

November 10, 2014

The Honorable Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
Mail Stop 9W-11
400 7th Street, SW
Washington, DC 20219

The Honorable Janet L. Yellen
Chair
Board of Governors of the Federal Reserve System
c/o Robert de V. Frierson, Secretary
Constitution Ave, NW
Washington, DC 20551

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
c/o Robert E. Feldman, Executive Secretary
Attention: Comments
550 17th Street, NW
Washington, DC 20429

RE: Community Reinvestment Act: *Interagency Questions and Answers Regarding Community Reinvestment*

**OCC Docket ID: OCC-2014-0021
Federal Reserve Docket No. OP-1497
FDIC-2014-0101-0001**

Dear Comptroller Curry, Chair Yellen, and Chairman Gruenberg:

The National Community Reinvestment Coalition (NCRC) appreciates this opportunity to comment on the proposed changes to the *Interagency Questions and Answers Regarding Community Reinvestment*.

NCRC is an association of more than 600 community-based organizations that promote access to credit and basic banking services, create and sustain affordable housing, promote job development, and ensure vibrant communities for America's working families. For more than 20

years, NCRC has been the leading voice on the Community Reinvestment Act (CRA) and has dedicated itself to the Act's enforcement, preservation, and modernization. Questions related to how CRA is implemented and enforced are core to NCRC's mission, and our members' missions.

We need a strong CRA now more than ever. We are currently facing one of the toughest economic climates in recent history, with wages and job growth stagnant and credit available only to the most pristine of borrowers. For example, the portion of home purchase loans in low- and moderate-income neighborhoods has stalled at 13 percent.¹ Small business lending is flat and, for the first time in 30 years, more businesses now close than open.² In addition, the Federal Deposit Insurance Corporation's *National Survey of Unbanked and Underbanked* revealed that 7.7 percent of households remain unbanked, and 20 percent of households are underbanked.³ It is clear that the original goals of CRA must be a priority.

Despite these grim indicators, the vast majority of banks are all passing their examinations. In fact, in recent years a mere three percent of banks have received a "Needs to Improve" rating.⁴ This strongly suggests that CRA examination grades continue to be inflated, or, if the grades are not inflated, that some of the activities being awarded CRA credit have strayed too far from the original intent of the Act.

This proposal comes at a time of unprecedented technological advancement in the financial services industry. Online banking and mobile technology have changed the way consumers interact with banks and with their finances. And, in fact, much of the proposal is focused on expanding and updating the CRA guidance to reflect these new technological advancements. While NCRC has consistently pushed to modernize CRA, it is critical that the Office of the Comptroller of the Currency, the Federal Reserve and the Federal Deposit Insurance Corporation (the Agencies) move forward with the following overall concerns:

- 1) **A bank's physical presence is the starting point for CRA.** Financial products and services must be found in the branches first, and they must align with a community's needs. Until it is clear that alternative methods of service delivery can meet community needs as adequately as bank branches, those methods should not receive equal weight in CRA evaluations.
- 2) **It is not enough that certain services and products exist.** Examiners must assess the cost, accessibility, and utilization of products and determine whether the bank's offerings actually align with a community's needs.

¹ 2013 HMDA data, Federal Reserve Report

² U.S. Census Bureau

³ FDIC, National Survey of Unbanked and Underbanked, available at <https://www.fdic.gov/news/news/press/2014/pr14091.html>

⁴ NCRC 2014 Policy Agenda, available at <http://www.ncrc.org/images/policy-agenda.pdf>

- 3) **It is not enough that certain community development outcomes exist.** A successful program is a good thing, but a successful program that is actually designed to address a community need is better. Examiners must assess the actual investment needs of a community and determine whether the bank’s initiatives actually align with the specific needs of its assessment area.
- 4) **The activities aligned with the original intent of the CRA should be prioritized.** In a time when there is a critical need for more access to credit, financial services, and financial services education, the Agencies should focus on awarding credit to those activities.
- 5) **Broader CRA modernization must become a priority.** Rather than selectively award CRA credit for activities outside assessment areas, the Agencies should consider that the definition of assessment areas is outdated and should be expanded to reflect banking’s changing landscape.

Specific language recommendations are located in the Appendix. NCRC’s comments on the proposed Interagency Questions and Answers are as follows:

Access to Banking Services: Evaluating Branches and Alternative Delivery Systems

NCRC strongly opposes the Agencies’ proposal to delete the language stating “performance standards place primary emphasis on full service branches.” NCRC also opposes the proposal to delete the statement that provides that alternative delivery systems are considered “only to the extent” that they are effective alternatives in providing services to low- and moderate-income geographies and individuals.

In existing guidance, the service test performance standards place primary emphasis on full service branches while still considering alternative systems like ATMs. As a result, examiners have focused primarily on an institution’s branching activities. In this proposed guidance, the Agencies note that there are “effective alternatives [to branches] in providing needed services to low and moderate-income geographies and individuals.”⁵ They specifically cite “technological advances in the retail banking industry, such as the internet or online banking, mobile banking, remote deposit capture and 24-hour banking kiosks.”⁶

Online and mobile technologies have grown exponentially in recent years. According to a recent study by *American Banker* and SourceMedia Research, 84 percent of banks polled offered some

⁵ Proposed Interagency Guidance

⁶ Proposed Interagency Guidance

form of mobile banking, and roughly 93 percent responded that they expected to roll out a mobile option by the end of 2015.⁷ It is clear that many online and mobile options exist. It is also clear that the accessibility, reliability, and adoption rates of these technologies—particularly in low-income communities and communities of color—do not warrant removing the primary emphasis from full service branches.

Bank branches continue to play a very important role, especially in low- and moderate-income communities and communities of color. A study from Pew Research Center shows that one-third of households earning less than \$20,000 per year do not use the internet.⁸ An additional third might use the internet at work or in a library, but do not have internet access at home. And fewer than half of those earning under \$50,000 per year have a smartphone.⁹

Another study found that only 86 percent of households in communities of color had internet access at home, and only 59 percent had internet access via a mobile cell phone.¹⁰ Despite the reach of home internet, only 51 percent used it for online banking transactions.¹¹ A mere 11 percent of all respondents said they felt comfortable using their mobile device for financial transactions.¹²

It is also unclear how broadly utilized these tools really are. The *American Banker* study found that only about one-third of bank customers have downloaded and are using banking apps.¹³ And a study conducted by the Federal Reserve revealed that just 33 percent of mobile phone users had used mobile banking in the past 12 months.¹⁴ For smartphone users the proportion was at 51 percent.¹⁵ Based on the accessibility, reliability, and usage of these online and mobile tools across all consumers, and in particular among low-income communities and communities of color, the Agencies cannot justify shifting the primary emphasis away from bank branches.

If the Agencies would like to integrate greater consideration of online and mobile delivery systems into CRA exams, they must consider the following:

⁷ Colin Wilhelm, "Mobile Banking Deployment Widespread. Next Challenge: Adoption." Bank Technology News, Oct. 29, 2014

⁸ Aaron Smith, Pew Research Center, "Technology Adoption by Lower-Income Populations," <http://www.pewinternet.org/2013/10/08/technology-adoption-by-lower-income-populations/>

⁹ Smith, Pew Research Center

¹⁰ NCLR, National Urban League, National CAPACD, "Banking in Color: New Findings on Financial Access for Low and Moderate-Income Communities," available at

http://www.nclr.org/images/uploads/publications/bankingincolor_web.pdf

¹¹ *Id.*

¹² *Id.*

¹³ Wilhelm

¹⁴ Federal Reserve Board of Governors, "Consumers and Mobile Financial Services," March 2014, available at <http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201403.pdf>

¹⁵ *Id.*

- 1) **The accessibility and reliability of these systems.** Internet access continues to expand nationwide, but it is not accessible to everyone. Moreover, not every internet connection is equally reliable and not every online system or mobile app performs at the same level.
- 2) **The range of alternatives to these systems.** Many financial transactions are complex and consumers can benefit from the guidance of bank employees. Consumers must have the option to conduct any transaction either online or at a branch. The existence of one delivery system cannot entirely replace the other.
- 3) **The cost of these systems.** The *American Banker* survey found that 86 percent of banks do not currently charge for mobile services, and 65 percent responded that they did not anticipate doing so in the future.¹⁶ These results could change just as rapidly as the development of technology itself and the Agencies must be vigilant in their review.
- 4) **The actual adoption rate of alternative systems.** The existence of alternative delivery systems is insufficient. These systems must be adopted by consumers in much stronger numbers than they are now, and across all income brackets and geographies. In particular, there must be a very strong rate of adoption in low-income communities and communities of color.
- 5) **The community's preferred approach for interacting with their bank.** Again, CRA obligations start with the bank branch. It is one thing if, over time, consumers develop a greater comfort level with online banking, but at no point should consumers be forced to adopt online and mobile systems if that is not their preferred method of engagement.
- 6) **The success of these systems within the bank's assessment area.** Even if a bank makes these systems available to all its customers, a bank's assessment area is determined by its physical presence. The reach of alternative systems is entirely irrelevant if they are not meeting the needs of customers in their assessment areas. It must be clear to examiners that this is the only data that should be considered.

Finally, it is important to note that community organizations and consumer advocates also play a vital role in the CRA examination process. Much of the data and information resources currently used by the Agencies to examine banks are also available to these groups. The Agencies should refrain from placing too much emphasis on the alternative delivery systems until the usage data can be accessed and utilized by advocates.

¹⁶ Wilhelm

Innovative and Flexible Lending Practices

NCRC strongly supports the Agencies' inclusion of small-dollar credit programs.

While small-dollar lending programs are already eligible for CRA consideration under the CRA's lending test, the Agencies propose that those products also offering credit counseling and financial education may also receive consideration under the service test. Small-dollar loan programs originated by banks offer a promising alternative to higher-cost loans offered by institutions like payday lenders. And with the financial literacy and savings components, these loan programs offer real opportunities to help build sustainable wealth and financial knowledge. It must be clear to examiners, however, that these small-dollar lending programs should only be considered if they are safe and sound alternatives to high-cost and/or predatory products.

Developing new and innovative ways to meet a community's small-dollar credit and financial education needs is a victory for communities, consumers, and banks. Consumers can develop relationships with banks, and banks play a role in helping customers improve their long-term financial management skills. NCRC strongly supports the Agencies' commitment to encouraging banks to offer reasonable and affordable small-dollar loan products. Properly structured small-dollar loans with an education component can offer borrowers an affordable and sustainable way to rebuild credit and escape the dangerous cycles created by utilizing high-cost payday lenders.

NCRC strongly supports the Agencies' consideration of alternative credit scoring models

An estimated 50 million people are denied access to credit simply because they do not have the credit history necessary to be scored by the most common models.¹⁷ A disproportionate number of these individuals are people of color and immigrants.¹⁸ It is critical that these communities be active participants in the economy moving forward.

Not having a credit score may limit job opportunities, rental housing options, the ability to own a car, and is certainly a hurdle to homeownership. It also limits a borrower's ability to access short-term credit and may push individuals into high-cost financial services. The consequences of not having a credit score can result in an otherwise financially responsible and creditworthy consumer being pushed into a cycle of debt. Having a credit score is essential for any consumer to start building wealth.

Nevertheless, consumers who are scored using alternative models may still be at risk. Examiners must be instructed to flag any predatory practices that result from these models, including pairing alternative-credit score consumers with egregiously high-priced products, be it the result of interest rates or fees.

¹⁷ <http://www.bankrate.com/brm/news/debt/debtcreditguide/new-scoring1.asp>

¹⁸ *Id.*

Community Development

NCRC supports the Agencies' efforts to clarify the language around economic development, but would like the Agencies' to clarify that not all activities that finance businesses and farms meeting the size eligibility standards should be considered community development.

Economic development is one of the least understood and least utilized categories of CRA. The category is very specific to financing small businesses that lead to job creation, retention, or improvement. Existing guidance provides examiners with a list of examples of initiatives that would be eligible for CRA credit, but this list may be artificially constricting and may not apply to all assessment areas.

The concept of "community development" under 12 CFR __.12(g)(3) involves both a "*size*" test and a "*purpose*" test that clarify what economic development activities are considered under CRA. An institution's loan, investment, or service meets the size test if it finances, either directly or through an intermediary, businesses or farms that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of \$1 million or less. It may also meet the size test if it finances the construction, rehabilitation, or maintenance of space designed for businesses or farms that meet the size test above.

To meet the purpose test, the institution's loan, investment, or service must promote economic development. Activities are considered to promote economic development if they support:

- **Permanent job creation, retention, and/or improvement** to the benefit of current or former low- and moderate-income people, including in low- and moderate-income geographies, **or** areas targeted for redevelopment by federal, state, local, or tribal governments; or
- **Federal, state, local, or tribal economic development initiatives** that include provisions for creating or improving access to quality jobs for low- and moderate-income persons and development of small businesses that employ current or former low- and moderate-income persons.

Rather than focus so much on a range of specific activities, regulators should focus more on how the activity meets local needs. Based on a robust performance context that includes data analysis and conversations with a variety of local contacts, including community organizations, economic development organizations, and workforce development practitioners, banks and regulators can gain a good understanding of the types of jobs local communities need and reward activities that truly meet those needs. Activities that generate low-wage jobs and jobs with little opportunity for economic mobility, or that lead to displacement of low- and moderate-income people, should not get CRA credit.

At the same time, due to the very specific nature of the economic development category, the new Q&A would only cover a segment of the CRA-eligible activities related to jobs and workforce development. When looking at job creation and retention, all CRA activities related to jobs and workforce development should be evaluated for their impact on quality jobs that would benefit low- and moderate-income people in general, and especially people with multiple barriers to employment.

Regulators understand that economic conditions vary greatly throughout the country and economic development strategies too will vary. The purpose of this category under CRA is for financial institutions to be meaningful partners in supporting economic development. Regulators will examine each economic development activity's outcomes to determine its responsiveness to meeting local economic development needs, including but not limited to:

- 1) Access to credit, grants, and technical assistance for small businesses and entities that serve small businesses;
- 2) Types of jobs needed with regards to wages, benefits, and targeted populations;
- 3) Types of workforce development activities needed for businesses, current employees, and/or people seeking employment; and
- 4) Types and affordability of space needed for small businesses to open, operate, develop and grow.

To determine whether a financial institution's economic development activity is effectively creating, preserving, or retaining quality jobs for low- and moderate-income people and neighborhoods, examiners may consider a variety of factors, including but not limited to:

- 1) Needs assessments prepared by governments, community organizations, and financial institutions;
- 2) Demographic and labor data such as population and unemployment rates among various populations; neighborhood level, education level, race, income, immigration status, and languages spoken; opportunities for targeted workforce development; and public housing residents, disconnected youth, immigrants, people with disabilities, and unemployed individuals;
- 3) Business demographics such as industries rising or diminishing; sectors that provide opportunities for quality jobs for people with limited education and skills; and land use constraints and opportunities; and

- 4) Community contacts including, but not limited to, community development financial institutions, economic development organizations, workforce development providers, trade associations, for-profit and nonprofit developers, and other community organizations and contacts.

Based on these criteria, regulators will evaluate how well the outcomes matched the documented need with regards to the number of jobs created, retained, or improved and to whom they went, and the number of small businesses created or retained and whom they benefited.

With regards to jobs and economic development, we encourage regulators to look at the impact of all community development activities that are connected to jobs, whether through small or large businesses. Development done well can create quality job opportunities for underserved populations, but when not done well, it can lead to low-wage jobs, displacement and lost opportunities. Likewise, direct access to assistance and capital for small businesses can have varying impact depending upon how they are structured and offered. The performance context is the best place to analyze all available data and hold extensive conversations with locally based organizations and municipalities to understand the types of jobs and workforce development opportunities that are needed, and to evaluate how banks are or are not supporting projects that meet those needs.

In high-cost cities like New York City, San Francisco, Chicago and others, people need access to quality jobs that pay well above a minimum wage to support themselves and their families, whereas other low-cost areas may have different needs. Ultimately, if activities lead to displacement, poor paying jobs with no opportunity for economic mobility, or loss of job opportunities for local residents and underserved populations, that should reflect poorly on an institution.

NCRC also encourages the Agencies to specifically list Historic Tax Credit projects as initiatives that may be eligible for CRA credit.

Historic rehabilitation creates more jobs than many more commonly cited government stimulus activities. One report states a \$1 million investment in historic rehabilitation will yield markedly better economic results in terms of job creation and taxes than a similar investment in other activities like manufacturing and telecommunications services.¹⁹ Historic Tax Credit projects create more jobs than new construction and other widely used stimulus strategies. Eighty-four percent of Historic Tax Credit transactions since 2001 have been located in low- and moderate-income census tracts.²⁰ Large commercial and residential projects are typically located in

¹⁹ David Listokin, Second Annual Report on the Economic Impact of Federal Historic Tax Credit

²⁰ Rutgers University's Center for Urban Policy Research, available at <http://www.nps.gov/tps/tax-incentives/taxdocs/economic-impact-2012.pdf>

designated economic development districts.²¹ Historic properties offer affordable space for small businesses and most Historic Tax Credit transactions are sponsored by small businesses, especially in a Main Street setting.

When a bank supports a historic rehabilitation project that will help revitalize and stabilize the community by attracting new, or retaining existing, businesses or residents and the activity has the support of the appropriate government agency, those projects should be eligible for CRA credit.

In addition to listing the Historic Tax Credit specifically, we also recommend that the Agencies add more clarity to the two methods for determining a “primary purpose of community development.” The first test is a dollar test in which a “majority” of the investment or loan provided must be allocated to community development purposes to be deemed qualified for CRA. The second test is much more complicated but does state that activities that support a “community action plan” where the intent is “primarily one or more enumerated community development purposes,” are qualified for CRA credit. This second test could be made more useful by clarifying that a project is eligible when it is consistent with an approved plan for a development district that has the support of the relevant government agency.

NCRC supports the use of energy-efficient technology but recommends that the Agencies clarify that there must be a clear and direct benefit for communities and in particular for low- and moderate-income households and geographies.

The inclusion of “green,” energy-efficient technology in affordable housing projects should be encouraged. These technologies have the ability to reduce costs to entire complexes and grids over time and create a benefit for all. But as these technologies become mainstream and the cost of including them in housing development is more comparable with traditional systems, it is not clear that these projects should always be awarded CRA credit. CRA credit should only be awarded when an institution supports the “green” technology and there is a direct, demonstrated benefit to low- and moderate-income residents.

NCRC strongly urges the Agencies to reconsider awarding CRA credit for the support of broadband infrastructure.

The expansion of broadband infrastructure into rural and tribal areas will be important to ensuring that these areas remain connected and competitive, especially as more business, commerce, and job creation activities move online. The Agencies correctly note that broadband

²¹ Id.

access in these areas remains limited. It is not clear, however, that CRA is the appropriate vehicle to support its expansion.

The expansion of broadband infrastructure is inevitable because it is so crucial to the growing expansion of online business. The activities that warrant CRA credit have broadened over time, but the primary objective is still to incentivize financial institutions to help meet the needs of low- and moderate-income individuals and geographies. Broadband access is a growing need, especially in rural areas, and it is a clear priority for the current Administration. But giving CRA credit for supporting broadband expansion is problematic. It is more important to use CRA credit to encourage financial institutions to find more direct ways to meet the needs of low- and moderate-income individuals and geographies.

Possible Additions to Existing Q&A

The proposed Q&A does not adequately reflect the needs of low- and moderate-income older adults. With the number of older adults expected to double by 2030 from 35 million to 72 million,²² it is essential that lending institutions are adequately serving the needs of aging low- and moderate-income communities. With traditional sources of retirement on the decline, nearly 75 percent of older adults are finding themselves economically vulnerable.²³ Especially vulnerable are older women²⁴ and minorities.²⁵ Many of the affordable housing and community development examples highlighted in the Q&A do not demonstrate the unique housing needs and financial services that benefit low- and moderate-income older adults.

²² U.S. Department of Health and Human Services - Administration on Aging, "A Profile of Older Americans: 2011."

²³ Tatjana Meschede, Laura Sullivan and Tomas Shapiro and Dēmos, "FROM BAD TO WORSE: SENIOR ECONOMIC INSECURITY ON THE RISE," Institute on Assets and Social Policy at Brandeis University, July 19, 2011.

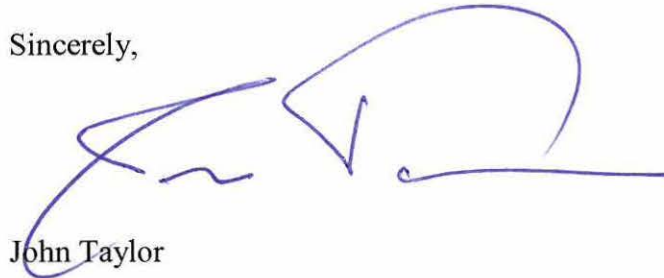
²⁴ Wider Opportunities for Women, "Doing Without: Economic Insecurity and Older Americans" No. 2: Gender | March, 2012. Cost of basic expenses is determined by the Wider Opportunities for Women (WOW) US Elder Economic Security Standard™ Index designed by WOW and the Gerontology Institute at the University of Massachusetts Boston.

²⁵ U.S. Department of Health and Human Services - Administration on Aging, "A Profile of Older Americans: 2011."

Communities all across the country suffered tremendously in the wake of the financial crisis. Laws like CRA will facilitate their recovery. With that in mind, it is more important now than ever that banks uphold their obligations under CRA and work to support the credit, financial services, and development needs of their communities. The Agencies must align community needs with outcomes and with the original purpose of CRA. The Agencies must also recognize that while the business of banking has changed for some, bank branches still play a critical role in communities and in the lives of individual consumers and must continue to be the basis for assessment areas and CRA performance.

Thank you for this opportunity to comment on the *Interagency Questions and Answers Regarding Community Reinvestment*. If you have any questions about these recommendations, please contact me at johntaylor@ncrc.org or (202) 464-2703, or NCRC's Legislative Policy Analyst, Elizabeth Kemp, at ekemp@ncrc.org or (202) 524-4878.

Sincerely,



John Taylor
President and CEO
National Community Reinvestment Coalition

APPENDIX

Proposed Wording of § __.12(g)(3)-1

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

A1. No. The concept of “community development” under 12 CFR __.12(g)(3) involves both a “**size**” test and a “**purpose**” test that clarify what economic development activities are considered under CRA. An institution's loan, investment, or service meets the size test if it finances, either directly or through an intermediary, businesses or farms that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of \$1 million or less. It may also meet the size test if it finances the construction, rehabilitation, or maintenance of space designed for businesses or farms that meet the size test above.

To meet the purpose test, the institution's loan, investment, or service must promote economic development. Activities are considered to promote economic development if they support:

- **Permanent job creation, retention, and/or improvement** to the benefit of current or former low- and moderate-income people, including in low- and moderate-income geographies; **or** areas targeted for redevelopment by federal, state, local, or tribal governments;
- **Federal, state, local, or tribal economic development initiatives** that include provisions for creating or improving access to quality jobs for low- and moderate-income persons and development of small businesses that employ current or former low- and moderate-income persons.

Regulators understand that economic conditions vary greatly throughout the country, and as such, economic development strategies too will vary. The purpose of this category under CRA is for financial institutions to be meaningful partners in supporting economic development. Regulators will examine each economic development activity's outcomes to determine its responsiveness to meeting local economic development needs, including but not limited to:

- Access to credit, grants, and technical assistance for small businesses and entities that serve small businesses;
- Types of jobs needed with regards to wages, benefits, and targeted populations;
- Types of workforce development activities needed for businesses, current employees, and/or people seeking employment; and
- Types and affordability of space needed for small businesses to open, operate, develop and grow.

To determine whether a financial institution's economic development activity is effectively creating, preserving, or retaining quality jobs for low- and moderate-income people and neighborhoods, examiners may consider a variety of factors, including but not limited to:

- Needs assessments prepared by governments, community organizations, and financial institutions;
- Demographic and labor data such as population and unemployment rates along various populations; neighborhood level, education level, race, income, immigration status, and languages spoken; opportunities for targeted workforce development; and public housing residents, disconnected youth, immigrants, people with disabilities, and unemployed individuals;
- Business demographics such as industries rising or diminishing; sectors that provide opportunities for quality jobs for people with limited education and skills; and land use constraints and opportunities; and
- Community contacts including, but not limited to, community development financial institutions, economic development organizations, workforce development providers, trade associations, for-profit and nonprofit developers, and other community organizations and contacts.

Based on these criteria, regulators will evaluate how well the outcomes matched the documented need with regards to the number of jobs created, retained, or improved and to whom they went, and the number of small businesses created or retained and whom they benefited.

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

Proposed Wording of § __.12(g)(3)-1 and new § __.12(g)(3)-2

Federal, state, local or tribal economic development initiatives that include provisions for creating or improving access by low- and moderate-income persons to jobs, affordable housing, financial services or community services, ***or activities in designated federal, state, local or tribal economic development districts that have plans that provide one or more of the above benefits and revitalize or stabilize the community by attracting new, or retaining existing, businesses or residents, and the activities have support in the form of a letter or minutes of a public meeting of the governmental agency with jurisdiction over such a district.***

To avoid confusion, we would also suggest a change to the existing Q&A §___.12 (h) – 8 to support our proposed edits to Q&A §___.12(g) (3) – 1. That question provides two methods of determining a “primary purpose of community development.” The first test is a dollar test in which a “majority” of the investment or loan provided must be allocated to community development purposes to be deemed qualified for CRA. The second test is much more complicated but does state that activities that support a “community action plan” where the intent is “primarily one or more enumerated community development purposes” are qualified for CRA credit. In our experience, banks almost always use the easier, more quantifiable first test rather than the challenging language of the second test. We propose that the new Q&A §___.12 (h) – 8 would read as follows:

- (1) if the express bona fide intent of the activity as stated, for example, in a prospectus, loan proposal or community action plan, is primarily one or more of the enumerated community development purposes *or is consistent with the approved plan for a designated federal state or local economic development district, and has the support, in the form of a letter of minutes of a public meeting, of the governmental agency with jurisdiction over such a district, . . .* then the requisite primary purpose may be found.

Possible Additions to Existing Q&A

What are examples of community development loans?

- Borrowing for the development of senior housing rehabilitation and construction that serve low- and moderate-income older adults.
- Providing home rehabilitation modification loans that improve accessibility (such as the installation of bathroom hand railings) for low- and moderate-income older adults and adults with disabilities.

What is meant by “provision of financial services”?

- Providing financial education and counseling to low- and moderate-income older adults concerning their retirement planning needs and other financial needs.