OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the 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 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: September 4, 2014.

Stuart Feldstein,

Director, Legislative and Regulatory Activities Division.

[FR Doc. 2014–21493 Filed 9–9–14; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2014–0021]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1497]

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 (the Agencies) propose to clarify and supplement their Interagency Questions and Answers Regarding Community Reinvestment to address questions raised by bankers, community organizations, and others regarding the Agencies' Community Reinvestment Act (CRA) regulations. The Agencies propose to revise three questions and answers that address (i) alternative systems for delivering retail banking services and (ii) additional examples of innovative or flexible lending practices. In addition, the Agencies propose to revise three questions and answers addressing community development-related issues, including economic development, community development loans, and activities that are considered to revitalize or stabilize an underserved nonmetropolitan middle-income geography. The Agencies also propose to add four new questions and answers, two of which address community development services, and two of which provide general guidance on responsiveness and innovativeness.

DATES: Comments on the proposed questions and answers must be received on or before November 10, 2014.

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.*

• *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–2014–0021'' in your comment. In general, the 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–1497 by any of the following methods:

• *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: 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 paper 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/.* Follow instructions for submitting comments on the agency Web site.

• *Email:* You may also electronically mail comments to *comments@fdic.gov.*

FOR FURTHER INFORMATION CONTACT:

OCC: Bobbie K. Kennedy, Bank Examiner, Compliance Policy Division, (202) 649–5470; or Margaret Hesse, Senior 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: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6958; Pamela A. Freeman, Senior Examination Specialist, Compliance & CRA Examinations Branch, Division of Depositor and Consumer Protection, (202) 898–3656; 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 CRA (12 U.S.C. 2901 *et seq.*) through their CRA regulations. *See* 12 CFR parts 25, 195, 228, and 345. The Agencies also issue the ''Interagency Questions and Answers Regarding Community Reinvestment'' (Questions and Answers) to provide further guidance to agency personnel, financial institutions, and the public. The Agencies first published the Questions and Answers under the auspices of the Federal Financial Institutions Examination Council (FFIEC) in 1996 (61 FR 54647), and last published the Questions and Answers in their entirety on March 11, 2010 (2010 Questions and Answers) (75 FR 11642). In 2013, the Agencies adopted revised guidance on community development topics that amended and superseded five questions and answers (Q&A) and added two new Q&As (2013 Guidance). *See* 78 FR 69671 (Nov. 20, 2013).

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. For ease of reference, the citation to those regulatory provisions in the Questions and Answers is set forth in a simplified format as 12 CFR ▮.26. Each individual 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 regularly conduct outreach with, and review comments from, industry, community organizations, and examiners, including public hearings held in 2010.[1] Many of the comments reviewed raised issues relating to examiners' consideration given to access to banking services and community development services and, more generally, on the need for additional guidance on performance criteria under the lending, investment, and service tests. The Agencies reviewed the Questions and Answers and identified areas that may warrant clarification or additional guidance to address and clarify some of the issues raised by commenters.

Overview of Comments

Some commenters raised questions and concerns related to access to banking services and alternative systems for delivering retail banking services. For example, commenters stated that examiners place too much weight on the distribution of branching under the service test. These commenters suggested that the Agencies should ensure that financial institutions are evaluated in a manner that is responsive to changes in the financial services marketplace. Other commenters added that examiners should place more emphasis on providing access to, and promoting usage of, financial services that enable individuals and families to build wealth. Other commenters urged the Agencies to evaluate alternative delivery systems based on their actual effectiveness and availability, not just the fact that they are offered. In addition, commenters asserted that community development services are not given appropriate consideration in the service test and, by extension, in the overall CRA evaluation, relative to retail banking services.

Some commenters indicated that the Agencies should increase their focus on qualitative factors when considering an institution's lending, investment, or services, particularly related to community development, and that the Agencies should encourage more strongly the delivery of high-impact products and services. Other commenters stated that the Agencies should encourage financial institutions to be flexible in designing products and services targeted to low- and moderate-income and underbanked individuals and geographies.

Commenters also have urged the Agencies to provide incentives for financial institutions to offer fair and affordable credit products, such as amortizing small dollar loans that are sustainable for both borrowers and financial institutions. Some of these commenters urged the Agencies to adopt guidance that would encourage financial institutions to offer sustainable consumer loans, including alternatives to payday loans. In connection with small dollar and home mortgage lending, a number of commenters stressed the importance of financial literacy education activities and counseling.

Commenters also addressed economic development. Some commenters stated that the Agencies should adopt guidance that would support the creation or expansion of technical assistance intermediaries that help new or existing small businesses access micro-enterprise or small business lending opportunities. Commenters also requested additional examples of CRA-eligible small business-related loans, investments, and services, particularly related to increasing small business lending to underbanked entrepreneurs.

A number of commenters suggested that the Agencies should address whether alternative energy facilities and energy efficiency enhancements that are responsive to local needs are eligible for CRA consideration. The Agencies have also been asked whether financing that enables the expansion of communication technology in rural areas and in Native American communities would be eligible for CRA consideration.

The Agencies propose to clarify the CRA regulations to address these questions and concerns. This notice proposing additional clarifications to the Agencies' CRA regulations builds upon the Agencies' 2013 Guidance addressing community development-related issues. After the Agencies have considered comments received on this proposal, the Agencies plan to formally adopt and republish the new and revised Q&As.

[1] *See* 75 FR 35686 (June 23, 2010).

Proposed Revisions to Existing Q&As

I. Access to Banking Services

A. Availability and Effectiveness of Retail Banking Services

The CRA regulations identify the performance criteria examiners consider when evaluating the availability and effectiveness of an institution's systems for delivering retail banking services under the service test. *See* 12 CFR ■.24(d). Specifically, the regulations provide that the Agencies evaluate the availability and effectiveness of a large institution's systems for delivering retail banking services pursuant to the following criteria:

(1) The current distribution of the institution's branches among low-, moderate-, middle-, and upper-income geographies;

(2) in the context of the current distribution of the institution's branches, the institution's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) the availability and effectiveness of alternative systems for delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) the range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies. *See* 12 CFR ■.24(d).

Existing Q&As § ■.24(d)–1 and § ■.24(d)(3)–1 provide further guidance related to the evaluation of retail banking services in the service test applicable to large financial institutions.

Existing Q&A § ■.24(d)–1 provides guidance regarding how examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services. The Q&A states, in part, that ''the service test performance standards place primary emphasis on full service branches while still considering alternative systems, such as automated teller machines ('ATM').'' The Q&A further states that alternative systems, such as ATMs, will be considered ''only to the extent that they are effective alternatives in providing services to low- and moderate-income areas and individuals.'' Based on this guidance, examiners have focused primarily on an institution's branching activities when evaluating the institution's service test performance. The emphasis on branch distribution continues despite technological advances in the retail banking industry, such as Internet or online banking, mobile banking, remote deposit capture, and 24-hour Internet banking kiosks, which provide financial institutions new methods to deliver retail banking services to consumers.

Some commenters contend that the primary emphasis on evaluating access to, and distribution of, physical branches to deliver retail banking services undervalues other means of providing these services, such as alternative delivery systems. Some of these commenters contended that this emphasis on the existence and distribution of retail bank branches is unwarranted, especially as financial institutions increasingly use alternative delivery systems to deliver financial services to all consumers. These commenters suggested that alternative delivery systems should receive greater consideration under the regulations' service test when they are effective in delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals. Other commenters, however, still believe that branches should be the primary emphasis of the service test.

The Agencies agree with commenters that additional clarification of the extent to which alternative delivery systems will be considered is necessary in order to recognize an institution's use of such systems to make products and services available to benefit low- and moderate-income geographies and individuals. Given the extent of technological innovation in the delivery of banking services, alternative delivery systems can create opportunities for institutions to better reach and serve low- and moderate-income geographies and individuals. Nonetheless, the Agencies recognize that, under the CRA regulations, alternative delivery systems supplement the services provided by a financial institution's branch and deposit-taking ATM structure because assessment areas are delineated around the institution's branches and ATMs.

Therefore, the Agencies propose to revise existing Q&A § ■.24(d)–1 to clarify how examiners should evaluate and consider alternative systems for delivering retail banking services in an institution's assessment area(s).

The Agencies propose deleting language that states ''performance standards place primary emphasis on full service branches'' and further deleting the statement that provides that alternative systems are considered ''only to the extent'' that they are effective alternatives in providing needed services to low- and moderate-income geographies and individuals. Changes in technology and the financial market increasingly provide opportunities for financial institutions to use alternative delivery systems effectively to provide needed services in low- and moderate-income geographies and to low- and moderate-income individuals. The Agencies encourage the use of all types of delivery systems to help meet the needs of low- and moderate-income geographies and individuals and, therefore, believe that this language should be removed to provide certainty among financial institutions that such activities should be considered during a CRA evaluation.

The Agencies believe that the proposed revisions to existing guidance would encourage broader availability of alternative delivery systems to low- and moderate-income geographies and individuals without diminishing the value full-service branches provide to communities. The text of proposed revised Q&A § ■.24(d)–1 follows:

Q&A § ■.24(d)–1. *How do examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services?*

A1. Convenient access to full-service branches and effective alternative systems to deliver retail banking services within a community are important factors in determining the availability of credit and non-credit services. Examiners evaluate an institution's current distribution of branches and its record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals. However, an institution is not required to expand its branch network or operate unprofitable branches. Examiners also consider the availability and effectiveness of an institution's alternative systems for expanding the delivery of retail banking services by evaluating factors that demonstrate consumer accessibility and use of such systems in low- and moderate-income geographies and by low- and moderate-income individuals. These factors used in evaluating alternative systems for delivering retail banking services are discussed in Q&A § ■.24(d)(3)–1.

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

1. Does the proposed revised guidance strike the appropriate balance between consideration of traditional delivery systems (e.g., branches) and alternative systems for serving low- and moderate-income geographies and individuals?

B. Alternative Systems for Delivering Retail Banking Services

As discussed above, the availability and effectiveness of alternative systems for delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals is one of four performance criteria that examiners consider when evaluating the availability and effectiveness of a financial institution's systems for delivering retail banking services. *See* 12 CFR ___.24(d)(3). Existing Q&A § ___.24(d)(3)–1 is intended to provide additional guidance on how examiners evaluate alternative systems for delivering retail banking services. This Q&A currently states that there are a ''multitude of ways in which an institution can provide services'' and lists ATMs, banking by telephone or computer, and bank-by-mail as examples of alternative delivery systems. The answer further states, in part, that delivery systems ''other than branches will be considered under the regulation to the extent that they are effective alternatives to branches in providing needed services to low- and moderate-income areas and individuals.''

Commenters noted that the existing Q&A should be updated to include examples that reflect technological advances in delivering retail banking services. These commenters also noted that the existing Q&A does not discuss the regulations' requirement that examiners consider the availability of alternative systems, provide examples of how to measure their effectiveness in reaching low- and moderate-income geographies or individuals, or provide insight into how an institution can demonstrate that its alternative delivery systems are effectively reaching low- and moderate-income geographies or individuals located in the institution's assessment area.

The Agencies agree with commenters' observation that additional guidance regarding how examiners will evaluate the availability and effectiveness of alternative delivery systems is warranted. In addition, the Agencies agree that it would be helpful to update the list of examples of alternative delivery systems even though the examples provided in the existing Q&A were not intended to limit consideration of new methods as technology evolves.

To address commenters concerns, the Agencies propose to revise Q&A § ___.24(d)(3)–1 to recognize the broad range of alternative systems that financial institutions use to deliver retail banking services to low- and moderate-income geographies and individuals. The revised Q&A would also include examples of alternative delivery systems that reflect current technological advances in the industry, but also note that such examples are not intended to limit consideration of systems that have yet to be created.

In addition, to recognize the industry's broader use of alternative systems for delivering retail banking services, the Agencies propose to provide further guidance on factors that examiners use to evaluate whether alternative delivery systems are an available and effective means of providing retail banking services to low- and moderate-income geographies and individuals. Specifically, the Agencies propose to revise existing Q&A § ___.24(d)(3)–1 to further clarify how examiners can assess the availability and effectiveness of an institution's alternative delivery systems by evaluating factors that demonstrate consumer accessibility and the use of those systems in low- and moderate-income geographies and by low- and moderate-income individuals. The Agencies propose that examiners evaluate the following factors when assessing the availability and effectiveness of an institution's alternative delivery systems: (i) The ease of access, whether physical or virtual; (ii) the cost to consumers, as compared with other delivery systems; (iii) the range of services delivered; (iv) the ease of use; (v) the rate of adoption; and (vi) the reliability of the system. The Agencies do not intend that every feature or factor would need to be satisfied for an institution's alternative systems for delivering retail banking services to be considered available and effective. Further, as is currently the case, alternative systems for delivering retail banking services are considered only when they are offered, which assumes that the necessary infrastructure or technology supporting their use is available.

The proposed revised Q&A would also state that financial institutions could provide available data on consumer usage or transactions and the other factors outlined above to demonstrate the availability and effectiveness of the institution's alternative delivery systems. To provide flexibility to financial institutions, the proposed revised guidance would clarify that examiners will consider any information an institution maintains and provides demonstrating that the institution's alternative delivery systems are available to, and used by, low- and moderate-income individuals.

The text of proposed revised Q&A § ___.24(d)(3)–1 follows:

Q&A § ___.24(d)(3)–1. *How do examiners evaluate alternative systems for delivering retail banking services?*

A1. There are a number of alternative systems used by financial institutions to deliver retail banking services to customers. Non-branch delivery systems, such as ATMs, online and mobile banking, and other means by which banks provide services to their customers evolve over time. No matter the means of delivery, examiners evaluate the extent to which the alternative delivery systems are available and effective in providing financial services to low- and moderate-income geographies and individuals. For example, a system may be determined to be effective based on the accessibility of the system to low- and moderate-income geographies and low- and moderate-income individuals.

To determine whether a financial institution's alternative delivery system is an available and effective means of delivering retail banking services in low- or moderate-income geographies and to low- or moderate-income individuals, examiners may consider a variety of factors, including

- The ease of access, whether physical or virtual;
- the cost to consumers, as compared with other delivery systems;
- the range of services delivered;
- the ease of use;
- the rate of adoption; and
- the reliability of the system.

Examiners will consider any information an institution maintains and provides to examiners demonstrating that the institution's alternative delivery systems are available to, and used by, low- or moderate-income individuals, such as data on customer usage or transactions.

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

2. Are the factors listed for consideration when examiners evaluate the availability and effectiveness of alternative delivery systems sufficiently flexible to be used by examiners as the financial services marketplace evolves? Are there other factors that should be included?

3. What types of information are financial institutions likely to routinely maintain that may be used to demonstrate that an institution's alternative delivery systems are available to, and used by, low- and moderate-income individuals?

4. What other sources of data and quantitative information could examiners use to evaluate the ease of

access; cost to consumers, as compared with other delivery systems; range of services delivered; ease of use; rate of adoption; and reliability of alternative delivery systems? Do financial institutions have such data readily available for examiners to review?

5. When considering cost to consumers, as compared with other delivery systems, and the range of services delivered, should examiners evaluate these features relative to other delivery systems (i) offered by the institution, (ii) offered by institutions within the institution's assessment area(s), or (iii) offered by the banking industry generally?

6. Do the proposed revisions adequately address changes in the way financial institutions deliver products in the context of assessment area(s) based on the location of a financial institution's branches and deposit-taking ATMs?

II. Innovative or Flexible Lending Practices

Under the performance standards applicable to large financial institutions, an institution's use of innovative or flexible lending practices is one of five factors examiners review as part of the lending test. *See* 12 CFR ■.22(b)(5). Examiners evaluate an institution's ''use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.'' *See* 12 CFR ■.22(b)(5). Existing Q&A § ■.22(b)(5)–1 provides guidance regarding the range of practices that examiners may consider in evaluating the innovativeness or flexibility of an institution's lending practices, and lists two examples of such practices.

Existing Q&A § ■.22(b)(5)–1 states that examiners are not limited to reviewing the overall variety and specific terms and conditions of credit products when evaluating innovativeness, but that an evaluation may also include consideration of related innovations that augment the success and effectiveness of the institution's community development loan program or lending programs that address the credit needs of low- or moderate-income geographies or individuals. The existing guidance provides two examples of practices that may or may not be innovative or flexible on their own, but are viewed as innovative practices when considered in conjunction with related activity. The current examples include (i) a technical assistance program for loan recipients administered in conjunction with a community development loan program, and (ii) a contracting program for small business borrowers established in connection with a small business lending program. These examples emphasize that practices receive consideration under the lending test as being innovative when they augment the success and effectiveness of particular lending programs that address the credit needs of low- or moderate-income geographies or individuals.

The Agencies believe that, when implemented correctly, innovative or flexible practices can help meet the credit needs of low- or moderate-income geographies or individuals. The Agencies believe existing guidance would benefit from additional examples of innovative or flexible lending practices that reflect advancement in lending. Including more recent examples may help examiners and institutions think more broadly about the types of practices that could encourage additional lending that would benefit low- or moderate-income geographies or individuals.

The Agencies propose to revise existing Q&A § ■.22(b)(5)–1 to expand the list of examples of innovative or flexible lending practices. The proposed revised Q&A would explain that examiners will consider whether, and to what extent, the innovative or flexible practices augment the success and effectiveness of the institution's lending program. The proposed Q&A also would emphasize that an innovative or flexible lending practice is not required to obtain a specific rating, but rather is a qualitative consideration that, when present, can enhance a financial institution's CRA performance.

In addition, the Agencies propose to revise the Q&A by adding two new examples of innovative or flexible lending practices. The first example describes small dollar loan programs as an innovative practice when such loans are made in a safe and sound manner with reasonable terms, and are offered in conjunction with outreach initiatives that include financial literacy or a savings component. The Agencies are including small dollar loan programs as an example of an innovative or flexible lending practice to encourage such programs as alternatives to higher-cost credit products that many low- or moderate-income individuals currently may depend upon to meet their small dollar credit needs.

The Agencies note that small dollar loan programs currently receive consideration under the lending test, and that these programs are already referenced in Q&A § ■.22(a)–1 as a type of lending activity that is likely to be responsive in helping to meet the credit needs of many communities. *See* Q&A § ■.22(a)–1. However, including small dollar loan programs as an example of an innovative or flexible lending practice acknowledges that banks may employ outreach initiatives in conjunction with financial literacy education or offer linked savings programs to improve the success of affiliated lending programs in meeting the credit needs of their communities. The Agencies believe that ensuring proper consideration for such initiatives as innovative or flexible lending practices is consistent with the goals of the regulations because they facilitate institutions' abilities to meet the credit needs of their communities.

The second example of an innovative or flexible lending practice that the Agencies propose to add to existing Q&A § ■.22(b)(5)–1 describes mortgage or consumer lending programs that utilize alternative credit histories in a manner that would benefit low- or moderate-income individuals. The Agencies understand that low- or moderate-income individuals with limited conventional credit histories face challenges in obtaining access to credit. Alternative credit histories supplement conventional trade line information with additional information about the borrower, such as rent and utility payments. For individuals who do not qualify for credit based on the use of conventional credit reports, but who have a positive payment history with regard to obligations such as a rental agreement or utility account, such additional information may supplement an assessment of a borrower's risk profile, consistent with safe and sound underwriting practices. The Agencies believe that considering alternative credit histories to supplement conventional underwriting practices may provide an opportunity for some additional creditworthy low- or moderate-income individuals to gain access to credit.

Finally, the Agencies propose to revise the existing question's reference to a ''range of practices,'' to conform the question to the existing and proposed revised answers.

The text of proposed revised Q&A § ■.22(b)(5)–1 follows:

§ ■.22(b)(5)–1: *What do examiners consider in evaluating the innovativeness or flexibility of an institution's lending under the lending test applicable to large institutions?*

A1. In evaluating the innovativeness or flexibility of an institution's lending practices (and the complexity and innovativeness of its community development lending), examiners will not be limited to reviewing the overall variety and specific terms and conditions of the credit products themselves. Examiners also consider whether, and the extent to which, innovative or flexible terms or products augment the success and effectiveness of the institution's community development loan programs or, more generally, of its loan programs that address the credit needs of low- or moderate-income geographies or individuals. Although examiners evaluate how innovative or flexible lending practices address the credit needs of low- or moderate-income geographies or individuals, an innovative or flexible lending practice is not required in order to obtain a specific rating. Examples of innovative or flexible lending practices include:

• In connection with a community development loan program, an institution may establish a technical assistance program under which the institution, directly or through third parties, provides affordable housing developers and other loan recipients with financial consulting services. Such a technical assistance program may, by itself, constitute a community development service eligible for consideration under the service test of the CRA regulations. In addition, the technical assistance may be considered favorably as an innovative or flexible practice that augments the success and effectiveness of the related community development loan program.

• In connection with a small business lending program in a low- or moderate-income area and consistent with safe and sound lending practices, an institution may implement a program under which, in addition to providing financing, the institution also contracts with the small business borrowers. Such a contracting arrangement would not, itself, qualify for CRA consideration. However, it may be favorably considered as an innovative or flexible practice that augments the loan program's success and effectiveness, and improves the program's ability to serve community development purposes by helping to promote economic development through support of small business activities and revitalization or stabilization of low- or moderate-income geographies.

• In connection with a small dollar loan program offered in a safe and sound manner and with reasonable terms, an institution may establish outreach initiatives or financial counseling targeted to low- or moderate- income individuals or communities. The institution's efforts to encourage the availability, awareness, and use of the small dollar loan program to meet the credit needs of low- and moderate-income individuals, in lieu of higher-cost credit, should augment the success and effectiveness of the lending program. Such loans may be considered responsive under Q&A § ▮.22(a)–1, and the use of such outreach initiatives in conjunction with financial literacy education or linked savings programs also may be favorably considered as an innovative or flexible practice to the extent that they augment the success and effectiveness of the related loan program. Such initiatives may receive consideration under other performance criteria as well. For example, an initiative to partner with a nonprofit organization to provide financial counseling that encourages responsible use of credit may, by itself, constitute a community development service eligible for consideration under the service test.

• In connection with a mortgage or consumer lending program targeted to low- or moderate-income geographies or individuals, consistent with safe and sound lending practices, an institution may establish underwriting standards that utilize alternative credit histories, which would benefit low- and moderate-income individuals who lack sufficient conventional credit histories to be evaluated under the bank's underwriting standards. The use of such underwriting standards may be favorably considered as an innovative or flexible practice that augments the success and effectiveness of the lending programs.

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

7. Is the proposed revised guidance sufficient to encourage institutions to design more innovative or flexible lending programs that are responsive to community needs?

8. Are the new examples described in the proposed revised guidance useful? Do the benefits of using alternative credit histories in underwriting standards that benefit low- or moderate-income persons outweigh any concerns raised by the use of alternative credit histories of which the Agencies should be aware?

9. Is there additional guidance that the Agencies should provide to better enable examiners and institutions to identify those circumstances in which the use of alternative credit histories will benefit low- or moderate-income individuals?

III. Community Development

Community development is an important component of community reinvestment and is considered in the CRA evaluations of financial institutions of all types and sizes. 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, ▮▮.24(e), ▮▮.26(c), and ▮▮.25, respectively. In addition, small institutions may use community development activity to receive consideration toward an outstanding rating.

The Agencies believe that community development generally improves the circumstances for low- and moderate-income individuals and stabilizes and revitalizes the communities in which they live or work. The 2013 Guidance addressed several aspects of community development. The Agencies propose to further refine the Questions and Answers to provide additional clarification about community development-related topics that were not addressed in the 2013 Guidance.

A. Economic Development

The CRA regulations at 12 CFR ▮▮.12(g)(3) define community development to include ''activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less.'' The Questions and Answers provide additional guidance on activities that promote economic development in Q&As § ▮▮.12(g)(3)–1, § ▮▮.12(i)–1, § ▮▮.12(i)–3, and § ▮▮.12(t)–4.

Existing Q&A § ▮▮.12(g)(3)–1 further explains what is meant by the phrase ''promote economic development.'' The guidance provides that activities promote economic development by financing small businesses or farms if they meet two ''tests'': (i) A ''size test'' (e.g., the recipient of the activity must meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) or have gross annual revenues of $1 million or less); and (ii) a ''purpose test,'' which is intended to ensure that a financial institution's activities promote economic development consistent with the CRA regulations. Existing Q&A § ▮▮.12(g)(3)–1 states that activities meet the purpose test if they ''support permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or support permanent job creation, retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment by Federal, state, local, or tribal governments.'' The Q&A further explains, ''[t]he Agencies will presume that any loan to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, or New Markets Tax Credit-eligible Community Development Entity promotes economic development.''

Some bankers contend that existing Q&A § ▮▮.12(g)(3)–1 narrows the scope and intent of the regulations, which do not define ''economic development'' beyond the ''size test.'' They believe 12 CFR ▮▮.12(g)(3) provides that all activities that finance businesses or farms that meet the size eligibility standards have a purpose of promoting economic development, and that no additional consideration beyond financing is necessary to demonstrate the promotion of economic development.

In addition, others have stated that the existing guidance on whether an activity promotes economic development is unclear and leads to the inconsistent treatment by examiners of economic development activities under the CRA regulations. For example, the purpose test in existing Q&A § ▮▮.12(g)(3)–1 refers to ''permanent job creation, retention, and/or improvement for persons who are *currently* low- or moderate-income.'' (Emphasis added.) The Agencies have learned through discussions with bankers and others that the use of the word ''currently'' may lead some examiners to recognize only activities that support low-wage jobs. Because bankers often are unable to demonstrate that employees were low- or moderate-income when hired, they often track the number of jobs at wages commensurate with incomes that are low or moderate for the area. As a result, the guidance may create incentives inconsistent with its own stated purpose of promoting job improvement opportunities for low- or moderate-income persons. Bankers and others also have indicated that the purpose test in the existing Q&A may have a dampening effect on economic development and related job creation. Notably, statistics show that small businesses are responsible for roughly one-half of all private sector employment and create a significant number of jobs. However, financial institutions' activities with micro-lenders and financial intermediaries that provide assistance to start-up businesses may not receive consideration because those institutions cannot demonstrate that the loans made by those entities are to, or will create jobs for, persons who are currently low- or moderate-income, or to businesses located in low- or moderate-income areas, until the micro-lender or financial intermediary makes loans to start-up businesses with the institutions' funds. As a result, financial institutions may hesitate to provide assistance to such entities, potentially reducing the resources available to micro-lenders and other financial intermediaries and the potential new businesses that would depend on their support.

In addition, some Q&As provide examples of activities that promote economic development under the CRA regulations that are not mentioned in the purpose test as outlined in Q&A § ▮▮.12(g)(3)–1. Specifically, both Q&As § ▮▮.12(i)–1 and § ▮▮.12(i)–3 note that providing technical assistance to small businesses is a community development service that involves the ''provision of financial services'' and Q&A § ▮▮.12(t)–4 lists examples of qualified investments, including some that promote economic development. These examples do not refer to the narrower scope of the purpose test and, as a result, if read and applied independently from the guidance in Q&A § ▮▮.12(g)(3)–1, could lead to inconsistent application of the guidance on examinations.

The Agencies note that the existing guidance provides that to meet the purpose test, the institution's activity must promote economic development. However, the Agencies agree that the guidance may benefit from additional clarification to facilitate consistent application of the ''purpose test'' and to ensure that all activities promoting economic development are considered.

Accordingly, the Agencies propose several revisions to Q&A § ▮▮.12(g)(3)–1 to clarify what is meant by ''promote economic development'' and to better align this Q&A with other guidance, including Q&As § ▮▮.12(i)–1 and § ▮▮.12(i)–3, regarding consideration for economic development activities undertaken by financial institutions. First, the Agencies propose to revise the statement that activities promote economic development if they ''support permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income'' by removing the word ''currently.'' The Agencies believe that, as currently drafted, the statement may unnecessarily focus bank community development activities on supporting low-wage jobs.

Second, the Agencies propose to add additional examples that would demonstrate a purpose of economic development. The Agencies propose to revise the guidance to add that activities promote economic development if they support (1) permanent job creation, retention, and/or improvement through (i) workforce development and/or job or career training programs that target unemployed or low- or moderate-income persons; or (ii) the creation or development of small businesses or farms; or (iii) technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance; or (2) Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate-income persons, to jobs, affordable housing, financial services, or community services.

The Agencies also propose to re-format the guidance to list the various types of activities that demonstrate a purpose of economic development separately. Finally, the proposed revised Q&A would include Community Development Financial Institutions that finance small businesses or small farms in the list of entities for which the Agencies will presume that any loan to or investment in promotes economic development.

The text of proposed revised Q&A § ▮▮▮.12(g)(3)–1 follows:

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

• Permanent job creation, retention, and/or improvement

Æ For low- or moderate-income persons;

Æ In low- or moderate-income geographies;

Æ In areas targeted for redevelopment by Federal, state, local, or tribal governments;

Æ Through workforce development and/or job or career training programs that target unemployed or low- or moderate-income persons;

Æ Through the creation or development of small businesses or farms; or

Æ Through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance; or

• Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate income persons, to jobs, affordable housing, financial services, or community services.

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 § ■■.42(b)(2)–2, § ■■.12(h)–2, and § ■■.12(h)–3 for more information about which loans may be considered community development loans.)

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

10. Does the proposed revised guidance clarify what economic development activities are considered under CRA?

11. What information should examiners use to demonstrate that an activity meets the size and purpose tests described in the proposed revised guidance?

12. Does the proposed revised guidance help to clarify what is meant by job creation for low- or moderate-income individuals?

13. Are the proposed examples demonstrating that an activity promotes economic development for CRA purposes appropriate? Are there other examples the Agencies should include that would demonstrate that an activity promotes economic development for CRA purposes?

14. What information should examiners review when determining the performance context of an institution seeking CRA consideration for its economic development activities?

15. What information is available that could be used to evaluate the local business environment and economic development needs in a low- or moderate-income geography or among low- or moderate-income individuals within the institution's assessment area(s)?

16. Are there particular measurements of impact that examiners should consider when evaluating the quality of jobs created, retained, or improved?

B. Community Development Loans

The Agencies' CRA regulations at 12 CFR ■■.12(h) define ''community development loan'' to mean a loan that has community development as its primary purpose. Existing Q&A § ■■.12(h)–1 provides examples of community development loans. The Agencies propose to add an example to clarify how examiners may consider loans related to renewable energy or energy-efficient technologies that also have a community development component. These activities commonly are referred to as ''green'' activities and are not specifically addressed under existing guidance.

Community organizations, examiners, and bankers have stated that affordable housing providers may install renewable energy or energy-efficient technologies to help reduce operational costs and maintain the affordability of single- and multi-family rental housing. Additionally, affordable housing developers may incorporate energy-efficient equipment into new and rehabilitated housing units or common area facilities to reduce utility costs and improve long-term affordability for low- and moderate-income homeowners. Further, communities may use sustainable energy sources to reduce the cost of providing services. Communities also may incorporate the development of related industries into local economic development plans to support job creation initiatives.

Bankers have commented that examiners do not always give consideration for projects or initiatives that incorporate ''green'' components because the concept is not specifically addressed in either the CRA regulations or the Questions and Answers. In addition, examiners may be hesitant to provide consideration because the benefit to low- or moderate-income residents, borrowers, or communities may not be easily quantified, particularly in cases in which the benefit is indirect. For example, renewable energy savings may reduce operating costs for an affordable housing development overall, without necessarily accruing a direct benefit to individual residents. Another example of such indirect benefit might be a loan to facilitate the installation of a solar power system, when the reduction in utility costs due to the sale of electricity generated by the solar panels is allocated to cover the expense of providing electricity to common areas of an affordable housing development.

The Agencies have learned of examples in which financial institutions helped finance energy-efficiency initiatives related to the rehabilitation or development of affordable housing projects and were not given CRA consideration for their activities. The Agencies have also heard from bankers that having specific examples in guidance helps to create incentives within their financial institutions to pursue such projects. The Agencies concur that loans that enable energy initiatives that help to reduce the cost of operating or maintaining affordable housing, even if the benefit to residents is indirect, qualify for consideration as community development loans.

To address these comments and concerns, the Agencies propose to revise Q&A § ■■.12(h)–1 to incorporate a new example of a community development loan that would illustrate how a loan that finances renewable energy or energy-efficient technologies and that also has a community development component may be considered in a financial institution's performance evaluation.

All loans considered in an institution's CRA evaluation, including loans that finance renewable energy or energy-efficient technologies, must be consistent with the safe and sound operation of the institution and should not include features that could compromise any lender's existing lien position.

The text of proposed revised Q&A § ■■.12(h)–1 follows:

§ ■■.12(h)–1: *What are examples of community development loans?*

A1. Examples of community development loans include, but are not limited to, loans to

• Borrowers for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons;

• not-for-profit organizations serving primarily low- and moderate-income housing or other community development needs;

• borrowers to construct or rehabilitate community facilities that are located in low- and moderate-income areas or that serve primarily low- and moderate-income individuals;

• financial intermediaries including Community Development Financial Institutions, New Markets Tax Credit-eligible Community Development Entities, Community Development Corporations, minority- and women-owned financial institutions, community loan funds or pools, and low-income or community development credit unions that primarily lend or facilitate lending to promote community development;

• local, state, and tribal governments for community development activities;

• borrowers to finance environmental clean-up or redevelopment of an industrial site as part of an effort to revitalize the low- or moderate-income community in which the property is located;

• businesses, in an amount greater than $1 million, when made as part of the Small Business Administration's 504 Certified Development Company program; and

• borrowers to finance renewable energy or energy-efficient equipment or projects that support the development, rehabilitation, improvement, or maintenance of affordable housing or community facilities, such as a health clinic, even if the benefit to low- or moderate-income individuals from reduced cost of operations is indirect, such as reduced cost of providing electricity to common areas of an affordable housing development.

The rehabilitation and construction of affordable housing or community facilities, referred to above, may include the abatement or remediation of, or other actions to correct, environmental hazards, such as lead-based paint, that are present in the housing, facilities, or site.

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

17. Should loans for renewable energy or energy-efficient equipment or projects that support the development, rehabilitation, improvement, or maintenance of community facilities that serve low- or moderate-income individuals be considered under the CRA regulations?

18. Do the proposed revisions make clear which energy-efficiency activities would be considered under the CRA regulations?

C. Revitalize or Stabilize Underserved Nonmetropolitan Middle-Income Geographies

The Agencies' CRA regulations at 12 CFR __.12(g)(4) define community development to include activities that revitalize or stabilize particular areas. Existing Q&A § __.12(g)(4)(iii)–4 provides further guidance by listing examples of activities that help to revitalize or stabilize underserved nonmetropolitan middle-income geographies. The Agencies propose to revise this guidance by adding an example of a qualified activity related to communications infrastructure.

The Federal government actively promotes the expansion of broadband infrastructure into rural and tribal areas due to its importance to global competitiveness, job creation, innovation, and the expansion of markets for American businesses. Yet many areas continue to lack adequate access to this crucial resource.[2] Further, the availability of broadband is essential to access banking services, particularly as financial institutions shift away from branch-based delivery systems. Currently, consumers and small businesses in many rural and tribal areas may not have reliable access to Internet-based alternative delivery systems for banking services because they do not have access to broadband service. In addition, improved broadband access supports economic development, as small businesses and farms increasingly use broadband-reliant technologies for payment processing systems, remote deposit capture, to access credit facilities, and to market and arrange delivery of products.

The Agencies agree that the availability of a reliable communications infrastructure is important to help to revitalize or stabilize underserved nonmetropolitan middle-income geographies. It is particularly important as banking services, as well as services such as credit and housing counseling, are increasingly delivered online.

To address these concerns, the Agencies propose to add a new example involving communication infrastructure as an activity that would be considered to ''revitalize or stabilize'' an underserved nonmetropolitan middle-income geography. Additionally, in order to improve readability, the format of the answer has been revised to include a bulleted list containing the examples of activities. The text of proposed revised Q&A § __.12(g)(4)(iii)—4 follows:

§ __.12(g)(4)(iii)–4: *What activities are considered to "revitalize or stabilize" an underserved nonmetropolitan middle-income geography, and how are those activities evaluated*?

A4. The regulation provides that activities revitalize or stabilize an underserved nonmetropolitan middle-income geography if they help to meet essential community needs, including needs of low- or moderate-income individuals. Activities, such as financing for the construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, affordable housing, or communication services, will be evaluated under these criteria to determine if they qualify for revitalization or stabilization consideration. Examples of the types of projects that qualify as meeting essential community needs, including needs of low- or moderate-income individuals, would be

• A new or expanded hospital that serves the entire county, including low- and moderate-income residents;

• an industrial park for businesses whose employees include low- or moderate-income individuals;

• a new or rehabilitated sewer line that serves community residents, including low- or moderate-income residents;

• a mixed-income housing development that includes affordable housing for low- and moderate-income families;

• a renovated elementary school that serves children from the community, including children from low- and moderate-income families; or

• a new or rehabilitated communication infrastructure, such as broadband internet service, that serves the community, including low- and moderate-income residents.

Other activities in the area, such as financing a project to build a sewer line spur that connects services to a middle- or upper-income housing development while bypassing a low- or moderate-income development that also needs the sewer services, generally would not qualify for revitalization or stabilization consideration in geographies designated as underserved. However, if an underserved geography is also designated as distressed or a disaster area, additional activities may be considered to revitalize or stabilize the geography, as explained in Q&As § __.12(g)(4)(ii)–2 and § __.12(g)(4)(iii)–3.

[2] *See* ''Accelerating Broadband Infrastructure Deployment,'' Exec. Order No. 13,616, 77 FR 36903 (June 20, 2012).

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

19. Should communications infrastructure, such as broadband internet service, that serves an institution's community, including low- and moderate-income residents, be considered an activity that revitalizes or stabilizes a community? Should CRA consideration be given to such activities?

20. Does the proposed revised guidance sufficiently clarify which activities related to communications infrastructure would be considered under the CRA?

Proposed New Questions and Answers

I. Community Development Services

A. Evaluating Retail Banking and Community Development Services

Community development services are an important component of community reinvestment. These services promote credit and affordable product availability, technical assistance to community development organizations, and financial education programs for low- and moderate-income individuals. The performance criteria for the large institution service test are comprised of two parts: (i) Retail banking services, and (ii) community development services. Pursuant to the regulations, examiners analyze both the availability and effectiveness of a financial institution's systems for delivering retail banking services and the extent and innovativeness of its community development services.

Despite the benefits of community development services, and regulatory language requiring their consideration, as discussed above, commenters have asserted that community development services are not given sufficient consideration in the service test relative to retail banking services. To address this concern, the Agencies are proposing a new Q&A § ▮.24(a)–1 that would clarify how retail banking services and community development services are evaluated. In addition, the proposed new Q&A would explain the importance of the community development service criterion of the service test.

The CRA regulations define a community development service as a service that (i) has as its primary purpose community development; (ii) is related to the provision of financial services; and (iii) has not been considered in the evaluation of the institution's retail banking services under 12 CFR § ▮.24(d). Examples of community development services noted in the Questions and Answers include retail services that benefit or serve low- or moderate-income consumers. Consequently, many examiners consider services that benefit low- and moderate-income consumers, such as low-cost transaction or savings accounts and electronic benefit transfers, under the retail performance criteria of the service test rather than as community development services.

Under the regulations, the Agencies evaluate community development services pursuant to two criteria: (i) The extent to which the institution provides community development services, and (ii) the innovativeness and responsiveness of community development services. *See* 12 CFR § ▮.24(e). However, commenters contend that there seems to be little emphasis placed on determining whether products and services, which are intended to improve or increase access by low- or moderate-income individuals to financial services, are effective or responsive to community needs as required under the regulation.

Accordingly, the Agencies propose a new Q&A § __.24(a)—1 to clarify how retail banking services and community development services are evaluated. The Agencies intend this clarification to improve consistency and reduce uncertainty regarding the performance criteria in the service test and encourage additional community development services by affirming the importance of community development services. The text of proposed new Q&A § ▮.24(a)–1 follows:

§ ▮.24(a)–1: *How do examiners evaluate retail banking services and community development services under the large institution service test?*

A1. In evaluating retail services, examiners consider the availability and effectiveness of an institution's systems to deliver banking services, particularly in low- and moderate-income geographies and to low- and moderate-income individuals, the range of services provided in low-, moderate-, middle-, and upper-income geographies, and the degree to which the services are tailored to meet the needs of those geographies.

In evaluating community development services, examiners consider the extent of community development services offered, and the responsiveness and effectiveness of those retail services deemed community development services under Q&A § __.12(i)—3 because they improve or increase access to financial services by low- and moderate-income individuals or in low- or moderate-income geographies. Examiners will consider any information provided by the institution that demonstrates community development services are responsive to those needs.

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

21. Does the proposed new guidance sufficiently clarify how examiners evaluate retail and community development services under the large institution service test? If not, why not? How could the answer be made clearer?

22. What types of information are financial institutions likely to maintain that may be used to demonstrate that an institution's community development services are responsive to the needs of low- and moderate-income individuals or in low- and moderate-income geographies?

B. Quantitative and Qualitative Measures of Community Development Services

As noted earlier, the regulations require the evaluation of (i) the extent to which an institution provides community development services, and (ii) the innovativeness and responsiveness of community development services when considering community development service performance under the service test. *See* 12 CFR ▮.24(e). However, commenters assert that it is often difficult to quantitatively or qualitatively evaluate community development services and that the difficulty appears to impede consideration of community development services in the service test.

Bankers note inconsistencies in how community development services are evaluated quantitatively. For instance, some performance evaluations reflect the number of hours that financial institution employees spend in board meetings, delivering workshops, or providing financial counseling services, while other performance evaluations reflect the range of services provided and/or the number of organizations or individuals served. In addition, commenters contend that there is inadequate consideration of whether products and services, which are intended to improve or increase access by low- and moderate-income individuals to financial services, are effective or responsive to community needs, as required under the CRA regulations.

The Agencies agree with commenters that further guidance would promote consistency in the quantitative evaluation of community development services. In particular, the Agencies believe that it is important to clarify that examiners need not look at any one specific quantitative factor when evaluating community development services.

In order to address these concerns, the Agencies are proposing a new Q&A § ▮.24(e)—2 that would address the quantitative and qualitative factors that examiners review when evaluating community development services to determine whether community development services are effective and responsive. The text of proposed new Q&A § ▮.24(e)–2 follows:

§ ▮.24(e)–2: *In evaluating community development services, what quantitative and qualitative factors do examiners review?*

A2. The community development services criteria are important factors in the evaluation of a large institution's service test performance. Both quantitative and qualitative aspects of community development services are considered during the evaluation. Examiners assess the extent to which community development services are offered and used. The review is not limited to a single quantitative factor, for example, the number of hours financial institution staff devotes to a particular community development service. Rather, the evaluation also assesses the degree to which community development services are responsive to community needs. Examiners will consider any relevant information provided by the institution and from third parties to quantify the extent and responsiveness of community development services.

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

23. Does the proposed new guidance sufficiently explain the importance of the qualitative factors related to community development services?

24. What types of information are financial institutions and relevant third parties likely to maintain that may be used to demonstrate the extent to which community development services are offered and used?

II. Responsiveness and Innovativeness

A. Responsiveness

The term ''responsive'' is found throughout the CRA regulations and the Questions and Answers. Generally, the Agencies' regulations and guidance promote an institution's responsiveness to credit and community development needs by providing that the greater an institution's responsiveness to credit and community development needs in its assessment area(s), the higher the CRA rating that is assigned to that institution.[3] For example, Q&A § ▮.21(a)–2 explains that responsiveness is meant to lend a qualitative element to the rating system. Other Q&As explain that examiners should give greater weight to those activities that are most responsive to community needs, including the needs of low- and moderate-income individuals or neighborhoods. *See, e.g.,* Q&As § ▮.12(g)(4)(ii)–2 and § ▮.12(g)(4)(iii)–3. Other Q&As mention various types of activities that may be considered responsive to community needs. *See, e.g.,* Q&As § ▮.12(g)(3)–1 and § ▮.12(t)–8. Many of the Q&As addressing ''responsiveness'' also indicate that an institution's performance context influences assessment of the responsiveness of a given activity. Further, Q&A § ▮.12(h)–6, which was revised as part of the 2013 Guidance, also placed emphasis on an institution's responsiveness to community development needs and opportunities in its assessment area(s).

When the Agencies revised their CRA rules to adopt the concept of ''intermediate small'' institutions and added a community development test for those institutions in 2005, one performance factor in the new community development test evaluated the institution's responsiveness through community development activities to community development lending, investment, and service needs. To elaborate on this factor, the agencies also adopted Q&A § ▮.26(c)(4)–1 to describe ''responsiveness to community development needs'' in the context of the community development test for intermediate small institutions.

Because the concept of ''responsiveness'' is utilized in the CRA regulations and Questions and Answers applicable to all covered institutions, the Agencies propose a new Q&A § ▮.21(a)–3 that sets forth general guidance on how examiners evaluate whether a financial institution has been responsive to credit and community development needs. The proposed Q&A is intended to encourage institutions to think strategically about how to best meet the needs of their communities based on their performance context.

[3] For example, Appendix A—Ratings states, ''The [Agency] rates [an institution's] investment performance 'outstanding' if, in general, it demonstrates: . . . (C) Excellent responsiveness to credit and community development needs.'' 12 CFR ▮ app. A(b)(2)(i). Responsiveness is generally a consideration in all of the ratings.

The new Q&A indicates that examiners will look at not only the volume and types of an institution's activities, but also how effective those activities have been. Examiners always evaluate responsiveness in light of an institution's performance context. The proposed Q&A suggests several information sources that may inform examiners' evaluations of performance context and responsiveness. The text of proposed new Q&A § ▮.21(a)–3 follows:

§ ▮.21(a)–3: *''Responsiveness'' to credit and community development needs is either a criterion or otherwise a consideration in all of the performance tests. How do examiners evaluate whether a financial institution has been ''responsive'' to credit and community development needs?*

A1. Examiners evaluate the volume and type of an institution's activities, i.e., retail and community development loans and services and qualified investments, as a first step in evaluating the institution's responsiveness to community credit needs. In addition, an assessment of ''responsiveness'' encompasses the qualitative aspects of performance, including the effectiveness of the activities. For example, some community development activities require specialized expertise or effort on the part of the institution or provide a benefit to the community that would not otherwise be made available. In some cases, a smaller loan may have more benefit to a community than a larger loan. Activities are considered particularly responsive to community development needs if they benefit low- and moderate-income individuals, low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies.

Examiners evaluate the responsiveness of an institution's activities to credit and community development needs in light of the institution's performance context. That is, examiners consider the institution's capacity, its business strategy, the needs of the community, and the opportunities for lending, investments, and services in the community. To inform their evaluation, examiners may consider information from many sources, including

• Demographic and other information compiled by local, state, and Federal government entities;

• public comments received by the Agency, for example, in response to its publication of its planned examination schedule;

• information from community leaders or organizations; and

• the results of an assessment, prepared by an institution in the normal course of business, of the credit and community development needs in the institution's assessment area(s) and how the institution's activities respond to those needs.

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

25. Does this proposed new guidance appropriately highlight the importance of responsiveness to credit and community development needs and provide a flexible, yet clear, standard for determining how financial institutions will receive consideration?

26. Are there other sources of information that examiners should consider when evaluating an institution's responsiveness to credit and community development needs?

27. In connection with community development activities that will not directly benefit a financial institution's assessment area(s), as described in Q&A § ▮.12(h)–6 in the 2013 Guidance, would the proposed new Q&A help a financial institution in making decisions about the community development activities in which to participate? Note that Q&A § ▮.12(h)–6 addresses two categories of community development activities that will not directly benefit a financial institution's assessment area(s): (i) Those that have a purpose, mandate, or function to serve the assessment area(s); and (ii) those that do not directly benefit the assessment area(s) but that do benefit geographies or individuals in the broader statewide or regional area that includes the institution's assessment area(s).

B. Innovativeness

Innovativeness, like responsiveness, is a standard that is found throughout the CRA regulations. For example, ''innovativeness'' is included as a standard throughout the performance tests for large financial institutions. The large institution lending test evaluates the innovativeness of community development lending and the institution's use of innovative lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies. *See* 12 CFR ▮.22(b)(4) and (b)(5). The large institution investment test evaluates the innovativeness or complexity of qualified investments. *See* 12 CFR ▮.23(e)(2). Similarly, the large institution service test evaluates the innovativeness and responsiveness of community development services. *See* 12 CFR ▮.24(e)(2).

The three-part performance criteria in the community development test for wholesale or limited purpose banks includes an evaluation of the use of innovative or complex qualified investments, community development loans, or community development services. *See* 12 CFR ▮.25(c)(2). Finally, when evaluating a strategic plan, the Agencies evaluate a plan's measurable goals according to the regulatory criteria, all of which mention innovativeness. *See* 12 CFR ▮.27(g)(3).[4]

The Questions and Answers also provide further guidance on what is meant by ''innovativeness.'' For example, under the large institution lending test, the Agencies state that in evaluating the innovativeness of an institution's lending practices (and the innovativeness of its community development lending), examiners are not limited to reviewing the overall variety and specific terms and conditions of the credit products themselves. In connection with the evaluation of an institution's lending, examiners also may give consideration to related innovations when they augment the success and effectiveness of the institution's lending under community development loan programs or, more generally, its lending under its loan programs that address the credit needs of low- and moderate-income geographies or individuals. *See* Q&A § ▮.22(b)(5)–1.

In addition, the Questions and Answers provide that innovative lending practices, innovative or complex qualified investments, and innovative community development services are not required for a ''satisfactory'' or ''outstanding'' CRA rating, even for large institutions or wholesale and limited purpose institutions. *See* Q&A § ▮.28–1. However, under these tests, the use of innovative lending practices, qualified investments, and community development services may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance rating. *Id.*

Bankers have sought further guidance, reporting that there are inconsistencies in the types of activities that have been considered innovative. For instance, bankers have mentioned that some examiners consider community development services innovative only if they are new to a particular market or to the assessment area, while others consider an activity innovative if it is new to the institution.

The Agencies agree that additional clarification regarding the meaning of ''innovativeness'' would benefit both examiners and institutions. Therefore, the Agencies are proposing a new Q&A § ▮.21(a)–4 that would address what is meant by ''innovativeness.'' First, the proposed new guidance discusses innovativeness based on the institution, stating that an innovative practice or activity will be considered when an institution implements meaningful improvements to products, services, or delivery systems that respond more effectively to customer and community needs, particularly those segments enumerated in the definition of community development. Then, the proposed new Q&A addresses innovativeness in terms of an institution's market and customers, specifically stating that innovation includes the introduction of products, services, or delivery systems by institutions, which do not have the capacity to be market leaders in innovation, to their low- or moderate-income customers or segments of consumers or markets not previously served. The Agencies' proposal stresses that institutions should not innovate simply to meet this criterion of the applicable test, particularly if, for example, existing products, services, or delivery systems effectively address the needs of all segments of the community. Finally, the proposed new Q&A indicates that practices that cease to be innovative may still receive qualitative consideration for being flexible, complex, or responsive. A practice typically ceases to be innovative for an institution when the once innovative practice has become a standard, everyday practice of the institution.

The text of proposed new Q&A § ▮.21(a)–4 follows:

§ ▮.21(a)–4: *What is meant by ''innovativeness''*

A. Innovativeness is one of several qualitative considerations under the lending, investment, and service tests. The community development test for wholesale and limited purpose institutions similarly considers ''innovative'' loans, investments, and services in the evaluation of performance. Under the CRA regulations, an innovative practice or activity will be considered when an institution implements meaningful improvements to products, services, or delivery systems that respond more effectively to customer and community needs, particularly those segments enumerated in the definition of community development.

[4] ''Innovativeness'' is not a factor in the community development test applicable to intermediate small institutions. *See* Q&A § ▮.21(a)–2.

Institutions should not innovate simply to meet this criterion of the applicable test, particularly if, for example, existing products, services, or delivery systems effectively address the needs of all segments of the community. Innovative activities are especially meaningful when they emphasize serving, for example, low- or moderate-income consumers or distressed or underserved non-metropolitan middle-income geographies in new or more effective ways. Innovation also includes the introduction of existing types of products, services, or delivery systems by institutions, which do not have the capacity to be market leaders in innovation, to their low- or moderate-income customers or segments of consumers or markets not previously served. Practices that cease to be innovative may still receive qualitative consideration for being flexible, complex, or responsive.

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

28. Does the proposed new guidance clarify what is meant by innovativeness?

29. Does the proposed new guidance appropriately explain innovations that may occur at financial institutions of different sizes and types?

30. Is it clear that innovative activities are not required?

General Comments

The Agencies invite comments on any aspect of this proposal. The Agencies particularly would like comments addressing those questions specifically noted at the end of the discussion of each of the proposed revised and new Q&As 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. 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 nevertheless are invited on whether the proposed revised interagency Q&As are stated clearly, and how the guidance might be revised to make it easier to read.

Dated: August 6, 2014.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 4, 2014.

Secretary of the Board.

Dated at Washington, DC, this 14th day of August, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

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