

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC-2013-0003]

FEDERAL RESERVE SYSTEM

[Docket No. OP-1456]

FEDERAL DEPOSIT INSURANCE CORPORATION

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

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

ACTION: Notice.

SUMMARY: The OCC, Board, and FDIC (collectively, the Agencies) are adopting as final the Interagency Questions and Answers Regarding Community Reinvestment that were proposed on March 18, 2013, to address several community development issues. In response to comments received, the Agencies made minor clarifications to some of the new and revised questions and answers that were proposed.

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

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SUPPLEMENTARY INFORMATION:

Background

The OCC, Board, and FDIC implement the Community Reinvestment Act (CRA) (12 U.S.C. 2901 et seq.) through their CRA regulations. See 12 CFR parts 25, 195, 228, and 345. The Agencies' regulations are interpreted primarily through the "Interagency Questions and Answers Regarding Community Reinvestment" (Questions and Answers), which provide guidance for use by agency personnel, financial institutions, and the public. The Questions and Answers were first published under the auspices of the Federal Financial Institutions Examination Council (FFIEC) in 1996 (61 FR 54647) and were last revised by the Agencies on March 11, 2010 (2010 Questions and Answers) (75 FR 11642).

On March 18, 2013, the Agencies published for comment proposed clarifications that would revise five questions and answers (Q&A), which address (i) community development activities

outside an institution's assessment area(s), both in the broader statewide or regional area that includes the institution's assessment area(s) and in nationwide funds; (ii) additional ways to determine whether recipients of community services are low- or moderate-income; and (iii) technical assistance activities related to the provision of financial services that might be provided to community development organizations.¹ The Agencies also proposed two new Q&As: one addresses the treatment of community development lending performance in determining a large institution's lending test rating, and the other addresses the quantitative consideration given to a certain type of community development investment. Finally, the Agencies proposed to redesignate one Q&A without substantive change.

Together, the Agencies received comments from approximately 200 different parties. The commenters represented financial institutions and their trade associations, community development advocates and organizations, state bank supervisors, and others. The commenters generally noted that the proposed changes were a modest, but beneficial, effort to modernize the implementation of CRA. Commenters largely supported the intent of the Agencies to encourage more community development activity, particularly outside large metropolitan areas that are well served by financial institutions. Many commenters expressed concern nonetheless about potential unintended consequences in the proposed changes and provided suggestions for improvement. Comments on each revised and new proposed Q&A are discussed in more detail below.

As discussed below, the Agencies adopt the five revised and two new Q&As that were proposed, with minor clarifications as appropriate, in response to comments received. The Agencies also redesignate one Q&A without substantive change.

The new and revised Q&As that the Agencies are adopting supplement the 2010 Questions and Answers. The revised Q&As replace the Q&As of the same citation designation

¹ See 78 FR 16765 (Mar. 18, 2013).

in the 2010 Questions and Answers. The Agencies are currently revising examination procedures to implement this final guidance to promote consistent application of the guidance within and among the Agencies.

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

Revisions of Existing Q&As

I. Community Development Activities Outside an Institution’s Assessment Area(s) in the Broader Statewide or Regional Area That Includes the Institution’s Assessment Area(s)

The CRA regulations allow consideration of community development loans, qualified investments, and community development services that benefit an institution’s assessment area(s) or a broader statewide or regional area that includes the institution’s assessment area(s). See 12 CFR __.12(h)(ii), __.23(a), and __.24(b). In 2001,² the Agencies adopted the versions of Q&As § __.12(h) – 6 and § __.12(h) – 7 that are found in the 2010 Questions and Answers to help assure financial institutions that community development loans and services and qualified investments in the broader statewide or regional area that includes their assessment area(s) would receive

² See 66 FR 36620 (July 12, 2001). Q&As § __.12(h) - 6 and § __.12(h) - 7 were previously designated as § __.12(i) & § __563e.12(h) – 5 and § __.12(i) & 563e.12(h) – 6. See 66 FR 36626-27.

consideration in their CRA evaluations. However, the Agencies had become aware that both financial institutions and community organizations needed additional guidance on how, and to what extent, the Agencies considered community development activities in the broader statewide or regional area when conducting CRA evaluations. Accordingly, the Agencies proposed to revise Q&As § __.12(h) – 6 and § __.12(h) – 7 to further clarify that community development activities in the broader statewide or regional area that includes an institution’s assessment area(s) will be considered in the evaluation of an institution’s CRA performance.

Q&A § __.12(h) – 6 addressed how examiners would consider community development activities in the broader statewide or regional area that includes an institution’s assessment area(s) and differentiated between whether or not the institution’s assessment area(s) might receive a direct benefit from the activity. The Agencies believed that Q&A § __.12(h) – 6 needed additional clarification with regard to community development activities that benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution’s assessment area(s) but that will not benefit the institution’s assessment area(s). Q&A § __.12(h) – 6 had stated that examiners would consider such activities if an institution, considering its performance context, had adequately addressed the community development needs of its assessment area(s).

First, the Agencies proposed to revise Q&A § __.12(h) – 6 by removing the phrase “adequately addressed the community development needs of its assessment area(s).” In its place, the Agencies proposed to state that community development activities located in the broader statewide or regional area that includes an institution’s assessment area(s) but that will not benefit those assessment area(s) “must be performed in a safe and sound manner, consistent with the institution’s capacity to oversee those activities and may not be conducted in lieu of, or to the detriment of, activities in the institution’s assessment area(s). When evaluating whether

community development activities are being conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s), examiners will consider an institution's performance context, including the community development needs and opportunities in its assessment area(s), its business capacity and focus, and its past performance.”

The Agencies received about 143 comments addressing proposed revised Q&A § __.12(h) – 6. Commenters were generally supportive of the Agencies' effort to clarify when and how community development activities in the broader statewide or regional area that includes an institution's assessment area(s) would receive consideration. However, commenters provided mixed views on whether the proposed clarifications would provide an incentive for financial institutions to increase their community development activities or expand their opportunities to engage in community development activities. For example, one commenter stated that institutions' community development activities would depend more on whether opportunities exist within a given state or region and the expertise of the institutions than on the Agencies' proposed revisions to the Q&A. On the other hand, another commenter stated that the proposed revisions might encourage institutions to expand their community development activities.

The vast majority of the commenters stated that the proposed language, “may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s),” would generate more uncertainty than the existing language, “adequately addressed the community development needs of its assessment area(s).” Several commenters stated that the proposed language would be an impossible standard to meet because any activity performed outside an institution's assessment area(s) would be “in lieu of” activities in the assessment area(s). Some commenters advocated that the Agencies should adopt a flexible approach, while other commenters suggested bright-line standards, such as an institution having received a

certain rating on its previous CRA evaluation. One commenter suggested that the existing phrase, “adequately addressed the community development needs of its assessment area(s),” would be preferable to the proposed language if the Agencies also defined the term “adequately.” A few commenters also contended that, because all CRA-related activities must be performed in a safe and sound manner, the proposed language stating that “such community development activities must be performed in a safe and sound manner consistent with the institution’s capacity to oversee those activities” was unnecessary. Further, some commenters maintained that the proposed reference to the institution’s ability to oversee those activities appeared to impose a duty upon the investing financial institution to oversee independent community development programs.

The Agencies are modifying the proposed language in Q&A § __.12(h) – 6 to address some of these comments. First, the Agencies note that all CRA-related activities must be performed in a safe and sound manner.³ Therefore, the Agencies agree that express reference to such activities being performed in a safe and sound manner in Q&A § __.12(h) – 6 may not be necessary. Accordingly, the Agencies are not adopting the proposed statement that such “community development activities must be performed in a safe and sound manner consistent with the institution’s capacity to oversee those activities . . .” However, the Agencies emphasize the continued expectation that an institution’s activities be consistent with safe and sound operation of the institution.

Second, among other purposes, the Agencies’ proposed clarifications to Q&A § __.12(h) – 6 were intended to encourage more community development investments in communities that are underserved by financial institutions. However, as noted above, commenters expressed concerns that the proposed phrase “in lieu of, or to the detriment of” may establish an unclear

³ See 12 CFR __.21(d).

standard and be more restrictive than the current language in Q&A § __.12(h) – 6. Thus, in response to comments, the Agencies are not adopting that proposed standard. In addition, the Agencies are not adopting the proposed statement that “[w]hen evaluating whether community development activities are being conducted in lieu of, or to the detriment of, activities in the institution’s assessment area(s), examiners will consider an institution’s performance context, including the community development needs and opportunities in its assessment area(s), its business capacity and focus, and its past performance.”

Instead, the Agencies are clarifying that a financial institution should be “responsive to community development needs and opportunities in its assessment area(s).” Specifically, Q&A § __.12(h) – 6 states, with respect to community development activities that are conducted in the broader statewide or regional area that includes the institution’s assessment area(s), that “examiners will consider these activities even if they will not benefit the institution’s assessment area(s), as long as the institution has been responsive to community development needs and opportunities in its assessment area(s).” The Agencies believe this revision makes clear the importance of being responsive to community development needs, a concept reflected throughout the CRA regulations.⁴ The Agencies further believe this approach provides a flexible standard for determining how financial institutions will receive consideration for community development activities in the broader statewide or regional area that includes the institution’s assessment area(s), but that will not directly benefit their assessment area(s).

Q&A § __.12(h) – 6 no longer expressly references an institution’s performance context or the factors considered as part of an institution’s performance context, such as community development needs and opportunities, the institution’s business capacity and focus, and its past performance. The Agencies reiterate that the context in which an institution’s CRA performance

⁴ See 12 CFR __.23, __.24, __.25, __.26, and __.27, as well as Appendix A, which describes ratings.

occurs is important. Performance context is always considered when evaluating an institution's record of helping to meet credit needs under CRA.⁵ The needs and opportunities of an assessment area may vary depending on the area and the financial institution. It is important, therefore, for an institution to be aware of the community development needs and opportunities in its assessment area(s) and to determine whether, and to what extent, the institution has the capacity and expertise to address such needs and opportunities.

The Agencies proposed to clarify Q&A § __.12(h) – 7, which addresses what is meant by a “regional area,” by modifying the current description of the term “regional area” to provide greater clarity about what constitutes a regional area. Proposed Q&A § __.12(h) – 7 stated that “a ‘regional area’ may be an intrastate area or a multistate area that includes the financial institution’s assessment area(s). Regional areas typically have some geographic, demographic, and/or economic interdependencies and may conform to commonly accepted delineations, such as ‘the tri-county area’ or the ‘mid-Atlantic states.’ Regions are often defined by the geographic scope and specific purpose of a community development organization or initiative.”

The Agencies also proposed to remove the discussion in the existing answer about how, with larger regional areas, benefit to an institution’s assessment area(s) may be diffused and, thus, less responsive to assessment area needs. The Agencies proposed this deletion because this portion of Q&A § __.12(h) – 7 was often misinterpreted and would no longer be necessary in light of revised Q&A § __.12(h) – 6.

With regard to proposed Q&A § __.12(h) – 7, most of the 16 commenters that addressed the proposed Q&A stated that the proposed definition of “regional area” was sufficiently clear and appropriately flexible. Several commenters suggested that Q&A § __.12(h) – 7 be further revised to specifically state that the illustrative geographic alternatives provided in the text of

⁵ 12 CFR __.21(b).

Q&A § __.12(h) – 7 do not represent a definitive list so as to avoid the misinterpretation that the listed alternatives are the only allowable options. In addition, three commenters suggested adding “Indian reservation” or “Indian area” as an example of a regional area. Commenters also generally supported removing the portion of the Q&A that discussed the potential for a diffused potential benefit to an institution’s assessment area(s). A number of commenters asserted that financial institutions needed more certainty that community development activities in the broader statewide or regional area that includes an institution’s assessment area(s) will receive consideration and believed that removal of that language may help to clarify that institutions will, in fact, receive such consideration.

The Agencies are adopting Q&A § __.12(h) – 7 as proposed. The Agencies note that the two examples, “the tri-county area” or “mid-Atlantic states,” provided in the Q&A are not intended to be an exhaustive list of examples of regional areas or to otherwise serve as a limitation. The intent of the revised Q&A is to provide greater flexibility, and the Agencies believe the language “such as” is sufficiently clear in conveying that the examples provided of regional areas are illustrative. The Agencies also note that a broader statewide or regional area that includes an Indian reservation or Indian country and a financial institution’s assessment area(s) would enable the institution to receive consideration for community development activities in which it engages in the Indian reservation or Indian area. Thus, the Agencies do not believe it is necessary to add further examples, such as “Indian reservation” or “Indian area.”

II. Investments in Nationwide Funds

In 2009, the Agencies adopted Q&A § __.23(a) – 2 to address investments in nationwide funds. See 12 CFR __.23(a); 74 FR 498 (Jan. 6, 2009) (2009 Q&A). The Agencies noted that the investment test, at 12 CFR __.23(a), evaluates an institution’s record of helping to meet the

credit needs of its assessment area(s) through qualified investments that benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). See 74 FR at 501. The Agencies further noted that investments in nationwide funds are subject to that standard. The 2009 Q&A advised that an institution may provide documentation from a nationwide fund to demonstrate the geographic benefit to its assessment area(s) or the broader statewide or regional area that includes its assessment area(s). Although the 2009 Q&A suggested types of documentation that could be provided, it also explained that the Agencies would accept any information provided by an institution that reasonably demonstrates that the purpose, mandate, or function of a nationwide fund includes serving geographies or individuals located within the institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s). The 2009 Q&A also stated that, at an institution's option, it could provide information that a fund has explicitly earmarked its projects or investments to certain investors.

The Agencies proposed to revise Q&A § __.23(a) – 2 to address concerns that side letters and earmarking of projects is burdensome on institutions and funds and have seemingly become mandatory. The proposed revised Q&A no longer expressly included the option for institutions to provide written documentation from the fund demonstrating earmarking, side letters, or pro-rata allocations.

Proposed revised Q&A § __.23(a) – 2 continued to recognize that nationwide funds are important sources of investments in low- and moderate-income and underserved communities throughout the country and can be an efficient vehicle for institutions in making qualified investments that help meet community development needs. In doing so, the proposed revised Q&A stressed that investments in nationwide funds may be suitable investment opportunities,

particularly for large financial institutions with a nationwide branch footprint or for other financial institutions with a nationwide business focus, including wholesale or limited purpose institutions. Large institutions with a nationwide branch footprint typically have many assessment areas in many states; thus, investments in nationwide funds are likely to benefit such an institution's assessment area(s), or the broader statewide or regional area that includes its assessment area(s), and provide that institution with the opportunity to match its investments with the geographic scope of its business.

Further, the proposed revised Q&A stated that other financial institutions may find such funds to be efficient investment vehicles to help meet community development needs in their assessment area(s) or the broader statewide or regional area that includes their assessment area(s). The proposed revised Q&A further noted that these other institutions, in particular, should consider reviewing the fund's investment record to see if it is generally consistent with the institution's investment goals and the geographic considerations in the regulations.

Finally, the proposed revised Q&A advised that any "investments in nationwide funds must be performed in a safe and sound manner, consistent with an institution's capacity to oversee those activities, and may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s). When evaluating whether community development activities are being conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s), examiners will consider an institution's performance context, including the community development needs and opportunities in its assessment area(s), its business capacity and focus, and its past performance." Thus, the proposed revised Q&A signaled that the performance context of a particular institution is very important when determining whether investments in nationwide funds are appropriate.

The Agencies received approximately 53 comments addressing these proposed revisions. Commenters were generally supportive of the Agencies' intent to clarify when banks would receive CRA consideration for investment in nationwide funds. The Agencies are adopting proposed revised Q&A § __.23(a) – 2 with several revisions.

Similar to the comments received on proposed revised Q&A § __.12(h) – 6, many commenters suggested that the proposed language “in lieu of, or to the detriment of” in Q&A § __.23(a) – 2 could exacerbate the confusion over whether institutions would receive CRA consideration for investments in nationwide funds. These commenters questioned whether its inclusion would actually enhance the ability of institutions to deliver products on a nationwide basis to address community needs. Commenters repeated many of the same concerns expressed with regard to proposed revised Q&A § __.12(h) – 6, and urged the Agencies not to adopt the phrase “in lieu of, or to the detriment of,” or any reference to “safety and soundness” and “ability to oversee.” Consistent with the revisions in final Q&A § __.12(h) – 6, the Agencies are not adopting the proposed language in Q&A § __.23(a) – 2 stating that “community development activities must be performed in a safe and sound manner consistent with the institution's capacity to oversee those activities and may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s)” and are eliminating the reference to performance context. As explained above in the discussion of final Q&A § __.12(h) – 6, CRA-related activities must always be consistent with the safe and sound operation of the institution and the Agencies always consider performance context when evaluating an institution's performance. The Agencies will consider investments in nationwide funds that benefit an institution's assessment area(s). Further, examiners will consider investments in nationwide funds that benefit the broader

statewide or regional area that includes the institution's assessment area(s) consistent with the treatment detailed in Q&A § __.12(h) – 6.

Commenters generally agreed that earmarking and side letters may be burdensome and provided examples of costly accounting and documentation expenses to demonstrate such burden. At the same time, some commenters stated concerns that the eliminated reference to optional side letters and earmarking could be interpreted as no longer permitting such documentation. These commenters asserted that such an interpretation could create a greater obstacle to making these investments and urged the Agencies to allow institutions to retain the option to earmark funds for specific assessment areas and submit documentation, such as side letters, during a CRA evaluation. The final Q&A § __.23(a) – 2 does not contain language regarding written documentation about earmarking and side letters. Nevertheless, the Agencies do not intend the absence of such language to mean that side letters and earmarking are no longer permissible, but a side letter or earmarking documentation is not required in order to obtain CRA consideration.

Commenters also generally expressed support for nationwide funds as important sources for investments in low- and moderate-income and underserved communities. A few commenters, however, were not in favor of encouraging nationwide fund investments that may not benefit the institution's assessment area(s). These commenters expressed concern that investments in nationwide funds could divert an institution's attention away from the needs within a financial institution's assessment area(s) (i.e., their local communities). The Agencies continue to believe that investments in nationwide funds are important sources of investments in low- and moderate-income and underserved communities throughout the country and can be an efficient vehicle for institutions to make qualified investments that help meet community

development needs. Accordingly, the Agencies are adopting this language, as proposed, in Q&A § __.23(a) – 2. In response to comments, however, the Agencies emphasize that an institution’s performance within its assessment area(s) will remain the primary focus of CRA examinations and that investments in nationwide funds should not substitute for direct investments in important local community development initiatives.

The Agencies specifically requested comment on when nationwide funds would be appropriate investments for regional or smaller institutions. A few commenters suggested that nationwide investments are never appropriate for small or regional institutions. In contrast, other commenters supporting nationwide fund investments noted that investments in such funds are appropriate under a number of circumstances, including when there is no Community Development Financial Institution (CDFI) presence in an area or when the institution can demonstrate that the fund has a history of activity in its market and the intention to address geographies or individuals located within its assessment area(s). One commenter noted that nationwide funds provide distinct advantages to all institutions, regardless of size, because the large footprint of these funds protects investors against risk associated with over-concentration of investment in a particular market. The Agencies are adopting the language in Q&A § __.23(a) – 2 that addresses regional or smaller institutions’ investments in nationwide funds. The final Q&A continues to stress that, prior to investing in a nationwide fund, institutions should review the fund’s investment record to determine if it is generally consistent with the institution’s investment goals and the geographic focus in the CRA regulations.

The Agencies had also proposed language stating that nationwide funds may be suitable investments opportunities, particularly for large institutions with a nationwide branch footprint or for other financial institutions with a nationwide business focus, including wholesale and limited

purpose institutions. Financial institutions with a nationwide branch footprint, for example, typically have assessment areas in many states and, thus, investments in nationwide funds are likely to benefit such an institution's assessment areas or the broader statewide or regional area that includes its assessment areas.

In the final Q&A, the Agencies have removed the reference to “wholesale or limited purpose institutions” because it is redundant. The Agencies have also moved the reference to financial institutions with a nationwide business focus from this sentence. Financial institutions with a nationwide business focus are now specifically addressed in the same context as other financial institutions that do not have a nationwide branch footprint. Like other financial institutions, if a financial institution with a nationwide business focus does not have a nationwide branch footprint, it needs to consider the geographic benefit requirements in the CRA regulations. However, investments in nationwide funds may still be suitable investments for such institutions. Consistent with the treatment detailed in Q&A § __.12(h) – 6, nationwide funds may provide these institutions with additional opportunities to serve the broader statewide or regional areas that include their assessment area(s).

Last, the Agencies requested comment about how investments in nationwide funds should be considered in an investing institution's CRA evaluation. In response to this question, commenters provided a number of recommendations related to whether there should be a special category for investment in nationwide funds; how to attribute investment in nationwide funds to particular states or assessment areas; and how to eliminate the risk of double counting investments in funds by financial institutions. With respect to whether investments in nationwide funds should be considered separately from other qualified investments, commenters were divided. Most commenters opposed the creation of a separate category because doing so

would further complicate CRA evaluations. A few favored the idea, however, and one recommended that the Agencies create a distinct “national needs” category in order to provide an incentive for financial institutions to make credit available in underserved areas. The Agencies have considered these comments and have decided not to create a separate category for investments in nationwide funds to allow financial institutions to use nationwide funds to provide for community development that reflects their particular business models and community development strategies.

Few commenters addressed how to attribute funds to an institution’s various assessment areas, but those that did comment suggested that consideration for investments in nationwide funds should be treated similarly to investments in regional funds. That is, the fund’s prospectus should be used to determine the areas that benefit from the investment. Similarly, few commenters offered suggestions as to how regulators should avoid double counting when considering nationwide investments. Those that did comment expressed little concern about double counting as long as the full dollar amount of the investment, and no more, is taken into consideration. The Agencies’ examination procedures are being revised to clarify how investments in nationwide funds will be considered. The examination procedures would allow institutions to demonstrate whether such investments have an impact on one or more assessment areas. They will also make it clear when such investments will be considered at the assessment area, state, or institution level to avoid double counting.

III. Community Services Targeted to Low- or Moderate-Income Individuals

Existing Q&A § __.12(g)(2) – 1 provided guidance on ways that financial institutions may determine that community services are being provided to low- or moderate-income individuals. The Agencies proposed to add the following examples of situations in which

institutions would be deemed to provide community services to low- or moderate-income people: (1) to students or their families from a school at which the majority of students qualify for free or reduced-price meals, and (2) to individuals who receive or are eligible to receive Medicaid.

Several community group and banking organization commenters expressed support for the proposed examples. In addition, some commenters suggested that the Agencies add additional proxies as indicators of serving low- or moderate-income individuals. Common suggestions included individuals qualifying for assistance under U.S. Department of Housing and Urban Development's section 8, 202, 515, and 811 programs or the U.S. Department of Agriculture's Supplemental Nutrition Assistance Program.

The Agencies are finalizing Q&A § __.12(g)(2) – 1 with one revision. Revised Q&A § __.12(g)(2) – 1 includes the free and reduced-priced meals and Medicaid proxies for determining whether individuals are low- or moderate-income as proposed. In response to comments, the final Q&A also provides that institutions may determine that community services are targeted to low- or moderate-income persons if the community service is provided to recipients of government assistance programs that have income qualifications equivalent to, or stricter than, the definitions of low- and moderate-income defined by the CRA regulations. Examples include U.S. Department of Housing and Urban Development's section 8, 202, 515, and 811 programs and U.S. Department of Agriculture's section 514, 516, and Supplemental Nutrition Assistance programs.

IV. Service on the Board of Directors of an Organization Engaged in Community Development Activities

Existing Q&A § __.12(i) – 3 stated that providing technical assistance to organizations that engage in community development activities (as defined by the regulation) is considered a

community development service. The Agencies proposed to modify Q&A § __.12(i) – 3 to clarify that service on the board of directors of a community development organization is an explicit example of a technical assistance activity that could be provided to community development organizations that would receive consideration as a community development service.

Most commenters supported the proposed revision. A few commenters raised concerns that mere attendance at a board of directors meeting was not sufficient to merit CRA consideration. These commenters wanted to ensure that CRA consideration would be provided only in recognition of active participation.

In addition, several commenters suggested expanding the list of technical assistance activities to include other professional skills offered by institution personnel, such as information technology support, legal assistance, and human resources, because these technical assistance activities are crucial to the provision of financial services by community development organizations.

The Agencies are adopting the revision to Q&A § __.12(i) – 3 addressing service on the board of directors of a community development organization as proposed. Although the Q&A does not expressly address commenters' concerns that financial institutions' representatives actively participate when serving on community development organizations' boards of directors, the Agencies note that all community development services are expected to provide genuine benefit to financial institutions' communities for consideration in a CRA evaluation. Further, the Agencies consider the responsiveness of 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.

In addition, in response to commenters' suggestions, the Agencies are adding the following example of a technical assistance activity that might be provided to community development organizations: providing services reflecting financial institution employees' areas of expertise at the institution, such as human resources, information technology, and legal services.

New Questions and Answers

I. Qualified Investments

The Agencies proposed a new Q&A § __.12(t) – 9 to address the quantitative consideration that should be provided for a particular type of investment or loan so that the amount of consideration is consistent with the amount of support provided to the activity or entity with a community development purpose. The Agencies became aware of situations in which a financial institution invests in, or lends to, an organization and then the organization invests the funds in an instrument, such as a Treasury security, which does not have a community development purpose. In these cases, the organization uses only the income (or a portion thereof) from the investment to support its community development purpose. At the end of the investment or loan term, the institution's investment or loan amount and, in some cases, a portion of the income from the instrument are returned to the institution. Although the financial institution has invested or loaned a comparatively large amount to the organization, only the much smaller amount of income from the organization's investment is used to support the organization's community development purpose.

The Agencies believe it is inappropriate to consider the entire amount of such investments or loans as qualified investments or community development loans, particularly when compared to investments or loans to other organizations that use the entire loan or invested amount to support their community development purpose. Accordingly, the Agencies proposed a new Q&A § __.12(t) – 9 to provide guidance about the amount of quantitative consideration that should be allowed for these types of investments or loans.

The majority of commenters addressing Q&A § __.12(t) – 9 were supportive of the Agencies' intent to clarify the treatment of qualified investments that involve funds that are not invested in instruments related to community development. However, some commenters were concerned that the proposed Q&A would result in less consideration for qualified investments. Several commenters were concerned that the proposed Q&A could negatively affect community development organizations' liquidity and harm the ability of CDFIs or other investment funds to operate in a safe and sound manner. These commenters suggested revisions that would make clear that the treatment described in the Q&A would not apply to investments in or loans to CDFIs or other organizations with a primary purpose of community development. A number of commenters believed that, absent changes, the proposed guidance would have a negative impact on institutions' investments in community development activities.

In addition, many of the commenters who addressed the proposed Q&A suggested that the proposed Q&A should not apply when funds are not immediately deployed toward community development activities, but temporarily invested in non-community development instruments until the funds can be used for their intended community development purpose. Commenters asserted that financial institutions should not be penalized for investments that are

temporarily placed in safe instruments for a period until the community development organization is able to use the funds for their intended purpose.

In response to comments, the Agencies are adopting Q&A § __.12(t) – 9 with additional clarification. The final Q&A states that examiners will provide consideration for investments or loans when the community development organization invests the funds in instruments without a community development purpose solely as a means of securing capital for leveraging purposes, securing additional financing, or in order to generate a return with minimal risk until funds can be deployed toward the originally intended community development activity. The organization must express a bona fide intent to deploy the funds from investments and loans in a manner that primarily serves a community development purpose in order for the institution to receive consideration under the applicable test.

II. Community Development Lending in the Lending Test Applicable to Large Institutions

The Agencies proposed new Q&A § __.22(b)(4) – 2 to clarify that community development lending performance is always a factor that is considered in an institution’s lending test rating. Proposed new Q&A § __.22(b)(4) – 2 addressed the concern that insufficient weight was given to community development loans in CRA evaluations. The proposed Q&A was also intended to promote consistent treatment of community development lending among the Agencies.

The proposed new Q&A clarified that an institution’s record of making community development loans may have a positive, neutral, or negative impact on an institution’s lending test rating. The Agencies consider an institution’s community development lending performance in the context of the institution’s business model, the needs of its community, and the availability of community development opportunities in its assessment area(s) or the broader statewide or

regional area(s) that includes the assessment area(s) (i.e., the institution's performance context). Further, strong performance in retail lending may compensate for weak performance in community development lending and, conversely, strong community development lending may compensate for weak retail lending performance.

Some financial industry commenters viewed the proposed Q&A as a mandate to undertake community development lending in all assessment areas. Most financial industry commenters raised concerns regarding how bankers and examiners will determine "how much is enough" community development lending, particularly in light of the complexity involved in evaluating community development activities within an institution's performance context. Several community organization commenters opposed the language indicating that strong performance in community development lending may offset weak performance in retail lending and, conversely, strong performance in retail lending may offset weak performance in community development lending.

The Agencies are adopting Q&A § __.22(b)(4) – 2 as proposed. The Agencies emphasize that the Q&A does not mandate that a financial institution must engage in community development lending in every assessment area. Examiners will consider the absence or lack of community development lending in a particular assessment area within the context of the environment in which the institution operated during the evaluation period, including economic, demographic, and competitive factors, the institution's financial capacity or constraints, and community needs and opportunities to make community development loans in the institution's assessment area(s). The Agencies also note that the language in the Q&A, which indicates that strong performance in community development lending may offset weak performance in retail lending and, conversely, strong performance in retail lending may offset weak performance in

community development lending, repeats regulatory language found at Appendix A to Part __ – Ratings and is further explained in Q&A Appendix A to Part __ – 1.

Redesignation of Existing Question and Answer without Substantive Change

Activities with Minority- and Women-Owned Financial Institutions and Low-Income Credit Unions

In 2009, the Agencies adopted Q&A § __.12(g) – 4 to address CRA consideration of majority-owned institutions’ activities with minority- and women-owned financial institutions and low-income credit unions (MWLI). See 74 FR 498 (Jan. 6, 2009). In 2010, the Agencies revised their regulations to implement section 804(b) of the CRA, which addresses the same topic. See 12 CFR __.21(f); 75 FR 61035 (Oct. 4, 2010). As a result, the Agencies proposed to redesignate existing Q&A § __.12(g) – 4 as Q&A § __.21(f) – 1 so that the Q&A would correlate to the appropriate regulatory provision that addresses the same topic. The Agencies did not propose any substantive changes to the existing Q&A.

Several community group and nonprofit organization commenters urged the Agencies to provide the same geographically beneficial treatment for CDFIs as is provided to MWLIs. The CRA statute provides that activities undertaken with MWLIs need not benefit the majority-owned financial institution’s assessment area(s); but must help meet the credit needs of the local communities in which the MWLI is chartered. Because the CRA statute does not extend this special status to CDFIs, the Agencies do not believe it is appropriate to extend the special status granted to MWLIs to CDFIs or other community development entities through guidance.

Accordingly, the Agencies are adopting redesignated Q&A § __.21(f) – 1 as proposed.

The text of the final new, revised, and redesignated Interagency Questions and Answers follows:

* * * * *

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

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

- The community service is targeted to the clients of a nonprofit organization that has a defined mission of serving low- and moderate-income persons, or, because of government grants, for example, is limited to offering services only to low- or moderate-income persons.
- The community service is offered by a nonprofit organization that is located in and serves a low- or moderate-income geography.
- The community service is conducted in a low- or moderate-income area and targeted to the residents of the area.
- The community service is a clearly defined program that benefits primarily low- or moderate-income persons, even if it is provided by an entity that offers other programs that serve individuals of all income levels.
- The community service is offered at a workplace to workers who are low- and moderate-income, based on readily available data for the average wage for workers in that particular occupation or industry (see, e.g., <http://www.bls.gov/bls/blswage.htm> (Bureau of Labor Statistics)).

- The community service is provided to students or their families from a school at which the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture's National School Lunch Program.
- The community service is targeted to individuals who receive or are eligible to receive Medicaid.
- The community service is provided to recipients of government assistance programs that have income qualifications equivalent to, or stricter than, the definitions of low- and moderate-income as defined by the CRA Regulations. Examples include U.S. Department of Housing and Urban Development's section 8, 202, 515, and 811 programs or U.S. Department of Agriculture's section 514, 516, and Supplemental Nutrition Assistance programs.

* * * * *

§ .12(h) – 6: Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?

A6. No. The regulations recognize that community development organizations and programs are efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multistate basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The institution's assessment area(s) need

not receive an immediate or direct benefit from the institution's participation in the organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s).

In addition, a retail institution will receive consideration for certain other community development activities. These activities must benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s). Examiners will consider these activities even if they will not benefit the institution's assessment area(s), as long as the institution has been responsive to community development needs and opportunities in its assessment area(s).

§ __.12(h) – 7: What is meant by the term “regional area”?

A7. A “regional area” may be an intrastate area or a multistate area that includes the financial institution's assessment area(s). Regional areas typically have some geographic, demographic, and/or economic interdependencies and may conform to commonly accepted delineations, such as “the tri-county area” or the “mid-Atlantic states.” Regions are often defined by the geographic scope and specific purpose of a community development organization or initiative.

* * * * *

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

A3. 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 an institution's retail banking services under 12 CFR __.24(d);

- Increasing access to financial services by opening or maintaining branches or other facilities that help to revitalize or stabilize a low- or moderate-income geography, a designated disaster area, or a distressed or underserved nonmetropolitan middle-income geography, unless the opening or maintaining of such branches or other facilities has been considered in the evaluation of the institution's retail banking services under 12 CFR __.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, including credit counseling to assist low- or moderate-income borrowers in avoiding foreclosure on their homes;

- Establishing school savings programs or developing or teaching financial education or literacy 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 remittance services that increase access to financial services by low- and moderate-income persons (for example, by offering reasonably priced international remittance services in connection with a low-cost account);
- Providing other financial services with the primary purpose of community development, such as low-cost savings or checking accounts, including “Electronic Transfer Accounts” provided pursuant to the Debt Collection Improvement Act of 1996, individual development accounts (IDAs), or free or low-cost government, payroll, or other check cashing services, that increase access to financial services for low- or moderate-income individuals; and
- Providing foreclosure prevention programs to low- or moderate-income homeowners who are facing foreclosure on their primary residence with the objective of providing affordable, sustainable, long-term loan modifications and restructurings.

Examples of technical assistance activities that are related to the provision of financial services and that might be provided to community development organizations include:

- Serving on the board of directors;
- 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;
- Assisting in fund raising, including soliciting or arranging investments; and
- Providing services reflecting financial institution employees' areas of expertise at the institution, such as human resources, information technology, and legal services.

* * * * *

§ __.12(t) – 9: How do examiners evaluate loans or investments to organizations that, in turn, invest in instruments that do not have a community development purpose, and use only the income, or a portion of the income, from those investments to support their community development purpose?

A9. Examiners will give quantitative consideration for the dollar amount of funds that benefit an organization or activity that has a primary purpose of community development. If an institution invests in (or lends to) an organization that, in turn, invests those funds in instruments that do not have as their primary purpose community development, such as Treasury securities, and uses only the income, or a portion of the income, from those investments to support the organization's community development purposes, the Agencies will consider only the amount of the investment income used to benefit the organization or activity that has a community development purpose for CRA purposes. Examiners will, however, provide consideration for such instruments when the organization invests solely as a means of securing capital for leveraging purposes, securing additional financing, or in order to generate a return with minimal risk until funds can be deployed toward the originally intended community development activity.

The organization must express a bona fide intent to deploy the funds from investments and loans in a manner that primarily serves a community development purpose in order for the institution to receive consideration under the applicable test.

* * * * *

§ __.21(f) – 1: The CRA provides that, in assessing the CRA performance of nonminority- and non-women-owned (majority-owned) financial institutions, examiners may consider as a factor capital investments, loan participations, and other ventures undertaken by the institutions in cooperation with minority- or women-owned financial institutions and low-income credit unions (MWLIs), provided that these activities help meet the credit needs of local communities in which the MWLIs are chartered. Must such activities also benefit the majority-owned financial institution’s assessment area(s)?

A1. No. Although the regulations generally provide that an institution’s CRA activities will be evaluated for the extent to which they benefit the institution’s assessment area(s) or a broader statewide or regional area that includes the institution’s assessment area(s), the Agencies apply a broader geographic criterion when evaluating capital investments, loan participations, and other ventures undertaken by that institution in cooperation with MWLIs, as provided by the CRA. Thus, such activities will be favorably considered in the CRA performance evaluation of the institution (as loans, investments, or services, as appropriate), even if the MWLIs are not located in, or such activities do not benefit, the assessment area(s) of the majority-owned institution or the broader statewide or regional area that includes its assessment area(s). The activities must, however, help meet the credit needs of the local communities in which the

MWLIs are chartered. The impact of a majority-owned institution's activities in cooperation with MWLIs on the majority-owned institution's CRA rating will be determined in conjunction with its overall performance in its assessment area(s).

Examples of activities undertaken by a majority-owned financial institution in cooperation with MWLIs that would receive CRA consideration may include:

- Making a deposit or capital investment;
- Purchasing a participation in a loan;
- Loaning an officer or providing other technical expertise to assist an MWLI in improving its lending policies and practices;
- Providing financial support to enable an MWLI to partner with schools or universities to offer financial literacy education to members of its local community; or
- Providing free or discounted data processing systems, or office facilities to aid an MWLI in serving its customers.

* * * * *

§ .22(b)(4) – 2: How do examiners consider community development loans in the evaluation of an institution's record of lending under the lending test applicable to large institutions?

A2. An institution's record of making community development loans may have a positive, neutral, or negative impact on the lending test rating. Community development lending is one of five performance criteria in the lending test criteria and, as such, it is considered at every examination. As with all lending test criteria, examiners evaluate an institution's record of

making community development loans in the context of an institution's business model, the needs of its community, and the availability of community development opportunities in its assessment area(s) or the broader statewide or regional area(s) that includes the assessment area(s). For example, in some cases community development lending could have either a neutral or negative impact when the volume and number of community development loans are not adequate, depending on the performance context, while in other cases, it would have a positive impact when the institution is a leader in community development lending. Additionally, strong performance in retail lending may compensate for weak performance in community development lending, and conversely, strong community development lending may compensate for weak retail lending performance.

* * * * *

§ .23(a) – 2: In order to receive CRA consideration, what information may an institution provide that would demonstrate that an investment in a nationwide fund with a primary purpose of community development will directly or indirectly benefit one or more of the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?

A2. There may be several ways to demonstrate that the institution's investment in a nationwide fund meets the geographic requirements, and the Agencies will employ appropriate flexibility in this regard in reviewing information the institution provides that reasonably supports this determination.

In making this determination, the Agencies will consider any information provided by a financial institution that reasonably demonstrates that the purpose, mandate, or function of the fund includes serving geographies or individuals located within the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). Typically, information about where a fund's investments are expected to be made or targeted will be found in the fund's prospectus, or other documents provided by the fund prior to or at the time of the institution's investment, and the institution, at its option, may provide such documentation in connection with its CRA evaluation.

Nationwide funds are important sources of investments in low- and moderate-income and underserved communities throughout the country and can be an efficient vehicle for institutions in making qualified investments that help meet community development needs. Nationwide funds may be suitable investment opportunities, particularly for large financial institutions with a nationwide branch footprint. Other financial institutions, including those with a nationwide business focus, may find such funds to be efficient investment vehicles to help meet community development needs in their assessment area(s) or the broader statewide or regional area that includes their assessment area(s). Prior to investing in such a fund, an institution should consider reviewing the fund's investment record to see if it is generally consistent with the institution's investment goals and the geographic considerations in the regulations. Examiners will consider investments in nationwide funds that benefit the institution's assessment area(s). Examiners will also consider investments in nationwide funds that benefit the broader statewide or regional area that includes the institution's assessment area(s) consistent with the treatment detailed in Q&A § __.12(h) – 6.

End of text of the final new and revised Interagency Questions and Answers.

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

Dated:

Thomas J. Curry,

Comptroller of the Currency.

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

By order of the Board of Governors of the Federal Reserve System, November 12, 2013.

Robert deV. Frierson,

Secretary of the Board.

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

Dated at Washington, D.C., this ___ day of _____, 2013.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman,

Executive Secretary.

(SEAL)

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