its entirety) for efficiency, time-saving and cost-saving purposes. Would such loans be considered refinanced under the 2012 final rule?

   Response: Yes, the reduction in the interest rate would be considered a refinancing as (except as noted in the 2012 final rule for credit card loans).

4. Would an increase or a decrease in the interest rate on a credit card loan be considered a refinance under the October 2012 final rule?

   Response: It depends. A credit card loan is considered refinanced when the interest rate is increased or decreased and that increase or decrease is not consistent with the specific interest rate terms contained in the original loan agreement. Although credit card loan agreements may contain broad language regarding the ability of the bank to change the terms of the agreement, such provisions would not exclude from the definition of "refinance" a change in the originally disclosed interest rate formula. For example, if a bank decides to increase or decrease the interest rate on a credit card loan as a result of increased or decreased risk of the loan, or due to changes in the bank's pricing policies for credit card loans, this would be considered a refinance.

   A credit card loan is not considered a refinanced loan if a bank changes the interest rate on a credit card loan and that change is consistent with the terms of the loan agreement. The following are four examples (the list is not exhaustive) of changes that are consistent with the terms of the original loan agreement: 1) the market interest rate on which a loan is based has changed but the spread to the index remains the same (for loans in which the interest rate is tied to an index such as Prime + x or LIBOR + x)~~,~~; 2) the Credit Card Act mandates a change in the loan's interest rate; 3) the expiration of a special introductory or promotional rate; or 4) the expiration of a special rate offered to a customer as a result of balance transfers.

5. A bank offers a number of interest rate discounts to borrowers in connection with its mortgage loan programs if a borrower meets certain criteria. The underlying agreement

discloses both the discounted and undiscounted rates or margins, as applicable, and that when the client no longer meets the qualification requirements for preferred banking, the discount will be discontinued. When the discounted rate is discontinued and the non-discounted rate or margin is imposed, is such a rate considered to be a change in terms and considered a refinanced loan?

Response: No, provided the discount was removed consistent with the language in the loan agreement, the change would not be considered a refinancing.

6. If a bank offers a rate modification program to an existing borrower where the borrower may request a reduction in the interest rate on his/her existing mortgage loan with the bank to match a rate that is currently offered for the mortgage type to other borrowers for new loans, subject to the payment of a modification fee. Would such loans be considered refinanced?

   Response: Yes, the reduction in the interest rate would be considered a refinancing because it is a change in the interest rate that is not permitted under the terms of the loan agreement.

Definition of Consumer Loan

1. Is a business purpose loan that is secured by 1-4 family residential real estate included in the scope of the subprime/higher-riskconsumer loan definition?

   Response: No. A business purpose loan that is secured by a 1-4 family residential property is not considered a consumer loan for deposit insurance pricing purposes, and therefore would not need to be evaluated to determine whether or not it is subprime (if originated or refinanced prior to April 1, 2013) or a higher-risk consumer loan (if originated or refinanced on or after April 1, 2013).

2. Are overdrafts via an overdraft line or unplanned overdrafts considered consumer loans for purposes of the pricing rule?

   Response: Any overdraft (planned or unplanned) that meets the definition of a consumer loan per Call Report instructions, is a consumer loan for deposit insurance pricing purposes.

3. Are automobile leases considered a consumer loan per the pricing rule?

   Response: If the auto lease is included in Schedule RC-C, line item 10.a. of the Call Reports, it is not considered a consumer loan. However, leases for autos that would be included in Schedule RC-C, line item 6.c (loans to individuals for household, family, and other personal expenditures (consumer loans)) would be considered consumer loans for pricing purposes and should be evaluated to determine if they meet the higher-risk consumer loan criteria included in the final rule.

<u>Higher-Risk C&I Loans and Securities</u>

Grandfathering

1. How should a bank report C&I loans and securities originated before April 1, 2013 on their Call Reports beginning June 30, 2013?

   <u>Response</u>: If a bank decides not to re-evaluate its entire C&I loan and securities portfolio, then, beginning with the June 30, 2013 Call Report, it must continue to report C&I loans originated, refinanced, or purchased before April 1, 2013 as they were reported before the second quarter of 2013. Under these circumstances, the bank will generally not be permitted to stop reporting loans reported through the first quarter 2013 in the RC-O "leveraged" balance that do not meet the new higher-risk definition (even if, for example, the loans would otherwise meet the asset-based lending exclusion, the floor plan lending exclusion, are government guaranteed or are under $5 million in original principal amount).

   If the borrower obtains a new C&I loan or refinances an existing C&I loan on or after April 1, 2013 and at that time the borrower does not meet the criteria to be considered a higher-risk C&I borrower, then C&I loans to that borrower should not be reported as higher-risk. If the borrower obtains a new C&I loan or refinances an existing C&I loan on or after April 1, 2013 and is considered to be a higher-risk borrower at the time the new loan is originated or the existing loan is refinanced, then all C&I loans to that borrower should be reported as higher-risk.

   If, on the other hand, a bank opts to apply the 2012 final rule definition of higher-risk C&I loans and securities to all of its C&I loans and securities (including those loans originated, refinanced, or purchased before April 1, 2013), it must also apply the 2012 final rule definition of a higher-risk C&I borrower without regard to when a loan is originally made or refinanced (*i.e.*, whether made or refinanced before or after April 1, 2013).

2. If a bank becomes a large bank after April 1, 2013, is the bank expected to review its entire C&I loan portfolio (including loans purchased or originated prior to April 1, 2013) to determine whether the loans are higher-risk?

   <u>Response:</u> Yes. The bank must review its entire C&I loan portfolio. For loans made, refinanced or purchased before April 1, 2013, the bank has three options for identifying and reporting higher-risk C&I loans and securities: (1) the February 2011 final rule definition; (2) the transition guidance (located in the Schedule RC-O Call Report instructions), or (3) the final rule (that is, the October 2012 final rule) definition.

   If the bank elects to use the October 2012 final rule definition of higher-risk C&I loans and securities for any C&I loan originated before April 1, 2013, then the bank must use the October 2012 final rule definition for *all* of its C&I loans, whenever originated, and must apply the final rule definition of a higher-risk C&I borrower without regard to when a loan is originally made (i.e., whether made before or after April 1, 2013).

   Additionally, if a borrower seeking a new C&I loan (or refinancing an existing one) on or after April 1, 2013 meets the October 2012 final rule definition of a higher-risk C&I

borrower, then the bank must report all loans to that borrower as higher-risk C&I loans and securities without regard to when the loans were originated or refinanced (*i.e.*, including C&I loans to that borrower that were originated or refinanced prior to April 1, 2013).

Removing loans from higher-risk category

1. If a borrower is a higher-risk borrower under the definition in the 2012 final rule as the result of aggregating all C&I loans to the borrower to reach the $5 million threshold, and, as the result of payments, the aggregate debt owed by the borrower falls below $5 million, may the bank discontinue reporting the loans as a higher-risk C&I loan?

   Response: No. The bank can only discontinue reporting a C&I loan as higher-risk when the loan has been paid off or extinguished (charged off), or at the time a borrower is no longer considered to be a higher-risk C&I borrower. As noted in the 2012 final rule, a borrower ceases to be a "higher-risk C&I borrower" only if:

   (a) The borrower no longer has *any* C&I loans owed to the reporting bank that, when originally made, met the purpose and materiality tests described herein;

   (b) The borrower has such loans outstanding owed to the reporting bank, but they have all been refinanced more than 5 years after originally being made; or

   (c) The reporting bank makes a new C&I loan or refinances an existing C&I loan and the borrower no longer meets the leverage test.

2. For a borrower to cease to be a higher-risk C&I borrower, must the reporting bank refinance the loan that originally qualified the borrower as a higher-risk C&I borrower?

   Response: No. A borrower ceases to be a ''higher-risk C&I borrower'' if: (1) The borrower no longer has any C&I loans owed to the reporting bank that, when originally made, met the purpose and materiality tests; (2) any such loans outstanding owed by the borrower to the reporting bank have all been refinanced more than five years after originally being made; or (3) the reporting bank makes any new C&I loan (not necessarily a loan that meets the purpose and materiality tests) or refinances any existing C&I loan (again, not necessarily a loan that meets the purpose and materiality tests) and the borrower no longer meets the leverage test. A borrower cannot cease to be a higher-risk borrower except in one of these three ways.

Syndicated loans

1. If a syndicated loan is a higher-risk C&I loan, do all participants report their portion of that loan even if that portion is less than or falls below the $5 million threshold?

   Response: Yes. If the syndicated loan is a higher-risk C&I loan as defined by the 2012 final rule, each participating bank must reflect its portion of the syndicated loan as higher-risk, regardless of the size of the loan held by the participant. Assume, for example, a syndicated loan in the original principal amount of $20 million, where the purpose, materiality, and leverage tests are met, making the borrower a higher-risk C&I borrower. Each bank that owns a portion of the syndicated loan will report the dollar amount of the portion it owns as higher-risk, regardless of the size of its portion.

Unfunded commitments

1. Are unconditionally cancellable unfunded commitments included as an unfunded commitment in determining whether a borrower is higher-risk?

   Response: Yes. A "higher-risk C&I borrower" is one that owes a large or highly complex bank on an outstanding loan where the original amount, including funded amounts and the amount of unfunded commitments (whether irrevocable or unconditionally cancellable), is $5 million or more and the purpose, leverage and materiality tests are met. In determining the amount of higher-risk C&I loans to that borrower to report on the Call Report, unfunded commitments (whether irrevocable or unconditionally cancellable) are included. If, however, the commitment is cancelled and no longer exists, the bank should not report the commitment as higher-risk.

2. Can a letter of credit issued to a C&I borrower ever be used to make the borrower a higher-risk C&I borrower and ever be considered a higher-risk C&I loan and security?

   Response: No. Letters of credit should not be added to other loans to a borrower to determine whether a borrower meets the original amount test ($5 million). For purposes of the leverage test of the higher-risk C&I loan definition, letters of credit are not considered an unfunded commitment and should not be included in total debt when calculating debt to EBITDA.

3. Can a bank use reasonable discretion in evaluating whether a C&I borrower is higher-risk if a line of credit is used to finance a seasonal build-up in a borrower's accounts receivable or inventory or for financing floor plans?

   Response: In order to preserve consistency among institutions, no discretion for seasonality is allowed. The entire funded and unfunded amount of the line of credit must be considered in the bank's analysis of whether or not a borrower is higher-risk. If a borrower is determined to be higher-risk, the unfunded and funded amount of the line of credit must be included as higher-risk on the bank's Call Reports.

Definition of higher-risk borrower

1. If a borrower is considered to be a higher-risk C&I borrower at one bank, does that mean that the borrower is automatically considered a higher-risk borrower at all banks?

   Response: No. A higher-risk C&I borrower is a borrower that ***owes the reporting bank*** on a C&I loan made on or after April 1, 2013, or on a refinanced C&I loan that is refinanced on or after April 1, 2013 if certain conditions are met. Except in the case of a syndicated loan, the definition has been simplified in the 2012 final rule so that each bank need only consider C&I loans, refinancings, and commitments that it makes to determine whether a borrower is a higher-risk C&I borrower.

2. Suppose that a large or complex bank acquires bonds issued by a firm where the total value of debt acquired exceeds $5 million, the bond issuance raised the funded debt of the firm by over 20 percent, and the bonds finance a leveraged buyout, such that the firm's debt exceeds the leverage test thresholds. Does the bond itself make the firm a higher-risk C&I borrower and are the bonds "higher-risk securities"?

   Response: No. A higher-risk C&I borrower is defined as a borrower that owes the reporting bank on a C&I loan or obtains a refinanced loan that meets certain specifications. Since bonds are not C&I loans, as defined in the Call Report, debt securities cannot trigger classification of a higher-risk C&I borrower.

   However, if the firm is a higher-risk C&I borrower based on a loan, then all securities issued by the firm, except securities classified as trading book, that are owned by the reporting bank are higher-risk C&I loans and securities.

Definition of refinance of a C&I loan

1. Is an existing loan that receives a short term extension of up to 180 days, with no commitment increase or diminution of collateral, considered a refinanced loan?

   Response: Yes. However, the rule states that a refinance would not include a modification of a commercial loan that results in the classification of the loan as a troubled debt restructuring (TDR).

2. Does the term "refinance" include an existing loan at another bank that is refinanced by the reporting bank?

   Response: Yes. A refinanced loan can include refinancing an existing loan at the reporting bank or refinancing any other loan that was originated by another lender. If a bank is refinancing a loan originated by another lender, the 2012 final rule provides that the new lender must use its best efforts and reasonable due diligence to determine whether the original loan met the purpose and materiality tests.

3. How should a bank determine whether a loan meets the definition of a troubled debt restructuring (TDR) and therefore does not meet the definition of a refinanced loan for purposes of the 2012 final rule?

   Response: The 2012 final rule states that a refinance of a C&I loan or a consumer loan does not include a modification or series of modifications to a loan that result in the classification of a loan as a TDR, as this term is defined in the glossary of the Call Report instructions, which may be amended from time to time. Banks should follow the guidance in the glossary of the Call Report instructions when determining whether or not a loan should be considered a TDR for purposes of the higher-risk assets definition in Schedule RC-O.

   Under the instructions, there is a distinction in the way loans within a pool of purchased credit-impaired loans and purchased credit-impaired loans accounted for individually must be evaluated to determine whether they are TDRs. The instructions provide in part:

> A refinancing or restructuring of a loan within a pool of purchased credit-impaired loans should not result in the removal of the loan from the pool. In addition, a modification of the terms of a loan within a pool of purchased credit-impaired loans is not considered a troubled debt restructuring under the scope exceptions in ASC Subtopic 310-40, Receivables – Troubled Debt Restructurings by Creditors (formerly FASB Statement No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings," as amended). However, a modification of the terms of a purchased credit-impaired loan accounted for individually must be evaluated to determine whether the modification represents a troubled debt restructuring that should be accounted for in accordance with ASC 310-40.

Definition of a C&I Loan

1. For purposes of the final rule, does a C&I loan include real estate loans, overdrafts, asset based loans, loans to equity real estate investment trusts (REITs), lease financing receivables, commercial and industrial loans to municipalities or commercial and industrial loans guaranteed by or sponsored by foreign governmental institutions?

   Response: The rule defines C&I loans the same as commercial and industrial loans are defined in Schedule RC-C of the Instructions to the Reports of Condition and Income. However, for pricing purposes, loans made to individuals for commercial purposes would not be subject to a higher-risk C&I loan evaluation since these types of loans are excluded from higher-risk C&I loans. Commercial loans also do not include loans to governmental agencies as these loans are to be reported in Call Report Schedule RC-C line items 7 (Loans to Foreign Governments and Official Institutions) and RC-C line item 8 (Obligations (other than securities and leases) of States and Political Subdivisions in the U.S.) as defined below. Commercial loans also do not include loans to depository and nondepository financial institutions as these loans are to be reported in Call Report Schedule RC-C line items 2 (Loans to Depository Institutions and Acceptances of Other Banks) and line item 9 (Loans to Nondepository Financial Institutions and Other Loans). Loans that meet the criteria for the asset-based and floor plan lending exclusions are not included as a higher-risk C&I loan for pricing purposes.

2. Would a loan to a sole proprietorship be exempt from the higher-risk C&I loan definition?

   Response: No. Banks will be expected to analyze all C&I loans granted to a sole proprietorship to determine whether the loans meet the higher-risk C&I loan definition. A sole proprietorship that is borrowing $5 million or more from a bank should be providing comprehensive information to the lending bank, including regular financial statements on the proprietorship's business, such that the bank can determine whether the borrower meets the purpose, materiality, and leverage tests in the higher-risk C&I loan definition.

Original Amount

1. Please clarify the meaning of this phrase, "the date of the bank's most recent Call Report" as it appears in the definition of "original amount."

Response: The phrase means the "as of" date for the bank's Call Report. The phrase appears in more than one place in the definition of "original amount." Thus, for example, for a Call Report that is "as of" September 30, the original amount is the original balance of an open line or loan as of the date of the bank's most recent approval or renewal that occurred closest to (but not after) September 30.

2. How is the "original amount" determined for revolving and non-revolving lines of credit?

   Response: The "original amount" for C&I loans drawn down under lines of credit or loan commitments is the total amount of the line of credit (including funded and unfunded amounts available) or loan commitment on the date of its most recent approval, extension or renewal prior to the date of the most recent Call Report; if, however, the amount currently outstanding on the loan as of the date of the bank's most recent Call Report exceeds this amount, then the original amount of the loan is the amount outstanding as of the date of the bank's most recent Call Report. For all other C&I loans (whether term or non-revolver loans), the "original amount" is the total amount of the loan as of origination or the amount outstanding as of the date of the bank's most recent Call Report, whichever is larger.

   To further illustrate, if a $6 million non-revolving line of credit was approved on August 30 and that line remains active as of September 30, then $6 million would be the original amount. If, however, the borrower had exceeded its line of credit as of September 30, then the original amount would be the actual balance outstanding as of September 30 (since that balance is greater than what was originally approved to be extended to the borrower). If, on September 1, the borrower had drawn up the line to $6 million, but, as of September 30, had paid it down to $4.5 million, the original amount would be $4.5 million for purposes of the September 30 Call Report, rather than $6 million, because the borrower could no longer draw on the line.

   However, if the loan was a $6 million revolving line of credit and the borrower could still draw up to the full $6 million as of September 30, the original amount would be $6 million for purposes of the September 30 Call Report.

Purpose test for general lines of credit

1. Is a credit line intended as a general liquidity backstop or a multi-purpose credit line that may be used as a borrower sees fit deemed to meet the Purpose Test at origination unless there is a specific covenant against it being used for an acquisition, buyout, or capital distribution that meets the Purpose Test? Or, instead, does the credit line fail to meet the Purpose Test at origination but begin to meet it when there is a draw that satisfies the Purpose Test?

   Response: Multi-purpose lines of credit would not be deemed to meet the purpose test at origination unless the borrower specifically plans to use the line of credit to finance an acquisition, buyout or capital distribution. If the borrower eventually draws on the line of credit for the purpose of financing an acquisition, buyout or capital distribution, the bank would identify this as a purpose loan at the time the line is renewed. If the line meets the purpose test (at origination or refinance), the bank must determine if the borrower meets the other tests outlined in the higher-risk C&I loan definition.

Leverage test

1. When a firm has capitalized a company with both equity and debt (to enhance return and for tax advantages), can the debt be excluded from the leverage test calculation?

   Response: No, even if the debt is deeply subordinated, contains no covenants, no default triggers, and requires payment-in-kind rather than cash interest.

2. When calculating the debt-to-EBITDA ratio for purposes of determining if a loan is leveraged, would an institution include the "proforma" debt (the debt or the loan that the borrower is applying for) in the debt-to-EBITDA calculation?

   Response: Yes. An institution should calculate the borrower's post financing debt-to-EBITDA and determine if it meets the criteria for leveraged as defined in the 2012 final rule.

3. For many middle market C&I customers, quarterly financials are not always required. In such cases, would it be acceptable to calculate EBITDA using either: (a) annualized EBITDA based on the most recent interim financials or (b) the most recent fiscal year financials?

   Response: Yes, provided the financial statements used are not more than 12 months old.

4. How should a bank treat a line of credit in the leverage test?

   Response: The leverage test must be calculated by including the debt the borrower is applying for. If the debt the borrower is applying for is a line of credit (on its own or as a part of a lending facility), the reporting bank should also assume that the line is fully drawn when the bank performs its debt to EBITDA calculations, unless the line of credit contains covenants that would, in effect, prevent the borrower's debt to EBITDA ratios from exceeding the leverage test thresholds as defined in Appendix C to Subpart A of Part 327 for a higher-risk C&I borrower. The 2012 final rule defines total and senior debt and provides that only funded amounts of lines of credit must be considered debt for purposes of the definition, but this provision refers only to existing debt of the borrower and not to the debt the borrower is applying for.

5. When there are multiple borrowers on a C&I loan, which financial statements should an institution use when calculating the leverage test?

   Response: The 2012 final rule states that the leverage test must be calculated using the consolidated financial statements of the borrower. In the case of multiple borrowers, an institution can use the primary borrower's financial statements to calculate the leverage test. In the case of multiple borrowers who each have joint and several liability for a loan, an institution can use the consolidated financial statements of any one of the borrowers to calculate the leverage test. Moreover, if one such borrower does not meet the criteria for a higher-risk C&I borrower, the loan would not be considered a higher-risk loan. Finally, if a loan is made to a subsidiary whose parent company has unconditionally and irrevocably guaranteed the borrower's debt, the leverage test may be calculated using the consolidated financial statements of the subsidiary or the consolidated financial statements of the parent company.

6. Are first lien secured debt and accounts receivable securitizations considered "senior debt" in the debt-to-EBITDA calculation?

   Response: Yes.

7. Are second lien debt and unsecured debt excluded from "senior debt" in the debt-to-EBITDA calculation?

8. Response: Yes. However, they are included in total debt, when calculating the debt-to-EBITDA ratio.

Materiality test

1. Should floor plan loans be included in the debt considered in the materiality test?

   Response: Yes. If the floor plan loan is the debt the borrower is applying for and it meets the purpose test, the bank must consider the funded and unfunded amount of the floor plan loan and determine whether it equals or exceeds 20 percent of the total funded debt of the borrower. If the floor plan loan exists when the borrower applies for or refinances another C&I loan that meets the purpose test, then, for purposes of the materiality test, only the amount of the floor plan loan that is funded and outstanding should be included in the total funded debt of the borrower (the denominator).

Asset-Based Lending and Dealer Floor Plan Financing Exclusions

1. Could a bank qualify for the asset based lending exclusion if the advance rate on accounts receivable and inventory is 90 percent?

   Response: No. The 2012 final rule requires that advance rates never exceed 85 percent for the exclusion to apply.

2. Is collateral in Canada considered foreign accounts receivable and therefore ineligible to include as collateral for purposes of the 2012 final rule?

   Response: Yes. The 2012 final rule states that foreign accounts receivable are ineligible; therefore, accounts receivable from Canada are ineligible.

3. Would foreign accounts receivable that are guaranteed by the Export-Import Bank be eligible to include as collateral for purposes of the asset-based lending exclusion in the 2012 final rule?

   Response: Yes. Institutions can include foreign accounts receivable that are guaranteed or insured by the Export-Import Bank as collateral in their borrowing base when determining loan to value for purposes of the asset-based lending exclusion. The maximum amount of foreign accounts receivable that is guaranteed or insured by the Export-Import Bank is the amount that can be included in the borrowing base as collateral. For example, if only 90 percent of the accounts receivable are guaranteed or insured, the bank can only include the 90 percent that is guaranteed or insured as eligible collateral.

4. The automobile floor plan exclusion requires that "each loan advance must be … at no more than 100 percent of (i) dealer invoice plus freight charges (for new vehicles) or (ii) the cost of a used automobile at auction or the wholesale value using the prevailing market guide (*e.g.*, NADA, Black Book, Blue Book). How much is allowed as "freight charges"?

   Response: For new vehicles, banks typically lend 100% of the dealer/manufacturer invoice price, which generally already includes "triple net" charges (*e.g.*, destination charge, hold back, and advertising). In these cases, advances should not exceed the dealer invoice price and additional freight charges should not be added to the dealer invoice price. However, for new vehicle floor plan financing, if triple net charges (including freight charges) are not included in a new vehicle manufacturing invoice, a bank may add the typical triple net fee (which generally amounts to 5 to 7 percent of dealer invoice) in calculating the amount that may be advanced to the borrower consistent with the automobile floor plan exclusion. For used vehicle floor plan financing, the advance rate must not exceed the cost of a used automobile at auction or the wholesale value using the prevailing market guide without addition for freight charges to be consistent with the exclusion.

5. Would a bank be eligible for the automobile dealer floor plan lending exclusion if the bank does not maintain borrowing base certificates to govern advances?

   Response: Yes. To be eligible for the floor plan lending exclusion, the 2012 final rule requires that "for automobile floor plan loans, each loan advance must be made against a specific automobile under a borrowing base certificate held as collateral." However, some banks do not use a borrowing base certificate for these loans because they have other controls in place to monitor advances on the loan. For banks that do not use a borrowing base certificate, then, to be eligible for the exclusion, the bank must have a perfected security agreement in place that evidences collateral and the bank must also have a system in place that monitors each loan advance made against specifically identifiable vehicles (*i.e*.., against specific vehicle identification numbers (VINs)). As the dealer sells each vehicle, the bank must ensure that the dealer repays the loan advance against that specific piece of collateral before the bank will release the collateral. The bank must also maintain a listing of each vehicle (including each vehicle's VIN) that it has advanced funds on so that the bank can continuously monitor which vehicles serve as collateral for the loan.

6. Will the floor plan exemption from higher-risk assets for a particular loan apply even though some of the vehicles collateralizing the loan may not always be in the dealer's possession?

   Response: The exemption may apply. The FDIC realizes that not every vehicle will be in the dealer's physical possession because, for example, they are out on test drives, are serving as loaners to service customers, or are being used as demos for dealership personnel. The dealer, however, should be able to document that all of the vehicles held as collateral are owned by the dealer and are accounted for at any given point in time.

7. Can a floor plan loan be eligible for the dealer floor plan exclusion if the bank does not receive borrowing base certificates, accounts receivable and inventory detail, accounts payable detail and covenant compliance certificates?

Response: Yes. Banks are required to receive borrowing base certificates, accounts receivable and inventory detail, accounts payable detail, and covenant compliance certificates on all asset-based loans to be eligible for the asset-based lending exclusion. However, banks are not necessarily required to receive borrowing base certificates, accounts receivable and inventory detail,* and accounts payable detail on floor plan loans for the floor plan lending exclusion to apply. If the loan agreement for a floor plan loan does not require the receipt of these items, or does not require the receipt of covenant compliance certificates because the loan includes a demand feature instead of covenants, then the bank is not required to receive these documents to be eligible for the floor plan lending exclusion.

* Regardless of what the loan agreement allows, to be eligible for the floor plan lending exclusion, the bank must maintain a listing of each vehicle or unit of inventory financed through the floor plan loan, the date the inventory was financed, and an identification number.

8. May banks use internally prepared rather than borrower prepared aging reports and still satisfy the 2012 final rule's requirements for the floor plan lending exclusion?

   Response: Although the rule states that borrowers must submit floor plan aging reports, aging reports that are developed by the lender are sufficient to satisfy the requirements of the floor plan lending exclusion provided that the records include the following: a listing of each vehicle or unit of inventory financed through the floor plan loan, the date the inventory was financed, and an identification number so that banks may track the length of time it takes to sell a particular unit of inventory. If the information is provided by the dealer-borrower, the bank must also periodically verify the accuracy of the floor plan aging reports via an on-site inspection.

9. A LBP bank cannot use the asset-based lending or floor plan financing exemptions if a supervisor has criticized the management of these programs. Can the FDIC clarify that a bank would be allowed to again use these exemptions as soon as an MRA is cleared?

   Response: A bank cannot use the asset-based lending or floor plan financing exclusions during a period in which an MRA is in place that criticizes the bank's controls or administration of its asset-based or floor plan loan portfolios. Once the MRA is removed (because the bank has corrected the deficiencies that caused the MRA), all loans that meet the requirements of the exclusions, including those made when the MRA was in place, can be excluded from higher-risk C&I loans.

General Questions About Higher-Risk C&I and Consumer Loans

1. Does the FDIC provide the list of government agencies for the purpose of determining which loans are guaranteed by the U.S. government and thus may be excluded from higher-risk assets?

   Response: The FDIC does not provide such a list. Lending banks should know whether their loans are guaranteed by the U.S. government. However, a loan guarantee by U.S.

government sponsored enterprises, including Fannie Mae, Freddie Mac, the Federal Home Loan Banks, and the Farm Credit System, is *not* grounds for excluding the loan from the definition of higher-risk assets.

Higher-Risk Securitizations

1. How should a bank report higher-risk securitizations issued before April 1, 2013 on their Call Reports beginning June 30, 2013?

   Response: For all securitizations issued before April 1, 2013, banks must either (1) use the definition provided in the February 2011 rule, (2) continue to use the transition guidance in the September 2012 Call Report instructions, or (3) apply the definitions in the 2012 final rule to all of its securitizations. If a bank applies the definition of higher-risk C&I loans and securities in the October 2012 final rule to its securitizations, it must also apply the definition of a higher-risk C&I borrower in the 2012 final rule to all C&I borrowers without regard to when the loans to those borrowers were originally made or refinanced (*i.e.*, whether made or refinanced before or after April 1, 2013).

2. After April 1, 2013, how should a bank reflect securitizations of nontraditional mortgage (NTM) loans that it was reporting as higher-risk before April 1, 2013?

   Response: Banks should continue to use the transition guidance to report such securitizations as higher-risk after April 1, 2013. The definition of NTM loans has not changed.

3. Are only securitizations purchased after April 1, 2013 required to be evaluated and reported as higher-risk?

   Response: No. For securitizations issued before April 1, 2013, banks must either (1) use the definition provided in the February 2011 rule, (2) continue to use the transition guidance in the September 2012 Call Report instructions, or (3) apply the definitions in the October 2012 final rule to all of its securitizations. If a bank applies the definition of higher-risk C&I loans and securities in the October 2012 final rule to its securitizations, it must also apply the definition of a higher-risk C&I borrower in the final rule to all C&I borrowers without regard to when the loans to those borrowers were originally made or refinanced (i.e., whether made or refinanced before or after April 1, 2013).

   Beginning April 1, 2013, the 2012 final rule definitions apply to securitizations issued on or after April 1, 2013.

4. For a securitization issued on or after April 1, 2013, when should a loan under $5 million be considered in determining whether more than 50 percent of the loans backing the securitization meet the definition of a higher-risk C&I loan (which would make the securitization higher risk)?

   Response: If the loan is owed by a higher-risk C&I borrower at the time the loan is sold into the securitization trust, the loan is a higher-risk C&I loan, regardless of its original amount, when it was originated or refinanced or the amount outstanding at the time of its sale into the securitization trust. Loans owed by a higher-risk C&I borrower may have paid down to below $5 million at the time they are sold into the securitization trust, but they are still considered higher-risk loans and such loans should be included in determining whether or not more than 50 percent of the loans backing the securitization are higher-risk.

In addition, if the loan is originated before April 1, 2013, and is a higher-risk asset under the transition guidance in the September 2012 Call Report instructions, the loan is also a higher-risk C&I loan.

5. If a C&I loan in a securitization is higher risk, how would the owner of the securitization know if the C&I loan is refinanced and no longer considered higher risk?

   Response: The asset manager of the securitization should have the information on individual loans in the securitization.

6. For purposes of determining whether or not a securitization is a higher-risk securitization, a bank must look to the underlying loans of a securitization to determine if more than 50 percent of the loans backing the securitization meet the definition of a higher-risk C&I loan. How should banks interpret the portion of the definition of a higher-risk C&I borrower that states "a higher-risk C&I borrower is a borrower that owes the reporting bank on a C&I loan"?

   Response: A bank that owns a securitization or that owns a portion of a securitization has an indirect interest in the underlying loans backing the securitization. For purposes of determining whether the loans meet the definition of a higher-risk C&I loan and whether the borrower on a loan is a higher-risk C&I borrower, the underlying loans backing the securitization are deemed to be owed to the reporting bank, i.e., a bank with such an indirect interest. (Otherwise, no C&I securitization would ever be higher-risk.)

7. For purposes of determining whether more than 50 percent of the loans backing the securitization meet the definition of a higher-risk C&I loan, does a bank consider the dollar volume of loans outstanding or the number of loans outstanding?

   Response: If more than 50 percent of the dollar volume of loans outstanding that back the securitization are higher-risk, then the securitization is considered a higher-risk securitization.

8. Regarding inclusion of higher-risk consumer and C&I loans in securitizations, what consideration has been given to the advance rates of mark-to-market accounting for the underlying assets?

   Response: No consideration is given to the advance rates of mark-to-market accounting.

9. Would an institution report as higher-risk securitizations it has purchased or issued as leveraged?

   Response: If a securitization meets the criteria for a higher-risk securitization it should be reported as such on the Call Report of the institution that holds that securitization. However, if an institution issued and sold 100% of a securitization that meets the higher-risk criteria as defined in the 2012 final rule and such securitization is not reported on the balance sheet, it would not report the sold securitization on its Call Report; instead the institution that purchased it would report the securitization on its Call Report.

Securitizations are defined consistent with Appendix A, Section II B of Part 325 of the FDIC Rules and Regulations, which reads: "Securitization means the pooling and repackaging by a special purpose entity of assets or other credit exposures into securities that can be sold to investors. Securitization includes transactions that create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments." Securitizations may also include interest only strips if these strips are backed by underlying pools of credit exposures. If the pools of credit exposures backing the interest only strip meet the criteria for higher-risk consumer or C&I loans as defined in the 2012 final rule, these interest only strips should be reported as higher-risk consumer or higher-risk C&I loan securitizations on the institution's Call Report or TFR.

Nontraditional Mortgage Loans

1. Is a balloon payment considered to be a deferment such that the loan would be considered a nontraditional mortgage loan?

   Response: No. A balloon payment is not considered a deferment of repayment of principal or interest. Therefore, loans that contain balloon payments are not necessarily considered nontraditional mortgage (NTM) loans for pricing purposes due solely to the fact that they allow for a balloon payment. However, if the loan met the other characteristics of a NTM loan as detailed in the 2011 and 2012 final rules, then the loan would be considered a NTM loan.

2. A nontraditional mortgage loan, such as an interest only loan or a teaser rate loan, ceases to be nontraditional when the loan begins to amortize or the teaser rate expires. When a nontraditional mortgage loan ceases to be nontraditional, is the bank required to make a determination at that time whether the loan is a higher-risk consumer loan (assuming that a refinancing or modification does not occur at the same time)?

   Response: No, a bank is not required to evaluate a nontraditional mortgage loan to determine whether it meets the characteristics of a higher-risk consumer loan at the time the loan ceases to be non-traditional. Instead, the bank would begin reporting the loan consistent with its higher-risk loan evaluation at origination or refinancing. If the loan was considered to be a higher-risk consumer loan at origination or refinancing, then the bank would begin reporting the loan as a higher-risk consumer loan.

3. Certain loans may be considered nontraditional in the United States, but traditional in other countries that an institution operates in. How should an institution report such loans on the Call Reports?

   Response: All loans on the institution's balance sheet should be evaluated under the nontraditional mortgage loan criteria detailed in the 2011 and 2012 final rules and the

Instructions to the Reports of Condition and Income. The "nontraditional" criteria of the country where the loan was originated is not a consideration for pricing purposes.

4. Are interest-only business purpose loans secured by 1-4 family residential properties considered nontraditional mortgages?

   Response: No.

5. Are simultaneous second lien loans or closed-end home equity loans considered nontraditional mortgage loans?

   Response: If a simultaneous second lien loan or a closed-end home equity loan meets the characteristics of a nontraditional mortgage loan as defined in Appendix C of the 2011 or 2012 final rule, it should be included as a nontraditional mortgage loan total on the Call Report.

6. If a loan has an escalating interest rate, how long is the rate considered to be a teaser rate?

   Response: As long as the current interest rate is a discounted interest rate, the loan is classified as a teaser rate loan. A discounted rate is an effective interest rate at the time of origination or refinance that is less than the rate the bank is willing to accept for an otherwise similar extension of credit with comparable risk.

7. Some banks offer discounted mortgage rate loans to employees. The loan rates are subject to reset to market rates if an employee leaves the bank. Would these loans need to be reported as nontraditional mortgage loans?

   Response: Yes.

8. To reduce credit risk and operating overhead (in check processing), many banks incent borrowers to sign up for autodrafts. While on autodraft, the loan's interest rate is reduced. The rate is increased if the autodraft is cancelled. Would these arrangements be considered teaser rate loans?

   Response: No, these arrangements would not be considered teaser rate loans.

9. In addition to an autodraft discount, a bank offers a number of other discounts in connection with its mortgage loan programs. For example, the bank discounts mortgage interest rates (for fixed rate loans) or margins (for variable rate loan products), to certain clients who qualify for preferred benefits and services based on, for example, opening and maintaining certain types of accounts with the bank, or maintaining a certain level of minimum balances across one or more product lines for a certain period, or otherwise. The amount of this "preferred banking" discount available at origination is typically between .25% and .50% below the standard interest rates or margins then available to clients. The underlying agreement discloses both the discounted and undiscounted rates or margins, as applicable,

and that when the client no longer meets the qualification requirements for preferred banking, the discount will be discontinued. Would such an arrangement be considered a teaser rate?

Response: No.

10. If a bank determines at origination or refinancing that a particular loan meets the definition of a nontraditional mortgage loan, is the bank required to make the additional determination as to whether the loan also meets the definition of a higher-risk consumer loan? How should the bank report the loan on the Call Report?

    Response: At origination or refinance, a bank should evaluate mortgage loans to determine whether they meet the characteristics of both a higher-risk consumer loan and a nontraditional mortgage loan. Mortgage loans displaying one or more characteristics of both higher-risk consumer loans and nontraditional mortgage loans are to be reported as nontraditional mortgage loans on the Call Report.

Top 20 Counterparty Exposure and Largest Counterparty Exposure to Tier 1 Capital and Reserves Definitions

1. Is counterparty exposure that is fully guaranteed by the U.S. Government excluded from the counterparty risk definitions?

   Response: For purposes of the above two definitions, exclude all counterparty exposure to the United States Government and departments or agencies of the United States Government that are unconditionally guaranteed by the full faith and credit of the United States.

2. When determining counterparty credit exposure amounts, should banks use the outstanding amount and undrawn commitments for loans and the mark-to-market amount for derivatives? What about other elements of potential counterparty exposure (*e.g.*, repurchase transactions) which are not calculated on a mark-to-market basis? Are these to be included, and, if so, on what basis should this be done?

   Response: Banks should use the outstanding amount and undrawn commitments for loans. Repos are securities financing transactions and counterparty exposure for all securities financing transactions and OTC derivatives should be calculated using either the Internal Models Methodology (IMM), if the bank has received approval to use the IMM, or one of the other methods permitted for measuring exposure at default (EAD) in accordance with the appropriate outstanding capital regulations (see below Q&As for more details).

3. Does my bank require regulatory approval to use an Internal Models Methodology (IMM) to calculate EAD for OTC derivatives and/or Securities Financing Transactions (SFTs)?

   Response: Yes. To adopt IMM to calculate EAD, banks must receive approval from their primary federal regulator in accordance with the capital regulations issued by each regulator. FDIC supervised institutions would follow the methodology prescribed by Section 32, Appendix D to Part 325 of the FDIC Rules and Regulations for measuring EAD. OCC supervised institutions should follow the methodology prescribed by 12 CFR Part 3, Appendix C, Section 32 and FRB supervised institutions should follow the methodology prescribed by 12 CFR Part 208, appendix F, section 32 (state member banks) and 12 CFR part 225, appendix G, section 32 (bank holding companies) for measuring EAD. If a bank has not received regulatory approval to adopt the IMM, then it may calculate EAD using the current exposure methodology in accordance with appropriate outstanding capital regulations. As an alternative, banks without approval to adopt the IMM or institutions not adopting the IMM may report the credit equivalent amount for each counterparty's derivative exposures as calculated in accordance with Call Report Schedule RC-R item 54.

4. My bank does not use an IMM to calculate EAD for SFTs. How should I calculate counterparty exposure for these transactions?

   <u>Response:</u> If a bank has not received regulatory approval to adopt the IMM, then it must calculate EAD or exposure using one of the other methods permitted in accordance with the appropriate outstanding capital regulations (as noted in the answer above).

5. Should a bank include due from accounts, federal funds sold, securities, and credit protection purchased or sold where the counterparty under consideration is a reference entity in the calculation of counterparty exposure?

   <u>Response:</u> No. For pricing purposes, counterparty exposure only includes gross lending (including unfunded commitments), OTC derivative, and SFT counterparty exposure amounts.

<u>Criticized and Classified Items</u>

1. Are consumer and retail loans that would be classified under the Uniform Retail Credit Classification and Account Management Policy (Retail Classification Policy) included in criticized and classified items for purposes of the Scorecard?

   <u>Response:</u> Yes. Criticized and classified items include all on and off balance sheet items (including consumer and retail loans) that meet the characteristics of the bank's or the bank's primary federal regulator's definition of Special Mention, Substandard, Doubtful, and Loss.

2. Will criticized and classified items information be publicly disclosed or confidential?

   <u>Response:</u> This information will remain confidential.

3. If a loan is designated as higher-risk for deposit insurance pricing purposes, should that higher-risk loan also be included in the criticized and classified items?

   <u>Response:</u> All loans, regardless of consumer or other loan types, or regardless of higher-risk designation, should be included in the criticized and classified numbers if they meet the definition of criticized and classified items as outlined in the 2011 final rule.