

additional 30 days to send comments to OMB on the information collection as described below.

**DATES:** Comments must be submitted on or before April 17, 2013.

**ADDRESSES:** Send comments regarding the burden estimate, including suggestions for reducing the burden, to OMB, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility, the accuracy of the Department's estimate of the burden of the proposed information collection, ways to enhance the quality, utility and clarity of the information to be collected, and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Angela Dow by telephone at 202-366-1246, by fax at 202-366-4566, or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE., PHP-30, Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:**

*Title:* Integrity Management in High Consequence Areas for Operators of Hazardous Liquid Pipelines.

*OMB Control Number:* 2137-0605.

*Current Expiration Date:* 05/31/2013.

*Abstract:* Hazardous liquid operators with pipelines located in or that could affect high consequence areas (i.e., commercially navigable waterways, high population areas, other populated areas, and unusually sensitive areas as defined in 49 CFR 195.450) are subject to certain information collection requirements relative to the Integrity Management Program provisions of 49 CFR 195.452.

*Affected Public:* All pipeline operators of hazardous liquid pipelines located in or that could affect high consequence areas.

*Annual Reporting and Recordkeeping Burden:*

*Annual Responses:* 203.

*Annual Burden Hours:* 325,470.

*Frequency of collection:* On occasion.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended, and 49 CFR 1.48.

Issued in Washington, DC, on March 12, 2013.

**John A. Gale,**

*Director, Office of Standards and Rulemaking.*

[FR Doc. 2013-06129 Filed 3-15-13; 8:45 am]

**BILLING CODE 4910-60-P**

**DEPARTMENT OF THE TREASURY**

**Proposed Collection; Comment Request; Office of Financial Stability**

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Financial Stability, within the Department of Treasury, is soliciting comments concerning the Troubled Asset Relief Program—Making Home Affordable Participants.

**DATES:** Comments must be received on or before May 17, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to the Department of the Treasury, Departmental Offices, Office of Financial Stability, ATTN: Tracy Rogers, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 927-8868.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to the Department of the Treasury, Departmental Offices, OFS, ATTN: Tracy Roger, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 927-8868.

**SUPPLEMENTARY INFORMATION:**

*Title:* Troubled Asset Relief Program—Making Home Affordable Participants.

*OMB Number:* 1505-0216.

*Abstract:* Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Public Law 110-343), the Department of the Treasury has implemented several aspects of the Troubled Asset Relief Program. Among these components is a voluntary foreclosure prevention program—Making Home Affordable (MHA) program, under which the Department uses TARP capital to lower the mortgage

payments of qualifying borrowers. The Treasury does this through agreements with mortgage servicers (Servicer Participation Agreements, or SPAs) to modify loans on their systems. All servicers are eligible to participate in the program.

*Type of Review:* Extension without change of a currently approved collection.

*Affected Public:* Individuals or Households.

*Estimated Number of Annual Respondents:* 130.

*Estimated Number of Annual Responses per Respondent:* 1,560.

*Estimated hours per response:* 8.

*Estimated Total Annual Burden Hours:* 12,480.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 13, 2013.

**Dawn Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2013-06130 Filed 3-15-13; 8:45 am]

**BILLING CODE 4810-25-P**

**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**

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC); Board of

Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, Board, and FDIC (collectively, the Agencies) are proposing to clarify their Interagency Questions and Answers Regarding Community Reinvestment to address several community development issues. The Agencies propose to revise five questions and answers, which address (i) community development activities outside institutions' assessment areas, both in the broader statewide or regional area and in nationwide funds; (ii) additional ways to determine whether recipients of community services are low- or moderate-income; and (iii) providing a community development service by serving on the board of directors of a community development organization. The Agencies also propose to add two new questions and answers, one of which addresses the treatment of community development performance in determining an institution's lending test rating, and the other addresses the quantitative consideration given to a certain type of community development investment. Finally, the Agencies also propose to redesignate one question and answer without substantive change.

**DATES:** Comments on the proposed questions and answers must be received on or before May 17, 2013.

**ADDRESSES:** Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Please use the title "Community Reinvestment Act: Interagency Questions and Answers Regarding Community Reinvestment" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Email:** [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).
- **Mail:** Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Mail Stop 9W-11, 400 7th Street SW., Washington, DC 20219.
- **Fax:** (571) 465-4326.
- **Hand Delivery/Courier:** 400 7th Street SW., Washington, DC 20219.

**Instructions:** You must include "OCC" as the agency name and "Docket ID OCC-2013-0003" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business

or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice by any of the following methods:

- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

- **Docket:** You may also view or request available background documents and project summaries using the methods described above.

**Board:** You may submit comments, identified by Docket No. OP-1456 by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- **FederaleRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Email:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number in the subject line of the message.
- **Fax:** (202) 452-3819 or (202) 452-3102.

• **Mail:** Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. All public comments will be made available on the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in person in Room MP-500 of the Board's Martin Building (20th and C Streets NW., Washington, DC) between 9:00 a.m. and 5:00 p.m. on weekdays.

**FDIC:**

- **Mail:** Written comments should be addressed to Robert E. Feldman,

Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

- **Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

• **Agency Web site:** <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow instructions for submitting comment on the agency Web site.

- **Email:** You may also electronically mail comments to [comments@fdic.gov](mailto:comments@fdic.gov).

• **Public Inspection:** Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1005, Arlington, Virginia 22226, between 9:00 a.m. and 4:00 p.m. (EST), Monday to Friday.

**FOR FURTHER INFORMATION CONTACT:**

OCC: Bobbie K. Kennedy, Bank Examiner, Compliance Policy Division, (202) 649-5470; or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 649-6350, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Catherine M.J. Gates, Senior Project Manager, (202) 452-2099; or Theresa A. Stark, Senior Project Manager, (202) 452-2302, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

FDIC: Pamela A. Freeman, Senior Examination Specialist, Compliance & CRA Examinations Branch, Division of Depositor and Consumer Protection, (202) 898-3656; or Surya Sen, Section Chief, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898-6699; or Richard M. Schwartz, Counsel, Legal Division, (202) 898-7424, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

**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 on March 11, 2010 (2010 Questions and Answers) (75 FR 11642).

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, they 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 question and answer (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.

In accordance with their statutory responsibilities, the Agencies regularly review examination policies, procedures, and guidance to better serve the goals of the CRA. To achieve these goals, the Agencies have reviewed various public comments, including comments received during public hearings held in 2010. A number of comments raised during this review related to community development. Accordingly, the Agencies have identified areas in the Questions and Answers regarding community development where clarification or additional guidance may be warranted to address and clarify some of the issues raised during this review.

The Agencies note that community development is an important component of community reinvestment. Community development activities are considered under the regulations' large institution, intermediate small institution, and wholesale and limited purpose institution performance tests. See 12 CFR §§ \_\_\_\_\_.22(b)(4), \_\_\_\_\_.23, \_\_\_\_\_.26(c), and \_\_\_\_\_.25, respectively. Small institutions may use community development activity to receive consideration toward an outstanding rating. Overall, community development has the effect of improving the circumstances for low- and moderate-income individuals, or of stabilizing and revitalizing the communities in which they live or work. In this proposal, the Agencies

intend to address community development-related issues through the Questions and Answers guidance, the Agencies' usual procedure for addressing non-regulatory changes. This notice addressing several community development issues is intended to be the Agencies' first step to addressing substantive and significant issues raised by commenters. After the Agencies have considered comments received on this proposal, the Agencies plan to republish the amended Questions and Answers in final format. The Agencies also intend to revise their examination procedures to reflect the final guidance and to develop examiner training in order to promote consistent application of the guidance within and among the Agencies.

### Summary of Comments Regarding Community Development

Industry and community organizations generally agree that community development activities are undervalued. Further, commenters, primarily those from community organizations, stated that the Agencies should evaluate the specifics and the outcomes of community development loans and investments to ensure that they provide value and impact to institutions' communities.

Commenters from both financial institutions and community organizations stated that the Agencies should provide further guidance on how an institution must "adequately address the community development needs of an institution's assessment area(s)" before out-of-assessment area activities are considered. As a related matter, commenters described situations in which too many institutions try to find scarce community development projects to fulfill their CRA obligations in some locations, while, in other locations, there are few or no institutions attempting to address community development needs. A number of commenters noted that nationwide funds could be an efficient means of addressing community development needs; however, commenters have suggested that the current methods of "earmarking" investments so that individual investors will be assured of CRA consideration in their assessment area(s) may deter some institutions from making investments in such funds.

Generally, commenters indicated they are satisfied with the types of activities that receive consideration as community development activities; however, some commenters believe that institutions' community development loans to, and investments in, certain types of entities should receive consideration regardless

of the entity's location. Similarly, these commenters opined that any investment made in a nationwide fund that serves a national market should be given consideration. Other commenters oppose giving such consideration to regional or nationwide funds. For example, one commenter stated that regional funds would hurt smaller and more rural markets. Another commenter has expressed concern that favorable consideration for all banks invested in multi-regional funds would remove the focus from the banks' existing duty to properly serve the consumers in their assessment area(s).

The Agencies believe that the proposed revisions and additions to the Questions and Answers set forth in this **Federal Register** notice may help to address and clarify some of these issues concerning community development.

### Proposed Revisions to 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)*

Current Q&As § \_\_\_\_\_.12(h)-6 and § \_\_\_\_\_.12 (h)-7

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). Current Q&As § \_\_\_\_\_.12(h)-6 and § \_\_\_\_\_.12 (h)-7 were intended to assure financial institutions that community development loans and services and qualified investments in the broader statewide or regional area(s) that includes their assessment area(s) would be provided consideration in their CRA evaluations. However, based on comments from both financial institutions and community organizations, the Agencies believe that these two Q&As could benefit from additional clarification.

Current Q&A § \_\_\_\_\_.12(h)-6 addresses whether there must be an 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). The Q&A states that the answer is generally no. It continues by first addressing community development

activities that could benefit the institution's assessment area(s), because the purpose, mandate, or function of the organization or fund in which the institution is investing or to which it is providing loans or services includes serving an area that includes the institution's assessment area(s). Although the activities of the organization or fund may not always directly benefit the institution's assessment area(s), the Agencies believe that, at some point, the institution's assessment area(s) may receive some benefit. For this reason, community development loans and services and qualified investments to or in such community development projects, organizations, or entities will receive consideration. The current Q&A then addresses other community development activities that, although located in the broader statewide or regional area in which the institution's assessment area(s) is located, will benefit individuals or areas that are not within the institution's assessment area(s). The current Q&A specifically states that, if an institution has, "considering its performance context," "adequately addressed the community development needs of its assessment area(s)," it will also receive consideration for those activities, even if those activities will not benefit the institution's assessment area(s).

Financial institution commenters, in particular, noted that it is unclear what is meant by "adequately addressed the community development needs of its assessment area(s)." Further, given the lack of clarity, both community organizations and financial institutions indicated that institutions have been unwilling to engage in community development activities without knowing with a degree of certainty that they will receive consideration for such activities in their CRA evaluations.

Commenters also noted that current Q&A § \_\_\_\_.12(h)-7, which addresses the meaning of the term "regional area," is a source of confusion. In addition to explaining the term "regional area," the Q&A states that "[w]hen examiners evaluate community development loans and services and qualified investments that benefit a regional area that includes the institution's assessment area(s), they will consider the institution's performance context as well as the size of the regional area and the actual or potential benefit to the institution's assessment area(s). With larger regional areas, benefit to the institution's assessment area(s) may be diffused and, thus, less responsive to assessment area needs."

Current Q&A § \_\_\_\_.12(h)-7 was intended to address the qualitative consideration that some community development activities would receive when examiners considered them, not the quantitative consideration that those activities would be afforded. However, the Agencies understand that some financial institutions may interpret the Q&A to mean that, if there was a diffuse or uncertain potential benefit to the institution's assessment area(s), the community development activity would not receive consideration (either qualitative or quantitative) in the institution's CRA evaluation. As a result, such financial institutions may have been hesitant to engage in community development activities outside their assessment area(s), even if the purpose, mandate, or function of the entity in which they were investing or to which they were lending or providing community development services included serving geographies or individuals located within the institution's assessment area(s). Financial institutions also may have been less likely to engage in those community development activities that would benefit geographies or individuals located somewhere within the broader statewide or regional area that includes the institution's assessment area(s) but that would not benefit its assessment area(s). According to both financial institution and community organization commenters, the confusion generated by Q&A § \_\_\_\_.12(h)-7 may have resulted in many financial institutions refusing to engage in community development activities unless they were certain that their assessment area(s) would benefit.

Given the potential uncertainty of institutions regarding whether community development activities benefiting areas or individuals in the broader statewide or regional area that includes their assessment area(s) would receive the same consideration as an activity directly benefiting the institutions' assessment area(s), they may not have engaged in those activities and worthwhile community development needs may have continued to be unmet. Commenters have stated, for example, that in cities where numerous major financial institutions have designated assessment areas, significant concentrations of community development loans and investments may occur, while in the broader statewide or regional area that includes these institutions' assessment areas, underinvestment in community development loans and investments occurs despite significant needs.

Proposed Revised Q&As § \_\_\_\_.12(h)-6 and § \_\_\_\_.12(h)-7

The Agencies propose 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. The first paragraph of the answer in Q&A § \_\_\_\_.12(h)-6 would remain unchanged. Accordingly, the Agencies would reaffirm that an institution's activity will be considered a community development loan or service or a qualified investment if it supports an organization or activity that covers a statewide or regional 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). The Agencies propose to revise the second paragraph of the answer in Q&A § \_\_\_\_.12(h)-6 to remove the phrase "adequately addressed the community development needs of its assessment area(s)." Instead, the Agencies propose 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."

Further, in Q&A § \_\_\_\_.12(h)-7, the Agencies propose to modify the current description of what is meant by the term "regional area" for additional clarity and flexibility. In addition, to prevent the misinterpretation described above, the Agencies propose to delete the rest of the Q&A, which currently states: "When examiners evaluate community development loans and services and

qualified investments that benefit a regional area that includes the institution's assessment area(s), they will consider the institution's performance context as well as the size of the regional area and the actual or potential benefit to the institution's assessment area(s). With larger regional areas, benefit to the institution's assessment area(s) may be diffused and, thus, less responsive to assessment area needs." The Agencies believe this text is no longer necessary given the misinterpretation of the current language and the clarification that is being provided in proposed revised Q&A § \_\_\_\_\_.12(h)-6.

The text of proposed revised Q&As § \_\_\_\_\_.12(h)-6 and § \_\_\_\_\_.12(h)-7 follows:

§ \_\_\_\_\_.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). However, such 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). 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.

§ \_\_\_\_\_.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.

The Agencies solicit comments on all aspects of these proposed revised Q&As. In addition, the Agencies specifically request commenters' views on the following:

- Do the revised Q&As clearly convey the Agencies' intent that community development activities in the broader statewide or regional area that includes an institution's assessment area(s) will receive consideration?

- Will this clarification of consideration in the broader statewide or regional area that includes an institution's assessment area(s) provide an incentive for banks to increase their community development activities or expand their opportunities to engage in community development activities?

- Does "community development activities being conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s)" raise the same uncertainty as "adequately addressed the community development needs of its assessment area(s)"? If so, how can the Agencies better describe the concept that a financial institution cannot ignore legitimate and financially reasonable community development needs and opportunities in its assessment area(s) to engage in community development activities elsewhere in the broader statewide or regional area when those activities will not provide any benefit to its assessment area(s)?

- Does removal of the portion of current Q&A § \_\_\_\_\_.12(h)-7 that discussed a diffuse potential benefit to an institution's assessment area(s)

alleviate the confusion between the two Q&As and help to clarify that community development activities in the broader statewide or regional area that includes an institution's assessment area(s) will receive consideration?

- Is the proposed definition of "regional area" sufficiently clear and appropriately flexible?

## II. Investments in Nationwide Funds

Current Q&A § \_\_\_\_\_.23(a)-2

In 2007, the Agencies proposed a new Q&A § \_\_\_\_\_.23(a)-2 addressing consideration of institutions' investments in national or regional funds. See 72 FR 37922 (July 11, 2007). After considering the 33 comments received, the Agencies adopted a final Q&A in 2009 (2009 Q&A). See 74 FR 498 (Jan. 6, 2009). The 2009 Q&A addressed investments in nationwide funds; however, as originally proposed, the Q&A also would have addressed regional funds. This refinement to the 2009 Q&A was made to avoid overlap with Q&As § \_\_\_\_\_.12(h)-6 and § \_\_\_\_\_.12(h)-7, which address investments in statewide and regional funds.

The Agencies had 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).

Since adopting the 2009 Q&A, the Agencies have received comments addressing nationwide funds. Some commenters have argued that there should be broad favorable consideration provided to any financial institution that invests in nationwide funds, while others have asserted that consideration

should not be provided for investments in nationwide funds because investments in such funds are not guaranteed to benefit local organizations. Although a number of commenters suggested that the focus should be on an institution's duty to serve consumers in its assessment area(s), some suggested that the Agencies should help regional and larger financial institutions make investments in multi-investor funds and encourage those institutions to invest in areas outside of their markets, especially in rural and underserved areas. In addition, some commenters advised that a retail financial institution should be able to receive consideration for qualified investments, regardless of their location, if the institution has adequately addressed the credit needs in its assessment area(s). Among these commenters, some suggested that a "Satisfactory" rating on the institution's previous examination would be indicative of adequately addressing credit needs in its assessment area(s); other commenters believed the standard should be more stringent—an "Outstanding" rating on the previous examination.

Several commenters recommended that the Agencies should simplify the documentation suggested in the Q&A for an institution to receive consideration for investments in nationwide funds. At least one commenter believed that the documentation suggestions in the current Q&A, such as side letters, create disincentives for financial institutions to participate in multi-investor funds. Several commenters suggested that investors should be attributed with a pro-rata share of the overall fund for CRA purposes because, legally, each investor owns a pro-rata share of each investment. They asserted that the advantage of a pro-rata share approach would be that several investors would be able to receive consideration for a project in a certain area. These commenters thought side letters artificially award investment projects to one investor, excluding other investors from consideration for those projects. Other commenters, however, were concerned about a pro-rata method for allocating shares of each project given the difficulty in determining whether an investing financial institution's investment addresses the geographic requirements in the regulations. Another commenter suggested that the only equitable method of distributing CRA consideration for multi-investor fund investments is to use the location of a fund's projects, but even this commenter was concerned that each

financial institution should receive full consideration and full weighting of the entire amount of its investment. A different commenter proposed that, if a nationwide fund has at least one investment in the broader statewide or regional area that includes the investing financial institution's assessment area(s), the institution should receive full consideration for its investment in the fund.

The Agencies also received comments addressing assessment area issues that are relevant to the consideration of investments in nationwide funds. For example, commenters suggested that global and other large institutions that have relatively small assessment areas should be encouraged to invest in underserved areas and receive full CRA consideration for doing so. Other commenters focused on where a financial institution does business, particularly an institution with one or a few branches. Those commenters advocated that such financial institutions should provide CRA-type activities wherever they do business—not only in their assessment area(s). Commenters also suggested that the regulations' current approach to delineating assessment areas may create disincentives for financial institutions to provide financial services to low- or moderate-income communities and rural areas that are not part of their assessment area(s) due to their lack of a physical presence.

#### Proposed Revised Q&A § \_\_\_\_.23(a)–2

As discussed above, the Agencies believe that revisions to existing guidance can address some of the concerns raised in the context of investments in nationwide funds. Current Q&A § \_\_\_\_.23(a)–2 provides guidance about investments in nationwide funds in the context of the CRA regulations' scope of the investment test—that the Agencies evaluate an institution's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes its assessment area(s). See 12 CFR \_\_\_\_.23(a).

To address some of the commenters' concerns, the Agencies are proposing to revise Q&A § \_\_\_\_.23(a)–2. First, as in the 2009 Q&A, the proposed Q&A would state that there may be several ways to demonstrate that an institution's investment in a nationwide fund meets the geographic requirements and that the Agencies will employ flexibility when reviewing information provided by the institution. The proposed Q&A also would highlight that

information about where a fund's investments are expected to be made or targeted usually 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. To address some of the commenters' concerns about side letters and earmarking of projects, the proposed revised Q&A would no longer suggest that written documentation by the fund demonstrating earmarking, side letters, or pro-rata allocations may be provided at an institution's option. The Agencies believe that earmarking and side letters may be burdensome and may provide disincentives to investing financial institutions.

In addition, the Agencies believe that the current Q&A § \_\_\_\_.23(a)–2 places too much focus on quantitative measures tied to the assessment area that do not give sufficient recognition to the broader community development needs of the area or the business model of the financial institution making the investment. The proposed revised Q&A continues to recognize that nationwide funds are important sources of investments for 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 Q&A stresses 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. Moreover, nationwide funds may be an effective means of engaging in community development activities for other financial institutions with a nationwide business focus, including wholesale or limited purpose institutions, which are evaluated under the community development test.

Further, the proposed revised Q&A states 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). However, as the proposed revised Q&A notes, 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 Q&A advises 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 performance context of a particular institution is very important when determining whether investments in nationwide funds are appropriate.

The text of the proposed revised Q&A § \_\_.23(a)-2 follows:

§ \_\_.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 for 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 or for other financial institutions with a nationwide business focus, including wholesale or limited purpose institutions. 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). 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. 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. *See also* Q&As § \_\_.12(h)-6 and § \_\_.12(h)-7 (additional information about recognition of investments benefiting an area outside an institution's assessment area(s).)

The Agencies intend for this proposed revised Q&A to apply only to nationwide funds. Institutions that are considering investments in statewide or regional funds would continue to rely on Q&As § \_\_.12(h)-6 and § \_\_.12(h)-7.

The Agencies solicit comments on all aspects of this proposed revised Q&A. In addition, the Agencies specifically request commenters' views on the following:

- Would the proposed revised Q&A assist institutions that deliver products on a nationwide basis to address

community needs in areas where they provide products and services?

- When might nationwide funds be appropriate investments for regional or smaller institutions?

- Some commenters indicated that current methods of "earmarking" investments, including through the use of side letters, are burdensome. Are such methods, in fact, burdensome and, if so, in what way?

- If the proposed revised Q&A is adopted, how should investments in nationwide funds be considered in an investing institution's CRA evaluation? Should there be a special category for investments in nationwide funds? How would such a category affect the amounts of an institution's investments at the assessment area and/or statewide levels?

- Alternatively, should investments in nationwide funds be attributed to particular states or assessment areas? If so, how can that be done in a meaningful manner, particularly if there is no earmarking by the fund?

- If nationwide fund investments are attributed to particular states or assessment areas, how can the Agencies avoid double counting the same funds in the same assessment areas in different institutions' evaluations?

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

One prong of the definition of "community development" is providing community services targeted to low- or moderate-income individuals. *See* 12 CFR § \_\_.12(g)(2). Current Q&A § \_\_.12(g)(2)-1 provides guidance on ways that financial institutions may determine that community services are being provided to low- or moderate-income individuals.

Commenters have noted two common situations in which institutions may provide community services to low- or moderate-income people: (1) At schools with a majority of students who receive free or reduced-price meals, and (2) to individuals who receive or are eligible to receive Medicaid. However, the commenters stated that it is not clear whether the Agencies deem such community services as being provided to low- or moderate-income individuals without additional income information about the recipients of such services being provided by the financial institution.

Financial institutions often provide funding for organizations that provide community services to students and their families through schools at which the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture's (USDA)

National School Lunch Program. The USDA's eligibility guidelines for free and reduced-price meals are based on the Federal income poverty guidelines and are stated by household size. The CRA regulations, on the other hand, define income based on the area median family income, based on a family of four individuals. In short, the USDA's eligibility guidelines are based on nationwide incomes, while the CRA regulations focus on local incomes. However, an analysis of USDA eligible incomes, based on an average household size of four, against the vast majority of the area median incomes of the Metropolitan Statistical Areas (MSAs) and non-MSA areas in the United States shows that the USDA-eligible incomes generally are less than or very similar to the median family incomes that would be considered low or moderate for an MSA or a non-MSA portion of a state.

Therefore, the Agencies propose to revise Q&A § \_\_\_\_.12(g)(2)-1 to add that, if a community service is provided to students or their families from a school where the majority of students qualify for free or reduced-price meals under the USDA's National School Lunch Program, the community service would be deemed to be provided to low- or moderate-income individuals.

Commenters also noted that the receipt of Medicaid should be an indicator that the recipient is low- or moderate-income for purposes of the CRA regulations. Medicaid is generally available only to individuals with limited income and assets. Although each state determines its own financial criteria for Medicaid recipients, the income criteria generally are based on the state poverty level. Thus, as with the income thresholds used to determine a student's eligibility for free or reduced-price meals, the income criteria for Medicaid are not based on area median income being less than 50 percent or less than 80 percent, respectively, for low- or moderate-income individuals, as defined in the CRA regulations at 12 CFR \_\_\_\_.12(m). As described more fully above, however, the state poverty levels used to determine Medicaid eligibility are, in most cases, less than or similar to the income levels considered low- or moderate-income under the CRA regulations. As a result, the Agencies believe eligibility for Medicaid should be considered as an example of a way that a financial institution may determine that community services are being targeted to low- or moderate-income individuals. Accordingly, the Agencies propose to revise Q&A § \_\_\_\_.12(g)(2)-1 to add targeting of a community service to individuals who receive or are eligible

to receive Medicaid as another example of how a financial institution could determine that community services are targeted to low- or moderate-income persons.

The text of proposed revised Q&A § \_\_\_\_.12(g)(2)-1 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:

- 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 Agencies solicit comments on all aspects of this proposed revised Q&A. In addition, the Agencies specifically request commenters' views on the following:

- Will the use of eligibility for free and reduced-price meals and Medicaid effectively identify individuals who are low- or moderate-income?

- Will the use of these proxies reduce the burden on financial institutions and community organizations to obtain actual income and, thus, promote the provision of community development services?

- Are there other commonly used proxies for low- or moderate-income that should be specifically included in the Q&A?

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

Current Q&A § \_\_\_\_.12(i)-3 states that providing technical assistance to organizations that engage in community development activities (as defined by the regulation) is considered a community development service. Some commenters stated that they were uncertain whether service on the board of directors of a community development organization would receive consideration as a community development service, or if such service would receive consideration only under certain circumstances, for example, if the board member also serves on a loan review committee or otherwise provides specialized financial services.

The Agencies have previously stated that "service on the board of directors of an organization that promotes credit availability or affordable housing" meets the criterion that a community development service must be related to the provision of financial services. See Joint Final Rule, 60 FR 22156, 22160 (May 4, 1995). Service by financial institution personnel on the board of directors of an organization engaged in community development activities should consistently receive consideration as a community development service. To further clarify this point, the Agencies propose to modify current Q&A § \_\_\_\_.12(i)-3 to include service on the board of directors as an explicit example of a technical assistance activity that can be provided to community development organizations and that would receive consideration as a community development service.

The text of proposed revised Q&A § \_\_\_\_.12(i)-3 follows:

§ \_\_\_\_.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 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; and
- Assisting in fund raising, including soliciting or arranging investments.

The Agencies request comment on whether there are other activities that should also be included in this Q&A as explicit examples of community development services.

## Proposed New Questions and Answers

### I. Qualified Investments

As noted above, several commenters asserted that CRA evaluations should consider the impact of community development loans and services and qualified investments on an institution's performance ratings. The Agencies believe that the qualitative performance criteria considered in CRA evaluations address the responsiveness to community needs. Further, Q&A § \_\_\_\_\_.23(e)-1 explains how the qualitative factors are considered when evaluating an institution's qualified investments. However, the Agencies are proposing 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 have become aware of investment or loan opportunities whereby 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, and uses only the income (or a portion thereof) from the investment to support the organization's 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 and loans as qualified investments or community development loans, particularly when they are compared with investments or loans to other organizations for which the entire amount of those investments or loans are used to support the organizations' community development purpose. To address this concern, the Agencies are proposing new Q&A § \_\_\_\_\_.12(t)-9, which would provide guidance to examiners about the amount of quantitative consideration to provide for these types of investments or loans.

The proposed new Q&A follows:  
 § \_\_\_\_\_.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.

The Agencies solicit comments on this proposed new Q&A generally, but in particular, would like comments addressing the following:

- Is the proposed new Q&A sufficiently clear?
- Will the proposed Q&A encourage or discourage investments or loans in organizations with a community development mission?
- Does the proposed Q&A provide the flexibility necessary to encourage community development activities, whether direct, indirect, or through the provision of capital investments, in connection with an organization with a primary purpose of community development?

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

As discussed above, a number of commenters asserted that community development activities are undervalued. More specifically, several commenters stated that insufficient weight is given to community development loans in the CRA examination. To address this concern, the Agencies propose 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.

The lending test applicable to large financial institutions consists of five performance criteria: (i) Lending activity, (ii) geographic distribution, (iii) borrower characteristics, (iv) community development lending, and (v) innovative or flexible lending practices. See 12 CFR \_\_\_\_.22(b). The interagency examination procedures and the examination practices of the Agencies currently address how lending activity, geographic distribution, borrower characteristics, and innovative or flexible lending practices are considered. However, the practices at the three Agencies have not always been consistent with regard to community development lending.

In 2000, the OCC adopted its internal guidance to examiners, "Large Bank CRA Examiner Guidance." Although this guidance provided direction to OCC examiners about how to conduct a large bank CRA evaluation, the document also was made publicly available. See OCC Bulletin 2000–35 (Dec. 29, 2000). This guidance explains that community development lending performance may have only a positive or neutral impact on overall lending test conclusions.

On the other hand, both the FDIC and the Board consider community development lending performance in all instances. Examiners provide a conclusion regarding an institution's community development lending performance when that performance has

a positive, neutral, or negative impact on the lending test rating.

The Agencies are proposing new Q&A § \_\_\_\_.22(b)(4)–2 to address this inconsistency among the Agencies and to address commenters' concerns that community development lending is undervalued. The proposed Q&A clarifies that an institution's record of making community development loans may have a positive, neutral, or negative impact on the institution's lending test rating. The Agencies would consider the 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.

The text of proposed new Q&A § \_\_\_\_.22(b)(4)–2 follows:

§ \_\_\_\_.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.

The Agencies solicit comments on this proposed new Q&A. In particular, comment is requested on the following:

- Does the proposed Q&A recognize the appropriate value of community development lending, while allowing flexibility based on performance context consideration?
- Will this proposed Q&A help to promote additional community development lending?
- Does this proposed Q&A appropriately clarify the consideration given to community development lending as one of the five performance criteria under the lending test?
- Does this proposed Q&A raise any issues that the Agencies will need to address with revised ratings guidance? If so, what are they and how should they be addressed?

## Redesignation of Existing Question and Answer Without Substantive Change

### *Activities With Minority- and Women-Owned Financial Institutions and Low-Income Credit Unions*

In 2010, the Agencies first adopted implementing regulations for section 804(b) of the CRA. See 75 FR 61035 (Oct. 4, 2010). Section 804(b) of the CRA provides that the Agencies may consider capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions as a factor when assessing the CRA record of nonminority- and nonwomen-owned financial institutions ("majority-owned institutions"). The regulatory section implementing section 804(b) of the CRA is found at 12 CFR \_\_\_\_.21(f).

Prior to adoption of implementing regulations in 12 CFR \_\_\_\_.21(f), the Agencies had adopted a related Q&A § \_\_\_\_.12(g)–4. See 74 FR 498 (Jan. 6, 2009). This Q&A explains that activities with minority- and women-owned financial institutions and low-income credit unions do not have to benefit the majority-owned financial institution's assessment area(s); however, such activities must help meet the credit needs of the local communities in which the minority- or women-owned financial institutions or low-income credit unions are chartered. The Q&A also provided examples of activities undertaken by a majority-owned financial institution in cooperation with minority- or women-owned financial institutions or low-income credit unions that would receive CRA consideration.

Because the new regulatory section addressing this topic is 12 CFR

\_\_\_\_.21(f), the Agencies are proposing to redesignate current Q&A § \_\_\_\_ .12(g)-4 as Q&A § \_\_\_\_ .21(f)-1. The text of the Q&A would remain unchanged.

The text of redesignated Q&A § \_\_\_\_ .21(f)-1 follows:

§ \_\_\_\_ .21(f)-1: *The CRA provides that, in assessing the CRA performance of non-minority- 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.

#### **General Comments**

The Agencies invite comments on any aspect of this proposal. The Agencies particularly would like comments on those issues specifically noted in this supplementary information section.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), the Agencies may not conduct or

sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The proposed revisions to the Questions and Answers would not involve any new collections of information pursuant to the PRA (44 U.S.C. 3501 *et seq.*). Consequently, no information will be submitted to OMB for review.

#### **Solicitation of Comments Regarding the Use of "Plain Language"**

Section 722 of the Gramm-Leach-Bliley Act of 1999, 12 U.S.C. 4809, requires the Agencies to use "plain language" in all proposed and final rules published after January 1, 2000. Although this guidance is not a proposed or final rule, comments are nevertheless invited on whether the proposed revised interagency questions and answers are stated clearly, and how the guidance might be revised to make it easier to read.

Dated: March 8, 2013.

**Thomas J. Curry,**  
*Comptroller of the Currency.*

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

**Robert deV. Frierson,**  
*Secretary of the Board.*

Dated at Washington, DC, this 7th day of March 2013.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**  
*Executive Secretary.*

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