DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

[Docket ID OCC–2014–0021]

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Docket No. OP–1497]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

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

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: Guidance on the interpretation and application of the Community Reinvestment Act regulations.

SUMMARY: The OCC, Board, and FDIC (the Agencies) are adopting as final revisions to the Interagency Questions and Answers Regarding Community Reinvestment (Questions and Answers) based on the proposal issued on September 10, 2014 addressing alternative systems for delivering retail banking services; community development-related issues; and the qualitative aspects of performance, including innovative or flexible lending practices and the responsiveness and innovativeness of an institution's loans, qualified investments, and community development services. The Agencies are clarifying nine of the 10 proposed questions and answers (Q&A), revising four existing Q&As for consistency, and adopting two new Q&As. The Agencies are not adopting one of the proposed revisions to guidance that addressed the availability and effectiveness of retail banking services. Finally, the Agencies are making technical corrections to the Questions and Answers to update cross-references and remove references related to the Office of Thrift Supervision (OTS) as obsolete. The Agencies are publishing all of the new and revised Q&As, as well as those Q&As that were published in 2010 and 2013 and that remain in effect in this final guidance.

DATES: This document goes into effect on July 25, 2016.

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SUPPLEMENTARY INFORMATION:

I. Background

The Agencies 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 CRA is designed to encourage regulated financial institutions to help meet the credit needs of their entire communities. The CRA regulations establish the framework and criteria by which the Agencies assess an institution's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations. The regulations provide different evaluation standards for institutions of different asset sizes and types.

The Agencies publish the Questions and Answers [1] to provide guidance on the interpretation and application of the CRA regulations 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). The Questions and Answers were last published in full by the Agencies 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 Q&As and added two new Q&As (2013 Questions and Answers) (78 FR 69671), which supplemented the 2010 Questions and Answers. This document supplements, revises, republishes, and supersedes the 2010 Questions and Answers and the 2013 Questions and Answers.

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, for thrifts, the small savings association performance standards appear at 12 CFR 195.26; for national banks, the small bank performance standards appear at 12 CFR 25.26; 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 to 12 CFR ____.26. Each Q&A is numbered using a system that consists of the regulatory citation and a number, connected by a dash. For example, the first Q&A addressing 12 CFR ____.26 would be identified as § ____.26–1.

Although a particular Q&A may provide guidance on one regulatory provision, *e.g.,* 12 CFR ____.22, which relates to the lending test applicable to large institutions, its content may also be applicable to, for example, small institutions, which are evaluated pursuant to small institution performance standards found at 12 CFR ____.26. Thus, readers with a particular interest in small institution issues, for example, should review Q&As relevant to other financial institutions as well.

A. The 2014 Proposal and Overview of Comments

On September 10, 2014, the Agencies proposed to revise six existing Q&As.[2] Two Q&As addressed the availability and effectiveness of retail banking services [3] and one Q&A addressed innovative or flexible lending practices.[4] The other three proposed

[1] Throughout this document, ''Questions and Answers'' refers to the ''Interagency Questions and Answers Regarding Community Reinvestment'' in its entirety; ''Q&A'' refers to an individual question and answer within the Questions and Answers.

[2] 75 FR 53838 (Sept. 10, 2014).

[3] Q&As § ____.24(d)–1 and § ____.24(d)(3)–1.

[4] Q&A § ____.22(b)(5)–1.

revised Q&As addressed 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.[5] The Agencies also proposed to add four new Q&As, two of which addressed community development services,[6] and two of which provided general guidance on responsiveness and innovativeness.[7]

Together, the Agencies received 126 different comment letters on the proposed Q&As, plus over 900 form letter submissions. The commenters included financial institutions and their trade associations (collectively, industry commenters), community development advocates and consumer organizations (collectively, community organization commenters), state bank supervisors, Federal agencies, and other interested parties.

Most commenters supported the Agencies' efforts to clarify the CRA guidance. Some commenters also suggested revisions to the proposed new and revised Q&As, as well as posed questions or stated concerns about the Q&As. Comments received by the Agencies on each revised or new proposed Q&A are discussed in further detail below in Parts II and III.

B. Summary of Final Q&As

The Agencies are adopting nine of the 10 proposed Q&As with clarifications to reflect commenters' suggestions. Parts II and III below discuss the clarifications made to these nine Q&As. Further, as discussed more fully below in Part II.C.i., in response to comments received, the Agencies are not adopting as final the proposed revisions to Q&A § ____.24(d)–1, one of the Q&As that addresses the availability and effectiveness of retail banking services.

The Agencies are also revising four additional existing Q&As [8] and adopting two new Q&As [9] based on questions and suggestions provided by the commenters. Finally, as discussed in Part IV, the Agencies have made technical corrections to 25 Q&As to update, for example, regulatory references, addresses, and references related to the former OTS.

As has been done in the past, the Agencies intend to provide training on all aspects of the new and revised Questions and Answers for examiners, as well as outreach for bankers and other interested parties.

II. Revisions to Existing Q&As

A. 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. In addition, small institutions may use community development activities 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 Agencies proposed to provide additional clarification of three Q&As addressing community development-related topics.

i. Economic Development

The CRA regulations 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 (SBDC) or Small Business Investment Company (SBIC) programs (13 CFR 121.301) or have gross annual revenues of $1 million or less." *See* 12 CFR ____.12(g)(3). 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 explained the phrase "promote economic development." This Q&A stated that activities promote economic development by financing small businesses or farms if they meet two "tests": (i) A "size test" (the beneficiaries of the activity must meet the size eligibility standards of the SBDC or SBIC programs 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 stated that activities promote economic development 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 explained, "[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."

The Agencies proposed to revise existing Q&A § ____.12(g)(3)–1 to clarify what is meant by the phrase "promote economic development," and to better align this Q&A with other guidance provided in existing Q&As § ____.12(i)–1 and § ____.12(i)–3 regarding consideration of economic development activities undertaken by financial institutions. Further, the Agencies proposed to revise the guidance to add additional examples that would demonstrate a purpose of economic development, such as workforce development and technical assistance support for small businesses. In addition, the Agencies requested public comment on seven questions regarding the proposed revisions to the Q&A.

The Agencies received 40 comments addressing proposed revised Q&A § ____.12(g)(3)–1. Most commenters provided general comments about the proposed revised Q&A, with relatively few responding to the seven specific questions posed by the Agencies. Commenters generally supported the Agencies' efforts to clarify the types of activities that promote economic development. One industry commenter mentioned that changing the format to a bulleted list of activities that demonstrate a purpose of economic development is helpful.

A few industry commenters suggested eliminating the purpose test altogether, asserting that the regulations require only that activities relate to businesses that meet Small Business Administration (SBA) size-eligibility requirements. However, the Agencies note the intent of the purpose test is to explain what is meant by the phrase "promote economic development." The purpose test ensures that examiners consider only activities that promote economic development as activities with a primary purpose of community development. Other loans to small businesses and small farms are considered as retail loans if they meet certain loan-size standards (*see* 12 CFR

[5] Q&As § ____.12(g)(3)–1; § ____.12(h)–1; and § ____.12(g)(4)(iii)–4.

[6] Q&As § ____.24(a)–1 and § ____.24(e)–2.

[7] Q&As § ____.21(a)–3 and § ____.21(a)–4.

[8] Q&As § ____.12(g)–1, § ____.12(i)–3, § ____.12(t)–4, and § ____.26(c)(3)–1.

[9] Q&As § ____.12(g)–4 and § ____.24(d)(4)–1.

____.12(v) and (w)); larger loans to small businesses and small farms that do not meet the purpose test would not be considered in a CRA evaluation as small business or small farm loans. Furthermore, they would not be considered as community development loans, unless they have an alternate community development purpose as defined in 12 CFR ____.12(g).

The Agencies specifically asked what information is available to demonstrate that an activity meets the size and purpose tests. One community organization commenter suggested that examiners consider the size of the business by revenues or, alternatively, the mission statement of the intermediary lender, if the statement provides sufficient detail on the types of businesses served, to demonstrate an activity meets the size test. A few industry commenters suggested that all activities that support small businesses should be presumed to qualify and meet the purpose test.

As noted above, existing Q&A § ____.12(g)(3)–1 explained that the 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. The Agencies proposed a revision to the Q&A to add the following presumption: For loans to or investments in a Community Development Financial Institution (CDFI) that finances small businesses or small farms. As discussed below, the Agencies are adopting this proposed amendment to Q&A § ____.12(g)(3)–1 regarding CDFIs.

The Agencies also proposed to revise the existing Q&A § ____.12(g)(3)–1 by removing the reference to persons who are ''currently'' low- or moderate-income in order to clarify that banks can focus on community development activities that extend beyond support for low-wage jobs. The Agencies specifically requested input on whether the proposed revision would help to clarify what is meant by job creation, retention, or improvement for low- or moderate-income individuals. Commenters generally agreed with removing the reference to persons who are ''currently'' low- or moderate-income. However, most commenters indicated that the proposal did not sufficiently clarify what is meant by job creation, retention, or improvement for low- or moderate-income persons beyond the creation of low-wage jobs. Industry commenters reiterated concerns that the primary method to demonstrate that activities benefit low- or moderate-income individuals is to provide evidence of low-wage jobs, which is not consistent with the spirit or intent of the CRA. These commenters also expressed concerns that the proposal did not include examples of methods that could be used to demonstrate that the persons for whom jobs are created, retained, or improved are low- or moderate-income, and asked that the Agencies incorporate examples into the final Q&A.

The Agencies are adopting revisions to existing Q&A § ____.12(g)(3)–1 largely as proposed, but with additional clarifications.

First, the Agencies recognize that financial institutions may rely on a variety of methods to demonstrate that activities promote economic development. To make clear that financial institutions may provide various types of information to demonstrate that an activity meets the purpose test, the Agencies have added a statement in the final Q&A clarifying that examiners will employ appropriate flexibility in reviewing any information provided by a financial institution that reasonably demonstrates that the purpose, mandate, or function of an activity meets the purpose test.

In addition to the above revisions, the Agencies had proposed to add examples of types of activities that would meet the purpose test of promoting economic development. The Agencies are adopting these examples largely as proposed, but with some clarifications and revisions to address commenters' concerns, as discussed more fully below. Accordingly, the Agencies are adopting this final Q&A with reference to activities that are considered to promote economic development if they support permanent job creation, retention, and/or improvement:

- For low- or moderate-income persons;
- in low- or moderate-income geographies;
- in areas targeted for redevelopment by Federal, state, local, or tribal governments;
- by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms; or
- through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance.

The final Q&A also recognizes that Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate-income persons to jobs, or job training or workforce development programs, promote economic development.

The Agencies note that only one of the examples in the final Q&A explicitly refers to permanent job creation, retention, and/or improvement for low- or moderate-income persons. The Agencies encourage activities that promote economic development through opportunities for low- and moderate-income individuals to obtain higher wage jobs, such as through private industry collaborations with workforce development programs for unemployed persons and are clarifying that examiners will consider the qualitative aspects of performance related to all activities that promote economic development. In particular, activities will be considered more responsive to community needs if a majority of jobs created, retained, and/or improved benefit low- or moderate-income individuals.

The Agencies also note that Q&A § ____.12(g)(2)–1 provides examples of ways in which an institution could determine that community services and, therefore, other types of community development activities, including economic development, are targeted to low- or moderate-income individuals. In particular, the example explaining that an institution may use readily available data for the average wage for workers in a particular occupation or industry could be useful when determining whether an activity promotes economic development.

The Agencies specifically asked whether the proposed examples demonstrating that an activity promotes economic development for CRA purposes were appropriate, and whether there are other examples the Agencies should include. Most commenters generally agreed the proposed examples were appropriate. Several community organization commenters, as well as a state bank supervisory agency commenter, suggested the Q&A should also include a reference to the ''quality of jobs'' created, retained, or improved. Industry commenters, however, opposed a ''quality of jobs standard,'' expressing concerns related to increased subjectivity by examiners and the Agencies and documentation burden on institutions, small businesses or small farms, and examiners. The Agencies recognize that the term ''quality'' is subjective, not easily defined, and heavily influenced by local economic conditions, needs, and opportunities. The amount of time, resources, and expertise needed to fairly evaluate the quality of jobs created, retained, and/or improved for low- or moderate-income individuals could be overly burdensome for examiners, financial institutions, and small businesses or small farms. However, the Agencies note that examiners are not precluded from considering qualitative factors relative to a particular financial institution's performance context, including, at the institution's option, any information provided on the quality of jobs created, retained, or improved through any of the types of activities listed in the Q&A's description of the purpose test as promoting economic development.

The Agencies proposed that permanent job creation, retention, and/or improvement is supported ''through the creation or development of small businesses or farms'' and, therefore, such activity would be considered to promote economic development and meet the ''purpose test.'' The Agencies proposed this example in an effort to recognize the impact small businesses have on job creation in general, and to address industry concerns that activities in support of intermediary lenders or other service providers, such as business incubators that lend to start-up businesses and help businesses become bankable and sustainable, are often not considered under the purpose test. Industry commenters have previously indicated that such activities are not considered because it is not clear under the purpose test that these activities help promote economic development since any job creation, retention, or improvement would occur in the future—after the businesses are organized or more established. However, there were concerns that the proposed guidance stating that permanent job creation, retention, and/or improvement ''through the creation or development of small business or farms'' may be overly broad and could result in diffuse potential benefit to low- or moderate-income persons or geographies. The Agencies are adopting this example with revisions to clarify that examiners will consider activities that support permanent job creation, retention, and/or improvement by financing intermediaries that lend to, invest in, or provide technical assistance to *start-up or recently formed* small businesses or small farms. This example applies to loans to, investments in, or services to intermediaries that, in turn, lend to, invest in, or provide technical assistance to small businesses or small farms, and not to activities provided directly by an institution to small businesses or small farms. A loan to a small business or small farm would be considered under the lending test applicable to a particular institution—for example, for large institutions, under the retail lending evaluation criteria.

The Agencies also proposed to add activities that support permanent job creation, retention, and/or improvement ''[t]hrough workforce development and/or job or career training programs that target unemployed or low- or moderate-income persons'' to the list of activities that are considered to promote economic development under the purpose test. Two government agency commenters expressed concerns that these activities, in and of themselves, may not involve financing small businesses or small farms and, therefore, would not meet the size test. To address these concerns, the final Q&A does not incorporate this example in the list of those types of activities that promote economic development under the purpose test. However, the Agencies are amending existing Q&As § ____.12(g)–1 and § ____.12(t)–4 to clarify that activities related to workforce development or job training programs for low- or moderate-income or unemployed persons are considered qualified community development activities.

The last example of a type of activity that would be considered to promote economic development that the Agencies proposed referred to ''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.'' Industry and community organization commenters suggested amending or eliminating this proposed activity altogether because it blurs the line between activities that support economic development and those that support other types of community development and could create confusion. Although the Agencies' original intention was to recognize all Federal, state, local, or tribal economic development initiatives, the Agencies agree with these commenters and have eliminated references to affordable housing, financial services, and community services, which would receive consideration under other prongs of the definition of ''community development.'' However, the Agencies have otherwise retained the example in the final Q&A being adopted, and have added a reference to governmental economic development initiatives that include job training or workforce development programs, because those initiatives are closely related to job creation, retention, and/or improvement.

Commenters overwhelmingly supported adding CDFIs that finance small businesses or small farms to the list of entities for which loans or investments are presumed to promote economic development; even so, some questioned limiting the presumption to CDFIs that finance small businesses or small farms. The Agencies are adopting this revision as proposed. In order for a CDFI to promote economic development by financing small businesses and small farms, it follows that any CDFI presumed to promote economic development would need to finance small businesses or small farms. Additionally, the Agencies are further revising the statement granting presumptions for activities related to the specified entities to include services provided to these entities, as well loans and investments.

Several commenters representing the Historic Tax Credit (HTC) industry suggested changes to the proposed Q&A that would expand and clarify the circumstances under which CRA consideration would be available for loans and investments related to projects involving HTCs. These commenters suggested the Agencies amend Q&A § ____.12(g)(3)–1 to create a presumption that activities related to HTC projects qualify for CRA consideration as promoting economic development by financing small businesses and small farms. Because not all HTC projects would meet the requirements to qualify for CRA consideration under 12 CFR ____.12(g)(3), the Agencies believe it would be inappropriate to grant such a presumption. Nonetheless, in instances in which loans to, or investments in, projects that receive HTCs do meet the regulatory definition of community development, including the geographic restrictions, the Agencies concur that CRA consideration should be provided. For example, a loan to, or investment in, an HTC project that does, in fact, relate to a facility that will house small businesses that support permanent job creation, retention, or improvement for low- or moderate-income individuals, in low- or moderate-income areas, or in areas targeted for redevelopment by Federal, state, local, or tribal governments may receive CRA consideration as promoting economic development. Further, a loan to or investment in an HTC project that will provide affordable housing or community services for low- or moderate-income individuals would meet the definition of community development as affordable housing or a community service targeted to low- or moderate-income individuals, respectively. Similarly, loans to or investments in HTC projects may also meet the definition of community development when the project revitalizes or stabilizes a low- or moderate-income geography, designated disaster area, or a designated distressed or underserved nonmetropolitan middle-income geography. Greater weight will be given to those HTC-related activities that are most responsive to community credit needs, including the needs of low- or moderate-income individuals or geographies. *See* Q&As § ____.12(g)–1, § ____.12(g)(2)–1, § ____.12(g)(4)–2, § ____.12(g)(4)(i)–1, and § ____.12(g)(4)(ii)–2 through–4.

In response to the Agencies' request for input on the types of information examiners should review when determining the performance context of an institution, some community organizations suggested consulting local studies and Federal Reserve Bank credit surveys; talking with CDFIs, local municipalities, and community organizations that work directly with small businesses; reviewing municipal needs assessments; and evaluating business and local demographic data. One industry commenter suggested examiners could review financial institution Consolidated Reports of Condition and Income (Call Reports) and academic or governmental economic development reports or adopted plans. Another industry commenter suggested that existing Q&As explain that an institution may provide examiners with any relevant information and, therefore, provide sufficient guidance without overlaying prescriptive changes that could be counter-productive to an institution's efforts to balance innovativeness and responsiveness with its unique business strategy. Also regarding performance context, community organization commenters called for examiners to conduct ''robust'' analyses of local needs, including localized data on employment needs and opportunities for low- or moderate-income individuals. The Agencies will consider commenters' suggestions going forward.

Finally, one community organization commenter noted that activities that support technical assistance may not involve ''financing'' small businesses or small farms and, therefore, may not be consistent with the size test. Providing technical assistance on financial matters to small businesses is currently cited as an example of a community development service in Q&A § ____.12(i)–3 and involves the provision of financial services. The Agencies long ago recognized that many small businesses, particularly start-up companies, are not immediately prepared for, or qualified to engage in, traditional bank financing and, therefore, included providing technical assistance to small businesses and small farms as a community development activity. However, the Agencies understand that reasoning may not be clear to examiners or financial institutions. To address this issue, the Agencies have amended the description of the ''size test'' in the final Q&A to explain that the term ''financing'' in this context is considered broadly and includes technical assistance that readies a business that meets the size eligibility standards to obtain financing. The Agencies intend this explanation to ensure that technical assistance that readies a small business or small farm to obtain financing is an activity that promotes economic development and, thus, would receive consideration as a community development activity.

ii. Revitalize or Stabilize Underserved Nonmetropolitan Middle-Income Geographies

The definition of ''community development'' includes ''activities that revitalize or stabilize . . . underserved nonmetropolitan middle-income geographies . . . .'' *See* 12 CFR ____.12(g)(4)(iii). The CRA regulations further provide that activities revitalize or stabilize underserved nonmetropolitan middle-income geographies if they help to meet essential community needs, including the needs of low- or moderate-income individuals. *See* 12 CFR ____.12(g)(4)(iii)(B). Existing Q&A § ____.12(g)(4)(iii)–4 provided further guidance by listing examples of activities that would be considered to help to revitalize or stabilize underserved nonmetropolitan middle-income geographies. The Agencies proposed to revise this guidance by adding a new example describing an activity related to a new or rehabilitated communications infrastructure in recognition that the availability of reliable communications infrastructure, such as broadband Internet service, is important in helping to revitalize or stabilize underserved nonmetropolitan middle-income geographies.

The Agencies received 66 comments addressing the proposed addition of the new example involving communications infrastructure. Commenters' views on whether the new example should be added to Q&A § ____.12(g)(4)(iii)–4 were mixed.

A number of commenters expressed concern regarding the addition of a new or rehabilitated communications infrastructure as an example of an activity that would be considered to revitalize or stabilize a nonmetropolitan middle-income geography. These commenters, primarily representing community organizations, generally expressed the view that CRA consideration should be used as a means of encouraging financial institutions to find more direct ways to meet the needs of low- or moderate-income individuals and geographies. One individual commenter that opposed the addition of the example expressed concern that ''regulatory creep'' was moving the focus of the CRA away from its original mission of helping to meet community credit needs.

In contrast, most industry commenters, as well as a few community organization commenters, supported the addition of the new example addressing communications infrastructure. These commenters stated that such an example would provide further clarity regarding what constitutes an activity that could revitalize or stabilize underserved nonmetropolitan middle-income geographies. Many commenters who supported the addition of the new example noted the importance of communications infrastructure, and in particular broadband access, to the economic viability of underserved nonmetropolitan middle-income geographies' residents and businesses in the current marketplace. Further, many of these commenters noted that the addition of the new example also may help to improve access to alternative systems of delivering retail banking services, which require reliable access to broadband.

The Agencies are adopting the new example describing a new or rehabilitated communications infrastructure because they continue to believe that, consistent with the CRA regulatory definition of ''community development,'' communications infrastructure is an essential community service. Specifically, the definition of ''community development'' provides that activities that help meet ''essential community needs'' revitalize and stabilize underserved nonmetropolitan middle-income geographies. Further, existing Q&A § ____.12(g)(4)(iii)–4 clarifies that ''financing for the construction, expansion, improvement, maintenance, or operation of essential infrastructure'' may qualify for revitalization or stabilization consideration. As noted above, in the Agencies' view, reliable communications infrastructure is increasingly essential to the economic viability of all residents of underserved nonmetropolitan middle-income geographies, including low- and moderate-income individuals.

Several industry and community organization commenters, as well as a commenter representing a state banking supervisor, sought clarification regarding the extent to which the new or rehabilitated communications infrastructure must benefit low- or moderate-income individuals or geographies. The Agencies considered whether to provide additional clarification addressing these comments and determined that additional guidance was not necessary. First, existing Q&A § ____.12(g)(4)(iii)–4 states that, to receive CRA consideration on the basis of revitalizing or stabilizing an underserved nonmetropolitan middle-income geography, a project must meet essential community needs, including the needs of low- or moderate-income individuals. Although the geographies (a term defined at 12 CFR ____.12(k) as census tracts) addressed by Q&A § ____.12(g)(4)(iii)–4 are designated as middle-income, there typically are low- and moderate-income individuals and neighborhoods interspersed throughout these nonmetropolitan geographies.

Second, the CRA regulations [10] and Q&A § ____.12(g)(4)(iii)–4 do not require that financial institutions demonstrate that projects primarily benefit the low- and moderate-income individuals or neighborhoods in these geographies in order to receive CRA consideration for revitalizing or stabilizing the underserved nonmetropolitan middle-income geographies. The Agencies believe that the current explanation in Q&A § ____.12(g)(4)(iii)–4 is clear regarding the benefits to an underserved nonmetropolitan middle-income geography and the low- and moderate-income individuals within that geography.

Two industry commenters and one community organization commenter requested that the proposed new example not be limited to Q&A § ____.12(g)(4)(iii)–4, asserting that communications infrastructure should also be considered to be an activity that revitalizes or stabilizes distressed nonmetropolitan middle-income, and low- or moderate-income, geographies. One industry commenter stated that it should be made clear that investments in new or rehabilitated communications infrastructure, and not just loans related to such activities, would receive CRA consideration. In addition, a few commenters requested generally that the Agencies clarify that the list of examples included in Q&A § ____.12(g)(4)(iii)–4 is not exhaustive.

In response to these comments, the Agencies are adopting a new Q&A § ____.12(g)–4. This new Q&A explains that examples included throughout the Questions and Answers are not exhaustive; rather, the Agencies provide examples to illustrate the types of activities that may qualify for consideration under a particular provision of the regulations. Nonetheless, the Agencies emphasize that the examples that are expressly provided are not the only activities that might receive CRA consideration. In addition, new Q&A § ____.12(g)–4 explains that financial institutions may receive consideration for a community development activity, such as a qualified investment, if it serves a similar community development purpose as an activity described in an example related to a different type of community development activity, such as a community development loan. If a financial institution can demonstrate that an activity it has undertaken has a primary purpose of community development and meets the relevant geographic requirements, that activity should receive CRA consideration.

The Agencies considered whether the example pertaining to a new or rehabilitated communications infrastructure should be added to any other Q&As, such as Q&A § ____.12(g)(4)(iii)–3, but declined to add the example to any other Q&As. The Agencies believe that new Q&A § ____.12(g)–4, described above, should provide guidance as to whether a new or rehabilitated communications infrastructure might receive CRA consideration in other contexts. The Agencies do not believe it is necessary to add the same example to any other Q&As.

Some industry and community organization commenters, as well as the U.S. Environmental Protection Agency (EPA), requested that the Agencies add additional examples of activities that qualify for consideration as activities that revitalize or stabilize underserved nonmetropolitan middle-income geographies. For example, the EPA suggested expanding Q&A § ____.12(g)(4)(iii)–4 to address renewable energy facilities, which it posited could be considered ''public services.'' (As discussed below, loans to finance certain renewable energy facilities has been added to the examples of community development loans in Q&A § ____.12(h)–1.) Consistent with the explanation in new Q&A § ____.12(g)–4, if a financial institution were to submit information demonstrating that financing or investing in renewable energy facilities qualifies for CRA consideration under, for example, 12 CFR ____.12(g)(4)(iii), or any of the other provisions within the definition of community development, then the financial institution would receive consideration for the activity. Therefore, the Agencies are not expressly adding a reference to renewable energy facilities to the list of examples in Q&A § ____.12(g)(4)(iii)–4.

Other commenters suggested that loans enabling flood control measures should be considered as an example of a community development loan. Although these comments were offered as a suggestion for an example of a community development loan in connection with Q&A § ____.12(h)–1, the Agencies believe that the commenters' suggestion of a new or rehabilitated flood control measure is another example of essential infrastructure that could qualify as an activity that revitalizes or stabilizes an underserved nonmetropolitan middle-income geography. As such, the Agencies have added the following new example in Q&A § ____.12(g)(4)(iii)–4: ''a new or rehabilitated flood control measure, such as a levee or storm drain, that serves the community, including low- and moderate-income residents.''

iii. Community Development Loans

The Agencies' CRA regulations define ''community development loan'' to mean a loan that has community development as its primary purpose. *See* 12 CFR ____.12(h). Existing Q&A § ____.12(h)–1 provides examples of community development loans. The Agencies proposed to add a new example of loans to finance certain renewable energy or energy-efficient technologies. The proposed example was intended to clarify that such loans may be considered as community development loans when the renewable energy or energy-efficiency improvements help reduce operational costs and maintain the affordability of single-family or multifamily housing or community facilities that serve low- and moderate-income individuals.

The Agencies received 43 distinct comments and 917 form letters addressing the proposed example in Q&A § ____.12(h)–1. Industry and community organization commenters, as well as commenters representing environmental organizations, generally supported adding the proposed example to the Q&A. However, a few community organization commenters expressed differing opinions regarding how the Agencies proposed to describe that an indirect benefit from renewable energy

[10] *See* 12 CFR ____.12(g)(4)(iii).

improvements would be considered. A few community organization commenters believed that the benefit to low- or moderate-income households or geographies should be more clear and direct. These commenters asserted that loans financing renewable energy or energy-efficiency initiatives should be required to result in a demonstrable reduction in the operating or maintenance cost for affordable housing or community facilities serving low- or moderate-income individuals in order to qualify for CRA consideration as community development loans. In response to these comments, the Agencies agree that there should be a discernible benefit to the affordable housing or community facilities serving low- or moderate-income individuals. Thus, the Agencies have revised the example in Q&A § ____.12(h)–1 to remove the reference to ''indirect benefit.'' However, to provide further clarification, the Agencies have added an example illustrating how renewable energy facilities could benefit low- or moderate-income individuals by reducing a tenant's utility cost or the cost of providing utilities to common areas in an affordable housing development.

In addition, a number of commenters representing the renewable energy industry asked the Agencies to consider renewable energy facilities that are not attached directly on the affordable housing or community services facility, explaining that this approach could be more efficient, technologically simpler, or less costly if a particular building site is not oriented to optimize renewable energy generation. In response to these comments, the Agencies have revised the example in the final Q&A to clarify that a renewable energy project may be located on-site or off-site. This clarification would apply, for example, to a community-scale or micro-grid renewable energy facility or solar panels placed on carports instead of being physically mounted on the main building, so long as the benefit from the energy generated is provided to an affordable housing project or a community facility that has a community development purpose. To demonstrate that activities related to a renewable energy facility or project have a primary purpose of community development, an institution may provide a copy of the contractual agreement, such as a lease, power purchase agreement, or energy service contract, that allocates energy or otherwise reduces energy cost to benefit affordable housing or a community facility that serves low- or moderate-income individuals.

The EPA suggested adding ''revitalizing a contaminated property by installing renewable energy'' to the list of examples of community development loans in the revision of Q&A § ____.12(h)–1. A community development loan must have a primary purpose of community development (*see* Q&A § ____.12(h)–8). The Agencies do not believe it is clear that revitalizing a contaminated property by installing renewable energy facilities would always have a primary purpose of community development, as defined in 12 CFR ____.12(g). Therefore, the Agencies have not added this particular example.

Several renewable energy-related industry commenters discussed the job creation and job training aspects of installing renewable energy improvements and requested greater CRA consideration of the impact of jobs during the construction phase. The agencies note that Q&A § ____.12(h)–5, in offering guidance on community development activities that revitalize or stabilize a low- or moderate-income geography, states that some activities provide only indirect or short-term benefits to low- or moderate-income individuals and, as such, do not receive CRA consideration. Construction jobs are used as an illustration of this type of short-term benefit. Consistent with this guidance, the Agencies do not believe that additional consideration should be given to short-term job creation related to the installation of renewable energy improvements benefitting affordable housing or a community facility that serves low- or moderate-income individuals and are not amending the Q&A as suggested by the commenters.

A few renewable energy-related industry commenters suggested that CRA consideration should be given for loans to low- or moderate-income homeowners to install renewable energy facilities or energy-efficient improvements. A loan to a homeowner for these purposes would be considered as a consumer loan or home mortgage loan. Under the existing regulation and guidance, these loans may be considered in an institution's CRA evaluation under the lending test relevant to the particular institution, so the Agencies have not made any additional revisions to the Questions and Answers in response to this comment.

One environmental organization suggested broadening the proposed language in Q&A § ____.12(h)–1 to expressly cover energy efficiency improvements in schools. The Agencies believe that inclusion of this language in Q&A § ____.12(h)–1 is unnecessary. A school that primarily serves low- or moderate- income students could be considered as a community facility, and a loan for energy efficiency improvements at that school would qualify as a community development loan, consistent with the example in the revised Q&A.

A number of community organization commenters suggested broadening the language in Q&A § ____.12(h)–1 to include water conservation improvements. The Agencies agree that water conservation improvements can promote sustainable affordable housing or community facilities serving low- or moderate-income individuals by lowering operating costs and, accordingly, have modified the example to include water conservation. In addition, activities related to water conservation improvements may also qualify as having a different community development purpose if an institution were to maintain information demonstrating that the activity meets the applicable community development definition as explained in new Q&A § ____.12(g)–4.

Although some commenters also suggested adding flood control improvements to the example in Q&A § ____.12(h)–1, the Agencies concluded that financing for flood control improvements may more appropriately be considered as essential infrastructure addressing the need for revitalization and stabilization of underserved nonmetropolitan middle-income geographies. *See* Q&A § ____.12(g)(4)(iii)–4.

The final paragraph of existing Q&A § ____.12(h)–1 stated that the rehabilitation and construction of affordable housing or community facilities may include the abatement or remediation of environmental hazards, and provided lead-based paint as an example. The Agencies received many comments from community and environmental organizations suggesting the inclusion of more explicit enumeration of several additional examples of environmental hazards and have added to the example ''asbestos, mold, or radon'' as other examples of environmental hazards that may be abated or remediated as part of a rehabilitation or construction project.

One renewable energy-related industry commenter noted that the discussion in the preamble of the September 2014 **Federal Register** notice addressing the proposed revision to Q&A § ____.12(h)–1 may affect certain energy financing programs. The

Agencies reiterate that 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 Agencies want to make clear that the addition of this example does not expand the definition of community development, but rather clarifies that consideration will be given for loans financing renewable energy facilities or energy-efficient improvements in affordable housing or community facilities that otherwise meet the existing definition of community development.

B. Lending Test—Innovative or Flexible Lending Practices

The CRA regulations provide that a financial institution's lending performance is evaluated by, among other things, 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). Existing guidance contained in Q&A § ____.22(b)(5)–1 provides two examples that illustrate the range of practices that examiners may consider when evaluating the innovativeness or flexibility of an institution's lending practices. The Agencies believed that the current guidance would benefit from additional examples of innovative or flexible lending practices and therefore, proposed to expand the list of examples.

First, the Agencies proposed to revise Q&A § ____.22(b)(5)–1 to 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. Second, the Agencies proposed to 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. Third, the Agencies proposed two new examples of innovative or flexible lending practices. The first example described small dollar loan programs as an innovative or flexible 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. A small dollar loan program currently receives consideration under the lending test and, therefore, the guidance already acknowledges these programs 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, the Agencies believed that outreach initiatives offered in conjunction with small dollar loan programs improve the success of those affiliated lending programs in meeting the credit needs of low- and moderate-income individuals and communities and, therefore, merit qualitative consideration as an example of an innovative or flexible lending practice.

The second example proposed by the Agencies described mortgage or consumer lending programs that utilize alternative credit histories in a manner that would benefit low- or moderate-income individuals. The Agencies believed that considering alternative credit histories to supplement conventional trade line information with additional information about the borrower, such as rent and utility payments, could provide some additional creditworthy low- or moderate-income individuals an opportunity to gain access to credit, consistent with safe and sound underwriting practices. The Agencies also solicited comment on whether the proposed guidance was sufficient to encourage institutions to design more innovative and flexible lending programs that are responsive to community needs; whether the benefits of using alternative credit histories outweighed any concerns; and if this additional guidance would better enable examiners and institutions to identify those cases in which alternative credit histories benefit low- or moderate-income individuals.

The Agencies received 87 comments addressing the proposed revisions and the three related questions the Agencies posed for comment. Because commenters' more general observations also addressed the three questions, their responses to the questions are integrated into the broader discussion of the comments received by the Agencies.

Most commenters were supportive of the Agencies' intent to clarify how examiners evaluate an institution's innovative or flexible lending practices. However, several commenters representing both the banking industry and community organizations expressed some concerns about the revisions, as discussed more fully below.

A few industry commenters asked the Agencies to further clarify that innovative activities, such as small dollar lending programs and alternative credit histories, are not required to obtain a specific CRA rating, and had concerns despite the revision proposed by the Agencies intended to address this issue. The Agencies have revised the introductory paragraph of the final Q&A to make clearer that innovative or flexible lending practices are not required to obtain a specific CRA rating. In addition, the final Q&A is revised to cross-reference Q&A § ____.28–1, which explains how innovativeness is considered in the rating process. Current Q&A § ____.28–1 explicitly states, among other things, that the lack of innovative lending practices will not result in a ''Needs to Improve'' CRA rating. Rather, the guidance notes that the use of innovative lending practices may augment the consideration given to an institution's performance under the quantitative criteria, resulting in a higher performance rating.

One industry commenter addressed the Agencies' proposed language stating that examiners will consider whether, and the extent to which, innovative or flexible practices augment the success and effectiveness of an institution's lending program. This commenter questioned whether the proposed guidance would be sufficient to help examiners or bankers understand and identify innovative or flexible lending activities since examiner discretion determines what is considered ''innovative'' or ''flexible.'' The Agencies recognize that the terms ''innovative'' and ''flexible'' are qualitative in nature and, thus, examiner judgment is needed to assess the unique characteristics and differences in an institution's lending programs. However, the Agencies believe additional guidance concerning what constitutes an innovative activity would be helpful to the review process undertaken by examiners. Bankers and examiners may also find additional guidance in new Q&A § ____.21(a)–4, discussed in further detail below, which explains, among other things, that ''innovative activities are especially meaningful when they emphasize serving, for example, low- or moderate-income consumers or distressed or underserved nonmetropolitan middle-income geographies in new or more effective ways.'' Although examiner judgment and discretion remain in determining what lending practices are deemed innovative or flexible, the Agencies believe the additional guidance in Q&A § ____.21(a)–4 provides further clarification on when an activity should be considered innovative or flexible.

Most commenters addressing proposed Q&A § ____.22(b)(5)–1 commented on the two examples proposed by the Agencies. Concerning the small dollar loan example, most community organization commenters recognized that such programs could be a feasible alternative to higher-cost loans offered by payday lenders. Industry commenters were also supportive of small dollar lending programs. For example, one industry commenter stated that small dollar loans are a path for a bank's clients with thin credit files or a lack of credit history to build or establish a credit score. Nevertheless, some community organization commenters expressed concern that the proposed example on small dollar loans did not make reference to any consumer protection standards.

In particular, one state agency expressed concern that the small dollar loan example did not sufficiently emphasize consumer protection and the safety and soundness aspects of individual small dollar loans. This commenter suggested that the Agencies consider adding the phrase ''based on a borrower's ability to repay'' to the small dollar loan example because it would emphasize that small dollar loans made in a safe and sound manner are evaluated with respect to individual loans and not the entire portfolio. Similarly, several community organization commenters asked that the Agencies give CRA consideration for small dollar loan programs only if the loans are safe and sound alternatives to high-cost predatory programs.

In response to these comments, the Agencies are adopting the small dollar loan program example largely as proposed with a revision to ensure consistency with Q&A § ____.22(a)–1.

Finally, one industry commenter requested that the Agencies clarify the term ''reasonable terms'' in the context of small dollar lending programs. This commenter expressed concern that ''reasonable terms'' was undefined and, thus, would add confusion as to what would receive CRA consideration. The Agencies note that whether a lending program has ''reasonable terms'' would depend on the facts and circumstances and, therefore, defining the term would not be practicable.

Most community organization commenters were supportive of the proposed new example addressing consideration of alternative credit histories as an innovative or flexible lending practice. Several community organization commenters, however, expressed concern over the risk of using certain alternative data sources, such as social media, checking account history, voter registration records, and criminal convictions, to establish credit history. According to these commenters, such data sources provide no predictive value, but could have a disproportionately negative impact on low- or moderate-income individuals and people of color. These commenters suggested that the Agencies clarify the types of data sources that should be used in alternative credit history reports that could be considered innovative, but that would not have a negative impact on low- or moderate-income individuals.

Industry commenters were also supportive of the proposed example concerning alternative credit histories. A few industry commenters acknowledged that the use of alternative credit histories could be effective in expanding access to credit to low- or moderate-income individuals. However, these industry commenters believed that access to credit should be balanced against safety and soundness considerations. These industry commenters urged the Agencies to work closely with each other to provide a consistent message regarding the activities that could be innovative and flexible while ensuring delivery in a safe and sound manner.

The Agencies are finalizing the example addressing consideration of alternative credit histories largely as proposed with clarifying revisions based on comments received. The Agencies agree with commenters that certain data sources provide little or no predictive value. Hence, the Agencies intend to consider an institution's use of alternative credit histories that are consistent with safe and sound banking practices and that would benefit *otherwise creditworthy* low- or moderate-income individuals who would otherwise be denied credit. Individuals that may benefit from such programs are those who may not qualify for credit based on the use of conventional credit bureau reports because they have little, or no, reportable credit history with the national credit bureaus (hence a credit denial due to a low, or no, credit score with the national credit bureaus), but have a timely and consistent record of paying obligations (such as rent and utility bills). The Agencies believe that the use of alternative credit histories to supplement (not substitute for) the institution's traditional underwriting programs, may open opportunities to some creditworthy low- or moderate-income individuals to gain access to credit. Accordingly, the Agencies have modified the example to clarify that alternative credit histories should be used to evaluate low- or moderate-income individuals who lack sufficient conventional credit histories and who would be denied credit based on the institution's traditional underwriting standards. Further, when such a program is used to demonstrate that consumers have a timely and consistent record of paying their obligations, the program may be considered an innovative or flexible practice that augments the success and effectiveness of the lending program. The Agencies note that, similar to the small dollar loan program example and the other examples in this Q&A, the use of alternative credit histories as an innovative or flexible lending practice is not required for the financial institution to obtain a specific CRA rating. *See* Q&A § ____.28–1.

Finally, the Agencies revised the introductory paragraph of this Q&A to make clear that, although many financial institutions have used innovative or flexible lending practices, such as a small dollar loan program or consideration of alternative credit histories, to customize loans to their customers' specific needs in a safe and sound manner and consistent with statutes, regulations, and guidance, such practices are not required to obtain a specific CRA rating. Further, the CRA regulations provide that a financial institution is not required to make loans or investments or to provide services that are inconsistent with safe and sound operations. Financial institutions are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals only if consistent with safe and sound operations. *See* 12 CFR ____ .21(d).

C. Service Test

i. Availability and Effectiveness of Retail Banking Services

The CRA regulations provide that the Agencies evaluate the availability and effectiveness of a financial institution's systems for delivering retail banking services under the service test pursuant to four criteria: (1) The current distribution of the institution's branches among low-, moderate-, middle-, and upper-income geographies; (2) the institution's record of opening and closing branches, particularly those 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.

The Agencies proposed to revise current Q&A § ____.24(d)–1, which addresses how examiners should evaluate the availability and effectiveness of an institution's systems for delivering retail banking services. Specifically, the Agencies proposed to delete the statements that ''performance standards place primary emphasis on full-service branches'' and that alternative delivery systems are considered ''only to the extent'' that they are effective alternatives in providing needed services to low- or moderate-income geographies and individuals. The proposal was intended to encourage broader availability of alternative delivery systems to low- or moderate-income geographies and individuals without diminishing the value full-service branches offer to communities.

The Agencies received 41 comments on proposed revisions to Q&A § ____.24(d)–1. Nearly all of the industry commenters supported the revision, including commenters that stressed the continued importance of branches to the communities they serve. Some industry commenters, however, voiced concern about how the Agencies would implement the revision and asked for further clarification on how examiners would weigh branches and alternative delivery systems and utilize performance context considerations in rating the different delivery systems' performance under the service test. In contrast, almost all community organization commenters opposed the proposed revisions, asserting that branches continue to be uniquely important to low- and moderate-income neighborhoods and individuals, elderly customers, and local businesses. Many of these community organization commenters highlighted the importance of face-to-face contact in order to overcome language barriers and effectively provide essential financial services, such as opening accounts, applying for loans, and explaining terms and conditions. These commenters believed the proposed changes regarding how examiners should weigh branches and alternative delivery systems would result in more branches being closed. Moreover, these commenters stated that the proposed revisions to Q&A § ____.24(d)–1 would not resolve the CRA regulations' outdated definition of assessment area.

In consideration of the comments received, the Agencies are withdrawing the proposed revisions to Q&A § ____.24(d)–1 to avoid the unintended inference that branches are less important in providing financial services to low- and moderate-income geographies. However, the Agencies are making a minor revision to the Q&A to remove references to automated teller machines (''ATMs'') as the only example of alternative delivery systems to acknowledge that many other alternative delivery channels are utilized by financial institutions. The Agencies note that other Q&As being finalized in this document provide additional guidance on how examiners will evaluate criteria under the retail service test to ensure that appropriate consideration is given to branches, alternative delivery systems, and financial services tailored to meet the needs of low- and moderate-income individuals or geographies. *See* Q&As § ____.24(d)(3)–1 and § ____.24(d)(4)–1.

ii. Alternative Systems for Delivering Retail Banking Services

The Agencies proposed to revise Q&A § ____.24(d)(3)–1, which addresses how examiners evaluate the availability and effectiveness of alternative delivery systems in the context of the retail service test. The proposed revisions were responsive to suggestions that the Agencies update the guidance to reflect technological advances used to deliver retail banking services by: (1) Adding examples of such technologically advanced systems, even though the examples were not, and are not, intended to limit consideration of new methods as technology evolves; and (2) providing additional guidance on how examiners will evaluate the availability and effectiveness of alternative delivery systems.

Proposed Q&A § ____.24(d)(3)–1 identified additional factors that examiners may consider when evaluating whether a financial institution's alternative delivery systems are available and effective in delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals. These proposed factors included: (1) Ease of access, whether physical or virtual; (2) cost to consumers, as compared to other delivery systems; (3) range of services delivered; (4) ease of use; (5) rate of adoption; and (6) reliability of the system. The proposed Q&A further explained that examiners will consider any information an institution maintains and provides to examiners to demonstrate that the institution's alternative delivery systems are available to, and used by, low- and moderate-income individuals, such as data on customer usage or transactions.

The Agencies received 41 comments on the proposed Q&A § ____.24(d)(3)–1. Commenters generally believed the proposed factors were reasonable and sufficiently flexible. Community organization commenters emphasized the importance of determining whether alternative services and products were not just offered, but adopted and used consistently by consumers. These commenters suggested that the cost of products is most relevant in the consideration of whether an alternative delivery system is available to, and used by, low- and moderate-income individuals.

Some community organization commenters suggested that the Agencies refrain from placing too much emphasis on alternative delivery systems until usage data can be accessed and used by the public to independently monitor the industry's performance. Furthermore, these commenters suggested that the Agencies clarify that financial institutions will *not* receive CRA consideration for serving low- or moderate-income individuals or areas outside of their assessment areas using online or mobile technology. Conversely, industry commenters focused on the difficulty of evaluating the availability and effectiveness of services based on the income of the recipient because such information is collected only in the context of a loan application.

The Agencies specifically sought comment on whether the factors proposed were sufficiently flexible to be used by examiners as the financial services marketplace evolves, and if other factors should be included. Commenters that addressed this question were largely supportive. Industry commenters indicated that the factors were sufficiently flexible, but noted that additional guidance was needed regarding the use of proxies for income and how the criteria would be weighted. Community organization commenters were also generally supportive of the proposed factors but offered suggestions on how to implement them.

One industry commenter opposed the proposed factor that would evaluate the comparative cost of alternative delivery systems to the consumer because it would give examiners broad discretion when evaluating the pricing of banking services. Other industry commenters suggested that the Agencies provide more clarity regarding how the factors would be weighted. Yet another industry commenter suggested that the Agencies clearly specify that the list of factors is not intended to be exhaustive and requested that the guidance clearly state that there is no regulatory requirement to provide banking services at a reduced cost. Finally, another industry commenter suggested that consideration should be given to the continuum of access channels that an institution provides, rather than comparing services within delivery channels. This commenter further stated that financial institutions providing a full range of access channels should receive greater consideration than mono-line or limited-channel institutions.

Community organization commenters focused on the importance of evaluating the actual impact of financial services on low- and moderate-income communities. These commenters suggested evaluating the sustainability of accounts opened, the range of services offered through alternative delivery systems, and the degree to which they are tailored to meet the needs of low- or moderate-income individuals. In addition, some community organization commenters suggested that the Agencies provide additional explanation on the ‘‘ease of access’’ factor to include consideration of language access, disability accommodation, and ability to use a system with alternative forms of identification.

One commenter, a public policy organization, supported the proposed factors, but suggested that they be applied to determine the effectiveness of branches as well as alternative delivery systems. This commenter stated that high-cost or inconvenient branches are no more beneficial than poorly utilized alternative delivery platforms, and asserted that the Agencies' objective should be to encourage high-quality service delivery through both branches and alternative channels. This commenter also stated that the use of intermediaries, such as community-based organizations that provide face-to-face interaction with customers, should be considered as an effective substitute for branch activity.

In general, the commenters agreed that the factors proposed are reasonable and sufficiently flexible. The Agencies are finalizing the proposed factors in final Q&A § ____.24(d)(3)–1 largely as proposed, but with two modifications. First, to address commenters' concern that availability of alternative delivery systems alone does not demonstrate a system's responsiveness to community needs, the Agencies have revised the factor regarding the rate of adoption to read ‘‘the rate of adoption *and use*’’ (emphasis added). Second, the Agencies clarified the language regarding the cost to consumers as compared with *the bank's* other delivery systems, as discussed more fully below.

The Agencies did not include additional explanation to the ‘‘ease of access’’ factor, as suggested by some commenters, but note that evaluation of ‘‘ease of access’’ could include consideration of language access, disability accommodation, and the ability to use a system with alternative forms of identification. Similarly, the Agencies did not revise the final Q&A to address how the various factors will be weighted since the availability and applicability of information regarding each factor will vary depending on the type of delivery system under consideration and the performance context of the institution. The factors cited in the final Q&A are examples of information that is relevant to the evaluation of whether alternative delivery systems are available and effective, and they are meant to be flexible.

The Agencies did not revise the guidance to address the comment suggesting that the proposed measures of availability and effectiveness of alternative delivery systems should be made applicable to branches and third-party service providers. The Agencies share the commenter's view that financial institutions should provide high-quality service delivery overall; however, the measures of availability and effectiveness in Q&A § ____.24(d)(3)–1 were designed to evaluate alternative delivery systems. As provided in the Interagency CRA Examination Procedures, examiners assess the quantity, quality, and accessibility of the financial institution's service delivery systems provided in low-, moderate-, middle-, and upper-income geographies. Examiners also consider the degree to which services are tailored to the convenience and needs of each geography (*e.g.,* extended business hours, including weekends, evenings, or by appointment, providing bilingual services in specific geographies, etc.).

The second question on which the Agencies requested comment asked about the types of information routinely maintained by financial institutions that would be useful to demonstrate the availability and effectiveness of its alternative delivery systems to low- or moderate-income individuals. One industry commenter described the data that it has begun to collect and retain to comprehensively assess all delivery systems, including customer complaint metrics, cost of delivery (including third-party costs), new account/product volume, account/product closure volume, current accounts/product volume, and Service Level Agreements metrics (uptime/downtime). Other industry commenters stated that financial institutions do not collect income information from customers and most suggested that the income level of the census tract where the customer resides is the best available proxy for income. Another industry commenter counseled against any effort to collect income information when opening deposit accounts, asserting that opening a bank account needs to be as simple as possible to increase access to banking services. This commenter believed that the more questions a financial institution asks, the fewer people would finish the process and, more importantly, that income information collected in this way would quickly become stale and statistically invalid.

One industry commenter suggested that some financial institutions may maintain information, such as internal operations reports, industry rankings, and customer surveys, that would be helpful in understanding their performance context, but, since the types of information that institutions maintain vary widely, such information would be difficult to use for anything other than context. A community organization commenter suggested that examiners evaluate the frequency of transactions, adoption and attrition rates, as well as any geographic and income data available.

Two commenters addressed the information available regarding the reliability of alternative delivery systems. The first, representing a community organization, suggested that examiners evaluate the alternative delivery systems' ability to handle peak transaction volumes, the frequency of system crashes, the number of service shut downs for system maintenance, and the information security of systems. The other comment, from a financial institution, suggested that the Agencies provide specific guidance on, and examples of, the types of information that might be relevant to the evaluation of a system's reliability.

The comment letters indicated that the types of information collected and maintained by financial institutions that would be relevant to an evaluation of the availability and effectiveness of alternative delivery systems vary widely. The Agencies, therefore, are retaining the proposed language stating that examiners will consider any information that an institution maintains and provides to demonstrate the availability and effectiveness of its alternative delivery systems to low- or moderate-income individuals.

Third, the Agencies asked what other sources of data and quantitative information examiners could use to evaluate the proposed factors and whether financial institutions have such data readily available for examiners to review. One industry trade association commenter suggested that market studies be used to determine alternative delivery systems' usage because income data is not available. Another industry commenter suggested that the interagency examination procedures be modified to require that examiners gather cost data from advertisements, brochures, online product lists, and similar sources to compare service costs across banks and within broad geographic areas. This commenter also suggested that examiners should gather information from the community regarding the cost of services locally in the course of examinations.

A community organization commenter noted the lack of useful data regarding the actual geographic location of a person or business holding deposits and suggested that the Summary of Deposits [11] information collected by the FDIC be improved to provide better data regarding depositor location. Another community organization commenter suggested that examiners evaluate punitive fees, prohibitive minimum balances, and narrow risk assessments associated with bank products. A third community organization commenter suggested that examiners refer to online sources to provide cost comparisons of products across providers. This commenter also suggested that examiners consider a comparison of costs relative to other banks in the assessment area and the industry overall. Still another community commenter focused on how prepaid cards could be evaluated for effectiveness, suggesting that examiners evaluate whether the cardholder's credit score had improved as a measure of whether the card helped accountholders save money, build credit, and improve financial literacy. This commenter also suggested that income could be estimated from direct deposits of employment checks.

The Agencies found these comments helpful in thinking about the types of information that may be useful in evaluating the availability and effectiveness of alternative delivery systems. Moreover, the Agencies noted that the comments, particularly those related to determining the relative cost of alternative delivery systems, suggest that the distinction between delivery systems and financial products is not clear. For example, many commenters focused on how the costs of financial products tailored to meet the needs of low- and moderate-income customers, such as prepaid cards and low-cost checking accounts, should be evaluated, rather than addressing information that could be used to determine the relative costs of delivery systems, such as usage or access fees for online accounts and mobile banking platforms.

In order to more clearly distinguish between delivery systems and financial products tailored to meet the needs of low- or moderate-income individuals, the Agencies have revised Q&A § ____.12(i)–3, which lists examples of community development services, to remove from that list any examples of retail banking services that are tailored to meet the needs of low- or moderate-income individuals. This revised Q&A is discussed more fully below under III.A.i. However, these examples of retail services will continue to be given consideration under the service test as provided pursuant to 12 CFR ____.24(d)(4).

The Agencies have also added a new Q&A § ____.24(d)(4)–1 addressing how examiners evaluate whether retail services are tailored to meet the needs of geographies of different income levels. The Agencies are adopting Q&A § ____.24(d)(4)–1 in response to the many comments received regarding how examiners evaluate alternative delivery systems. Many of these commenters indicated that some confusion exists in distinguishing alternative delivery systems from financial products that are tailored to meet the needs of low- or moderate-income geographies and individuals. The Agencies believe that this new guidance makes clear that, in addition to evaluating the range of services provided in geographies of different incomes, examiners will also review any other information provided by the institution to demonstrate that its services are tailored to meet the needs of its customers in the various geographies of its assessment area(s). The final guidance further explains that this information may include data regarding the costs and features of loan and deposit products, account usage and retention, geographic location of accountholders, the availability of information in languages other than English, and any other relevant information maintained by the institution.

Fourth, the Agencies asked whether examiners should evaluate the cost of alternative delivery systems to consumers as compared with other delivery systems, as well as the range of services delivered 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. Two industry commenters stated that an evaluation of the cost to consumers compared to other delivery systems is best evaluated within the specific context of each financial institution. One of these commenters suggested that it would be unreasonably burdensome to expect an institution to survey and monitor costs related to other institutions' delivery systems. One industry commenter suggested that it would be preferable to evaluate the cost to consumers within each assessment area, recognizing that examiners are required to reach a conclusion on a financial institution's performance in each of its assessment areas. One community organization commenter stated that the cost to consumers of a particular delivery system should not be considered along with other factors, such as the rate of adoption and sustained use. Another community organization commenter asserted that examiners should consider the total cost of products because fees are a primary factor preventing households from obtaining bank products and retaining banking relationships.

After reviewing the comments received in response to this question, the Agencies agree that it would be most appropriate to compare the costs of a financial institution's alternative delivery systems with its other delivery systems because of significant differences in size, capacity, and business strategy among institutions. As a result, the Agencies have revised the final Q&A to clarify that costs of alternative delivery systems will be compared to the financial institution's other delivery systems.

Lastly, the Agencies asked whether 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. While most commenters noted that the proposed Q&A offered helpful guidance on how examiners would evaluate the availability and effectiveness of alternative delivery systems, they also observed that the proposed guidance did not adequately address the trend in the financial services industry toward non-branch delivery systems and its impact on financial institutions'

[11] The Summary of Deposits (SOD) is the annual survey of branch office deposits as of June 30 for all FDIC-insured institutions, including insured U.S. branches of foreign banks. This survey has been conducted since 1934. Instructions, survey results, market share reports, contact information, and survey facsimiles are available through the FDIC's Summary of Deposits Web site at *https://www2.fdic.gov/sod/*.

performance within their branch-based assessment areas. Similarly, one industry commenter and one community organization commenter noted that the Agencies should clarify that the evaluation of alternative delivery systems is conducted strictly within the assessment areas defined by branches and emphasize that CRA evaluations do not consider alternative delivery systems outside of an institution's assessment area. Currently, the regulations provide for consideration of alternative delivery systems to the extent that they meet the needs of low- and moderate-income individuals within an institution's assessment area.

III. New Questions and Answers Proposed in 2014

A. Community Development Services

i. Evaluating Retail Banking and Community Development Services

The Agencies proposed a new Q&A § ____.24(a)–1 to clarify how examiners evaluate retail and community development services under the large institution service test to improve consistency and reduce uncertainty regarding the performance criteria in the service test, and to encourage additional community development services.

For retail banking services, the proposed new Q&A stated that ''examiners consider the availability and effectiveness of an institution's systems for delivering 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.'' With regard to community development services, the proposed Q&A stated that examiners would consider the extent of community development services offered.

The proposed Q&A sought to differentiate retail services that are also considered community development services under existing Q&A § ____.12(i)–3 (such as low-cost banking accounts targeted to low- or moderate-income individuals) from other retail banking services by stating that examiners would consider whether these retail banking services are responsive and effective in that they ''improve or increase access to financial services by low- and moderate-income individuals or in low- or moderate-income geographies.'' In addition, the proposed Q&A stated that examiners will consider any information provided by the institution that demonstrates community development services are responsive to those needs in order to address concerns that examiners have refused to consider certain types of documentation.

The Agencies solicited comment on all aspects of this proposed new Q&A and specifically requested commenters' views on two questions, as discussed below. The Agencies received 26 comments that were generally supportive of the intent of the Q&A; however, most of these commenters did not believe that the proposed Q&A would achieve its stated purpose. A number of commenters asserted that the proposal did not elevate the relative importance of community development services compared to retail banking services as the Agencies had intended.

The Agencies specifically requested comment on whether the proposed guidance provided sufficient clarity regarding how examiners evaluate retail and community development services under the large institution service test and if not, suggestions that would make the Q&A clearer. Community organization and industry commenters responded generally that the proposed Q&A did not clarify how retail services that benefit low- and moderate-income individuals or geographies and that are described as community development services under existing Q&A § ____.12(i)–3 (such as low-cost transaction accounts and electronic benefit transfer accounts) are evaluated. Rather, at least one commenter believed the proposed Q&A exacerbated the confusion that currently exists. One community organization commenter contended that the Agencies incorrectly labelled low-cost transaction and savings accounts as community development services, rather than as retail banking services. This sentiment was shared by a few other commenters who asserted that basic transaction savings and checking accounts should be considered retail banking services. Commenters noted that, under existing guidance, these services could be classified as either retail banking or community development services.

These commenters and others urged the Agencies to more clearly demarcate the boundaries between retail banking services and community development services in the Questions and Answers. They requested that the Agencies provide specific examples or additional explanation that more clearly identifies which products and services will be evaluated under the retail banking services criteria and which will be considered as community development services.

In reviewing the comments, the Agencies noted that much of the confusion surrounding the distinction between retail banking services and community development services can be traced to the inclusion of retail services or products that are tailored to meet the needs of low- or moderate-income individuals in existing Q&A § ____.12(i)–3, which lists examples of community development services. Of the 11 examples of community development services listed in Q&A § ____.12(i)–3, five are related to branch delivery systems and retail products or services. They involve: (i) providing financial services to low- or moderate-income individuals through branches and other facilities located in low- or moderate-income geographies; (ii) 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; (iii) providing electronic benefits transfer and point of sale terminal systems; (iv) providing international remittance services; and (v) providing other financial services with the primary purpose of community development, such as low-cost savings or checking accounts, including electronic transfer accounts, individual development accounts, or free or low-cost government, payroll, or other check cashing services.

The Agencies have revised Q&A § ____.24(a)–1 in response to these comments. The final Q&A incorporates, as examples, most of the retail banking services currently listed as community development services under Q&A § ____.12(i)–3. These examples demonstrate retail banking services that improve access to financial services, or decrease costs, for low- or moderate-income individuals. The examples include: low-cost deposit accounts; electronic benefit transfer accounts and point of sale systems; individual development accounts; free or low-cost government, payroll, or other check cashing services; and reasonably priced international remittance services.

In turn, as mentioned above, the Agencies have deleted all of the retail banking services from the list of examples of community development services in Q&A § ____.12(i)–3. This conforming change is intended to address commenters' concerns that including examples of retail banking services, even when such services increase access by, or reduce costs for, low- or moderate-income individuals or geographies, in the list of examples for community development services leads to confusion and inconsistencies regarding how retail services are considered during the evaluation process.

The Agencies are also adopting conforming revisions to existing Q&A § ____.26(c)(3)–1 to ensure these activities are appropriately evaluated in intermediate small institutions. This Q&A addresses what activities examiners consider when evaluating the provision of community development services by an intermediate small institution. To ensure that intermediate small institutions continue to receive consideration under their community development test for retail banking services that increase access by, or reduce costs for, low- or moderate-income individuals, the Agencies are revising existing Q&A § ____.26(c)(3)–1. Although the revised Q&A labels services such as electronic benefit transfer accounts, individual development accounts, and free or low-cost government, payroll, or other check cashing services as retail services, examiners will continue to consider these services when evaluating the provision of community development services for an intermediate small institution when the services increase access by, or reduce costs for, low- or moderate-income individuals. This Q&A is revised to clarify also that branches and other facilities in low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies are considered as providing community development services under the community development test applicable to intermediate small institutions.

The Agencies made one additional revision based on these comments. Because all of the examples of community development services that now remain in revised Q&A § ____.12(i)–3 are more direct examples of community development services, the Agencies added a cross-reference to Q&A § ____.12(i)–3 in the discussion of community development services in new Q&A § ____.24(a)–1.

In addition to addressing the confusion between retail and community development services, some commenters asserted that proposed Q&A § ____.24(a)–1 did not adequately emphasize the importance of community development services or address concerns that community development services are not given sufficient consideration in the service test relative to retail banking services. A few commenters contended that it remained unclear how the Agencies planned to weigh the relative importance of retail banking and community development services under the service test pursuant to the proposed Q&A. For instance, one industry commenter urged the Agencies to state that community development services will be reflected in the total ''score'' that is attributed to the service test. Other commenters noted that the Agencies appear to give more consideration to branches than other services when evaluating a large institution's service test performance.

In response to these comments, the Agencies have revised Q&A § ____.24(a)–1 to stress that both retail banking and community development services are important factors under the large institution service test. The revision to the Q&A now states: ''Retail banking services and community development services are two components of the service test and are both important in evaluating a large institution's performance.'' The Agencies note that, as with other aspects of the CRA evaluation process, the relative weighting of retail banking and community development services will depend on the financial institution's performance context.

Several commenters asserted that the proposed Q&A did not sufficiently explain how qualitative factors, such as ''effectiveness'' and ''availability,'' would be evaluated in the context of retail banking and community development services. These commenters urged the Agencies to provide more specificity by defining key terms or providing concrete examples of the metrics for the key concepts of ''availability and effectiveness'' and ''responsiveness.'' The Agencies did not revise Q&A § ____.24(a)–1 to address the qualitative factors associated with retail banking and community development services because the Agencies believe other Q&As adequately discuss what is meant by ''availability and effectiveness'' and ''responsiveness.'' See Q&As § ____.24(d)–1 and § ____.21(a)–3, respectively.

The proposed Q&A stated that examiners will consider any information provided by the institution that demonstrates its community development services are responsive to the needs of low- or moderate-income individuals and low- or moderate-income geographies. Industry commenters were particularly supportive of this proposal. These commenters opined that examiners often impose excessive and unreasonable documentation requirements on institutions to demonstrate that particular products and services offered are responsive to community needs. A few industry and community organization commenters, however, sought further clarification regarding the types of information that would be considered to ensure consistency.

The Agencies specifically requested comment on what types of information financial institutions are likely to maintain that may demonstrate that an institution's community development services are responsive to the needs of low- or moderate-income individuals or in low- or moderate-income geographies. In response to this question, both community organization and industry commenters provided several examples of the types of information that are or should be maintained to demonstrate such responsiveness, including: (i) Documentation evidencing attendance at and involvement in applicable community events; (ii) surveys completed by the financial institution to ascertain community needs; (iii) an institution's records of discussions with community contacts; and (iv) publicly available market research data that support the importance to low- or moderate-income families for a particular type of service, such as financial literacy education services or Volunteer Income Tax Assistance (VITA) tax preparation. Some commenters suggested that the examples would be useful and effective additions to the final Q&A.

The examples offered by commenters are practical suggestions of the types of information institutions could collect or maintain to demonstrate the responsiveness of a community development service. However, the Agencies have chosen not to include the above suggested examples in the final Q&A because some examiners and bankers may view examples as requirements, which could lead to unintended burden on financial institutions. The Agencies remind institutions that they can provide any information to examiners that demonstrates responsiveness.

One community organization commenter opined that community development services are currently defined too narrowly and urged the Agencies to broaden the definition of community development services to include access for small businesses. This commenter contended that financial institutions should receive CRA consideration when loan officers refer a small business applicant to an intermediary when the applicant does not qualify for a bank loan. The Agencies note that Q&A § ____.12(i)–3 already addresses bank referral programs for small businesses and provides that they may qualify for community development service consideration when the financial institution ''[provides] 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.''

Finally, to reflect more closely the regulatory factors used to evaluate community development services, the Agencies have revised final Q&A § ____.24(a)–1 to state clearly that examiners evaluate the extent of community development services and their innovativeness and responsiveness to community needs.

ii. Quantitative and Qualitative Measures of Community Development Services

The Agencies proposed new Q&A § ____.24(e)–2 to clarify how community development services are quantitatively and qualitatively evaluated. The new Q&A is meant to address inconsistencies in how community development services have been evaluated quantitatively and to respond to concerns that qualitative factors, such as whether community development services are effective or responsive to community needs, receive inadequate consideration. Thus, the proposed Q&A noted that both quantitative and qualitative aspects of community development services are considered during an institution's evaluation.

With regard to quantitative factors, the proposed Q&A stated that examiners assess the extent to which community development services are offered and used by the community. This review is not limited to a single quantitative factor, such as the number of hours that financial institution staff devotes to a particular community development service. Rather, an evaluation of community development services assesses the degree to which those services are responsive to community needs. Finally, the proposed Q&A stated that examiners would consider any relevant information provided by the institution and from third parties to quantify the extent and responsiveness of community development services.

Overall, the Agencies received 19 comments addressing this proposed Q&A. Commenters unanimously supported the Agencies' intent to clarify the quantitative and qualitative factors that examiners review when evaluating community development services to determine whether these services are effective and responsive. However, commenters disagreed on whether the proposed Q&A fully achieved its stated goal of clarifying the assessment of qualitative and quantitative factors or explaining the importance of qualitative factors.

The Agencies specifically requested feedback on whether the proposed guidance sufficiently explained the importance of the qualitative factors related to community development services. Commenters addressing this question were divided, with a slight majority stating the proposed Q&A sufficiently explained the importance of the qualitative factors related to community development services. For example, one community organization commenter found the guidance on examiners taking into consideration the degree to which community development services are responsive to community needs helpful. Other commenters, representing both the industry and community organizations, noted that clarifying that examiners should not rely solely on quantitative factors, such as hours spent by employees conducting financial literacy workshops, was adequate guidance and would help give examiners needed direction to consider other factors besides hours worked when making evaluations of community development services. Other commenters viewed that statement as inadequate. These commenters noted the proposed Q&A mentioned only that the review ''is not limited to a single quantitative factor'' rather than listing examples of the qualitative factors that examiners could consider. Commenters further noted that the proposed Q&A did not adequately explain qualitative factors, such as responsiveness, and asserted that the proposal could benefit from the inclusion of specific examples of how examiners assess the degree to which services are responsive to community needs.

The Agencies have revised Q&A § ____.24(e)–2 to address some of these comments. The final Q&A incorporates language that, consistent with regulatory factors, more explicitly states that examiners will consider community development services qualitatively by assessing the degree to which those services are innovative or responsive to community needs. The proposed Q&A did not include a reference to ''innovativeness,'' although it is a qualitative factor included in the regulation. *See* 12 CFR ____.24(e). In addition, the Agencies added cross-references to Q&As § ____.21(a)–4 and § ____.21(a)–3, which discuss the qualitative factors ''innovativeness'' and ''responsiveness,'' respectively, to direct readers to additional guidance regarding these criteria.

Further, the final Q&A discusses how qualitative performance criteria augment the consideration given to community development services by recognizing that community development services sometimes require special expertise and effort on the part of the financial institution and provide benefit to the community that would not otherwise be possible. The final Q&A states that these assessments will depend on the impact of a particular activity on community needs and the benefits received by a community and illustrates this point with an example of a community development service that would be considered responsive to credit and community needs.

In addition, some commenters, representing both the industry and community organizations, asserted that the proposed Q&A did not provide sufficient guidance regarding how the quantitative and qualitative factors would be comparatively weighted under the service test. Some commenters expressed support for a balanced approach to how qualitative and quantitative factors are evaluated in assessing community development service performance, while others indicated a preference for weighting one factor over the other. For instance, one industry commenter preferred using the hours spent by employees performing community development services as the baseline measure, augmented with a review of responsiveness, innovation, leadership, complexity, and flexibility, to the extent that the institution chooses to provide such information. State financial regulator commenters took an opposing position, suggesting that qualitative aspects of community development services should serve as the primary driver in determining whether services are effective and responsive.

The Agencies do not believe it is necessary to revise the Q&A to address these comments. First, the Agencies note that examiners do not use a specific formula when quantitatively and qualitatively evaluating community development services. As with all aspects of an institution's CRA performance evaluation, the performance context of the institution will affect how the qualitative and quantitative factors are considered under the service test. Similarly, some industry commenters asserted that the Q&A should specify how many community development services would be needed in order to obtain a rating of ''outstanding'' or ''satisfactory.'' However, examiners do not utilize specific benchmarks. Instead, the nature of each community development service and the performance context of the institution are considered.

The proposed Q&A stated that examiners will consider any relevant information provided by the institution or from a third party to quantify the extent and responsiveness of community development services. Industry commenters were particularly supportive of this aspect of the proposal because they viewed it as a flexible policy.

With regard to relevant information, the Agencies specifically asked what types of information financial institutions and third parties would be likely to maintain that may be used to demonstrate the extent to which community development services are offered and used. In response, commenters provided several examples of relevant information that may be available, including: (i) data on the number of low- and moderate-income individuals attending counseling sessions; (ii) demographic information on clients or customers benefitting from a service; (iii) records of the number and types of community development service provided; and (iv) attestations collected via a survey of employees, directors, and officers that tracks hourly involvement in community development services.

Rather than referring to only a single quantitative factor as an example, final Q&A § ____.24(e)–2 includes a list of examples of quantitative factors that examiners may assess to determine the extent to which community development services are offered and used. The expanded list should provide additional clarity and address concerns that examiners and institutions may default to ''the number of hours financial institution staff devotes to a particular community development service'' as the only quantitative measure of community development services. The final Q&A includes the following additional examples of quantitative factors: (i) The number of low- and moderate-income individuals participating in a community development activity; (ii) the number of organizations served by a community development activity; and (iii) the number of sessions of a community development service activity.

Finally, a community organization commenter suggested that the Agencies revise the proposed Q&A to explicitly state that institutions' funding of community organizations to enable them to collect quantitative data will receive favorable CRA consideration. The commenter asserted that, while quantitative information is necessary in assessing whether a community development service is effective in assisting low- or moderate-income individuals and families to access the financial system, obtaining this information can be very expensive and resource intensive. The commenter maintained that providing an incentive to finance data collection systems in nonprofit organizations would increase the availability and quality of this much needed information. The Agencies note that the CRA regulations allow for the consideration of grants or other funding to nonprofit organizations with a community development purpose as qualified investments or community development loans. Such funding could be used by these recipients for a variety of purposes, including data collection.

B. Responsiveness and Innovativeness

i. Responsiveness

The term ''responsiveness'' 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. *See, e.g.,* 12 CFR ____, appendix A, section (b)(2)(i). Responsiveness is generally a consideration in all of the ratings that the Agencies assign.

The Agencies' Questions and Answers address responsiveness in various contexts. For example, Q&A § ____.21(a)–2 explains that responsiveness is meant to lend a qualitative element to the rating system. Other Q&As state that examiners should give greater weight to those activities that are most responsive to community needs, including the needs of low- or moderate-income individuals and geographies. *See, e.g.,* Q&A § ____.12(g)(4)(ii)–2.

Because the concept of ''responsiveness'' is utilized in the CRA regulations and Questions and Answers applicable to all covered institutions, the Agencies proposed a new Q&A § ____.21(a)–3 to set forth general guidance on how examiners evaluate whether a financial institution has been responsive to credit and community development needs. The Agencies intended the proposed Q&A to encourage institutions to think strategically about how to best meet the needs of their communities based on their performance context. The proposed new Q&A indicated that examiners would look at not only the volume and types of an institution's activities, but also how effective those activities have been. The proposed Q&A noted that examiners always evaluate responsiveness in light of an institution's performance context. The proposed new Q&A also suggested several information sources that could inform examiners' evaluations of performance context and responsiveness.

The Agencies received 28 public comments addressing the proposed new Q&A. With few exceptions, the commenters were supportive of the Agencies' intent to clarify how examiners evaluate an institution's responsiveness to credit and community development needs. However, a number of commenters, representing both the industry and community organizations, questioned whether the proposed new Q&A would help examiners or bankers understand that a project or program has been responsive to credit and community development needs.

The Agencies requested comment on three questions relating to proposed new Q&A § ____.21(a)–3. First, the Agencies asked whether the proposed new Q&A appropriately highlighted the importance of responsiveness to credit and community development needs and provided a flexible, yet clear, standard for determining how financial institutions would receive consideration. An industry commenter and a community organization commenter agreed that the importance of responsiveness to credit and community development needs was highlighted, but that there was also an increase in subjectivity in the evaluation process and burden to institutions, as well as a shortage of detail. To help clarify how the Agencies review responsiveness and the flexible approach taken, a new sentence was added at the beginning of the answer to provide a road map of the three factors that examiners consider when evaluating responsiveness: quantity, quality, and performance context. The answer then describes each of the three factors.

The Agencies also asked whether there were other sources of information that examiners should consider when evaluating an institution's responsiveness to credit and community development needs. Commenters representing both the industry and community organizations suggested a number of information sources, including targeted outreach to local organizations; local, state, and Federal information compilations; reports and studies by academic institutions; and the Consumer Financial Protection Bureau's (CFPB) complaint database. Two community organization commenters asserted that examiners should be required to review information from all of the sources cited in the proposed Q&A. An industry commenter stated that, although the Agencies should accept information from financial institutions, care must be taken not to require institutions to perform needs assessments or evaluate the institutions on the quality of information they provide, consistent with Q&A § ____.21(b)(2)–1. Another industry commenter suggested that the Agencies should ensure that regulatory requirements, guidelines, and actions by examiners are flexible and do not create unnecessary burden. Two other commenters, one representing the industry and the other a community organization, stated that they appreciated the clarification that examiners should not rely so heavily on quantitative factors. They noted that the unique needs and opportunities in an institution's local community should be the basis for evaluating the institution's performance.

In response to these comments, the Agencies expanded the list of sources of information about credit and community development needs and opportunities that examiners may consider by adding ''consumer complaint information.'' To address commenters' concern that a formal needs assessment will be expected from financial institutions, the Agencies have deleted the reference to an assessment prepared by the institution and have clarified that examiners will consider any relevant information provided to examiners by the financial institution that is maintained by the institution in its ordinary course of business.

Finally, the Agencies asked whether the new Q&A would help a financial institution in making decisions about the community development activities in which it will participate, particularly if those activities benefit individuals or geographies located somewhere in the broader statewide or regional area that includes the institution's assessment area(s), but that may not benefit the institution's assessment area(s). *See* Q&A § ____.12(h)–6. Of the six commenters who addressed this question, five commenters (two representing the industry and three representing community development funds) believed that proposed Q&A § ____.21(a)–3 would not help bankers to determine which community development activities to support. In support of their views, commenters asserted that (i) the requirement to first demonstrate responsiveness to assessment area needs is too vague to cause a change in institutions' investment strategies; (ii) due to increased subjectivity and additional burden of proof in the evaluation process, institutions will likely maintain their focus on assessment area activities; (iii) the proposed Q&A does not provide insight to help institutions make determinations on which community development activities to support; and (iv) a bright line test would be preferable to an evaluation of whether the financial institution has been responsive to credit and community development needs and opportunities. On the other hand, the sixth commenter, representing the industry, stated that the proposed Q&A may encourage financial institutions to focus on community development activities that benefit low- and moderate-income individuals or geographies, disaster areas, and distressed or underserved nonmetropolitan middle-income geographies. This commenter believed that recognizing responsiveness rather than placing all the emphasis on quantitative benchmarks will encourage financial institutions to engage in various community development activities.

To respond to commenters' assertion that new Q&A § ____.21(a)–3, as proposed, would not assist a financial institution in determining whether a community development activity in the broader statewide or regional area that includes the institution's assessment area(s) would receive CRA consideration, the Agencies have added to the final Q&A a new paragraph discussing how examiners will determine whether an institution has been responsive to the credit and community development needs of its assessment area(s). First, examiners will consider as responsive all of the institution's community development activities in its assessment area(s). Examiners will also consider as responsive to assessment area needs any community development activities that support an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). If the purpose, mandate, or function of the organization or activity includes serving the institution's assessment area(s), it will be considered responsive to assessment area needs even if the institution's assessment area(s) did not receive an immediate or direct benefit from the institution's participation in the organization or activity. New Q&A § ____.21(a)–3, as adopted, also includes an example of such an investment.

Finally, several industry commenters noted that the proposed new Q&A stated that ''activities are particularly responsive to community development needs if they benefit low- or moderate-income individuals, low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies.'' They asked whether any activity that has a community development purpose, as defined in the CRA regulations, would be ''particularly'' responsive. If so, they noted that financing for small businesses or small farms should also be included. And, if not, the Agencies should clarify what is meant by that statement. In addition, two community organization commenters addressed the importance of the ''impact'' of responsive activities. These commenters asserted that responsiveness must be demonstrated through impact and outcomes in meeting a documented community need. To address these related comments, the Agencies have deleted the statement addressing activities that would be ''particularly responsive'' that caused the confusion. In its place, the final Q&A explains that, when evaluated qualitatively, some activities are more responsive than others, and that activities are more responsive if they are successful in meeting identified credit and community development needs. The final Q&A also includes an example of two community development activities, one of which would be considered more responsive than the other, to describe this concept.

ii. Innovativeness

The Agencies proposed a new Q&A § ____.21(a)–4 in response to reports about inconsistencies in the types of activities considered innovative and requests from financial institutions that the Agencies provide clarification of the ''innovativeness'' standard found throughout the CRA regulations. For example, the large institution lending test evaluates the complexity and innovativeness of community development lending and the 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)(4) and (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 performance criteria in the community development test for wholesale or limited purpose banks include 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).

The proposed new Q&A stated 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 to the needs of those segments enumerated in the definition of community development. Then, the proposed Q&A addressed 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 stressed 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. The proposed Q&A also indicated that practices that cease to be innovative may still receive qualitative consideration for being flexible, complex, or responsive.

The majority of commenters addressing Q&A § ____.21(a)–4 were largely supportive of the Agencies' intent to clarify how examiners evaluate an institution's innovativeness. Nevertheless, several of the commenters posed questions about the import of ''innovativeness'' generally, notwithstanding the specific references to that term in the various CRA performance tests.

Rather than focusing on innovativeness, several of the community organization commenters urged the Agencies to address strengthening performance context when evaluating whether the subject CRA activities were responsive to local needs and had a positive demonstrable impact on the communities they were meant to serve. Industry commenters sought language stating that innovativeness is not required, lack of it will not have a negative impact, and, when present, innovativeness will result in positive consideration. These commenters also sought language specifically tying ''innovativeness'' to the requirement that CRA activities must be consistent with safe and sound banking practices.

With regard to the proposed Q&A statement addressing consideration for entities that do not have the ''capacity to be market leaders,'' commenters had differing points of view. One industry commenter found that statement to be overly broad, open to wide interpretation, and contrary to the intent of the Q&A. This general view was also shared by two other commenters. On the other hand, one community organization commenter was expressly in favor of that statement, although another community organization commenter stated that a financial institution should not receive consideration for innovativeness when bringing another institution's innovative product to its assessment area(s) unless it is doing so in a way that could not have been, or was not otherwise, done.

In response to comments, the Agencies are adopting Q&A § ____.21(a)–4 with revisions to provide additional clarification. As stated above, the Agencies note that ''innovativeness'' is a regulatory consideration in a variety of performance tests. The Agencies continue to believe that there is a benefit in clarifying the term, while not overemphasizing its importance. The final Q&A continues to make the point that ''innovative'' practices need to be responsive to community needs but are not required if existing products, services, or delivery systems effectively address the needs of all segments of the community. The final Q&A also adds a cross-reference to Q&A § ____.28–1, which explains how innovativeness is considered in the rating process and states, in part: ''The lack of innovative lending practices, innovative or complex qualified investments, or innovative community development services alone will not result in a 'needs to improve' CRA rating. However, under these tests, the use of innovative lending practices, innovative or complex qualified investments, and innovative community development services may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher performance rating.''

With regard to comments we received about innovative products and services already in the market, the Agencies continue to believe that innovativeness could include a financial institution's adoption of products, services, or delivery systems already in the market under certain circumstances. This is especially true for smaller institutions and institutions that have, to date, offered only traditional products, services, or delivery systems. For sake of clarity, the Agencies amended the final Q&A by removing the potentially ambiguous terms ''capacity'' and ''market leader.'' Specifically, the Agencies replaced the reference to ''market leader'' with ''leaders in innovation'' and explained that some financial institutions may not be leaders in innovation ''due to, for example, available financial resources or technological expertise.''

IV. Technical Corrections

The Agencies also have revised the Questions and Answers to address a number of events that have occurred since the 2010 Questions and Answers were published, including, for example, the elimination of the OTS and the Thrift Financial Report (TFR), changes in data sources for income-level information, and the transfer to the CFPB of rulemaking authority for certain consumer financial laws. The Agencies have made technical changes to a number of Q&As to provide this updated information.

A. Elimination of the OTS

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203 (July 21, 2010) (Dodd-Frank Act), transferred powers of the OTS to the OCC, the FDIC, and the Board, and eliminated the OTS. Specifically, among other changes, the Dodd-Frank Act transferred rulemaking and supervisory authority over savings and loan holding companies and supervisory authority over their non-depository subsidiaries to the Board; transferred rulemaking authority over Federal savings associations and state savings associations, and supervisory authority over Federal savings associations, to the OCC; and transferred supervisory authority over state savings associations to the FDIC. *See* 12 U.S.C. 5412–5413; *see also* 12 U.S.C. 2905. The OCC transferred the CRA rules applicable to savings associations from 12 CFR part 563e to 12 CFR part 195. The Agencies' rules are substantially similar throughout so that a general reference to the section and paragraph of the rule (*e.g.,* 12 CFR ____.12(a)) continues to describe the same provision in all four of the rules. However, 12 CFR 195.11(c), which is applicable to savings associations, includes one less paragraph than the rules applicable to national and state banks. As a result, the citation to section 11 of the rule in the related Q&As must separately mention the rule applicable to savings associations. Therefore, the Agencies have changed the references in the two Q&As addressing §§ ____.11(c)(3) & 563e.11(c)(2) to §§ ____.11(c)(3) & 195.11(c)(2), respectively.

B. Elimination of the Thrift Financial Report

In 2010, when the Questions and Answers were last updated, banks filed Call Reports and savings associations filed TFRs. Beginning with the first quarterly filing in 2012, all savings associations began filing Call Reports. The Agencies are removing the references to the TFR in 12 Q&As. One additional Q&A refers to the Uniform Thrift Performance Report (UTPR), which was phased out when savings associations began filing Call Reports. Uniform Bank Performance Reports are now produced for savings associations, so the Agencies have removed the reference to the UTPR in Q&A § ____.26(b)(1)–1. The Agencies have also adopted a consistent citation to the relevant sections of the Call Report and have made revisions to effect those changes where necessary throughout the Questions and Answers.

C. Home Mortgage Disclosure Act (HMDA) Regulation

The Dodd-Frank Act transferred exclusive rulemaking authority to the CFPB for certain consumer financial laws, including the HMDA. The CFPB subsequently published its own rule to implement HMDA, 12 CFR part 1003.[12] Four Q&As referred to home mortgage data collected under the HMDA and provided a citation to the Board's HMDA rule at 12 CFR part 203. The Agencies have updated those citations to refer to the CFPB's HMDA rule at 12 CFR part 1003.

D. Income Level Data Sources

Q&A § ____.12(m)–1 discusses the sources of income level data for geographies and individuals. Beginning with the FFIEC's geographic income data published in 2012, the FFIEC discontinued using decennial census data to calculate geographic income levels and began using the U.S. Census Bureau's American Community Survey (ACS) five-year estimate data. At the same time, the FFIEC announced that it would begin using ACS data to update geographic incomes every five years. Q&A § ____.12(m)–1 has been revised to reflect the current data sources used to calculate income level data for geographies and individuals.

E. Data Reporting

Q&As § ____.42–1, § ____.42–2, and § ____.42–6 address data submission, validation, and software, respectively. The Agencies have revised these Q&As to include updated data submission instructions and the correct Board contact information for submitting questions about CRA data submission, validation, and software.

F. Outdated Reference

Q&A § ____.12(g)(4)–1 advises that the revised definition of ''community development,'' which became effective in 2005 for banks and 2006 for savings associations, is applicable to all institutions. Because this revised definition has been in effect for around 10 years, it has been shortened to omit the historical information about its effective dates. The revised version merely affirms that the definition of ''community development'' is applicable to all institutions.

G. OCC Address Changes

Q&A Appendix B to Part ____–1 includes OCC-specific contact information. The OCC's headquarters moved in December 2012; thus, the Q&A has been revised to reflect the OCC's new street address, which is to be included in national banks' and Federal savings associations' public notices. In addition, a Web site URL has been added that national banks and Federal savings associations may include in their public notices that will allow interested parties to find information about planned OCC CRA evaluations in upcoming quarters. Similarly, an email address has been added that national banks and Federal savings associations may include in their public notices to which commenters may submit electronic comments about institutions' performance in helping to meet community credit needs.

The text of the final Interagency Questions and Answers follows:

Interagency Questions and Answers Regarding Community Reinvestment

§ ____.11—Authority, Purposes, and Scope

§ ____.11(c) Scope

§§ ____.11(c)(3) & 195.11(c)(2) Certain Special Purpose Institutions

§§ ____.11(c)(3) & 195.11(c)(2)—1: *Is the list of special purpose institutions exclusive?*

A1. No, there may be other examples of special purpose institutions. These institutions engage in specialized activities that do not involve granting credit to the public in the ordinary course of business. Special purpose institutions typically serve as correspondent banks, trust companies, or clearing agents or engage only in specialized services, such as cash management controlled disbursement services. A financial institution, however, does not become a special purpose institution merely by ceasing to make loans and, instead, making investments and providing other retail banking services.

§§ ____.11(c)(3) & 195.11(c)(2)—2: *To be a special purpose institution, must an institution limit its activities in its charter?*

A2. No. A special purpose institution may, but is not required to, limit the scope of its activities in its charter, articles of association, or other corporate organizational documents. An institution that does not have legal limitations on its activities, but has voluntarily limited its activities, however, would no longer be exempt from Community Reinvestment Act (CRA) requirements if it subsequently engaged in activities that involve granting credit to the public in the ordinary course of business. An institution that believes it is exempt from CRA as a special purpose institution should seek confirmation of this status from its supervisory Agency.

§ ____.12—Definitions

§ ____.12(a) Affiliate

§ ____.12(a)—1: *Does the definition of ''affiliate'' include subsidiaries of an institution?*

A1. Yes, ''affiliate'' includes any company that controls, is controlled by, or is under common control with another company. An institution's subsidiary is controlled by the institution and is, therefore, an affiliate.

§ ____.12(f) Branch

§ ____.12(f)—1: *Do the definitions of ''branch,'' ''automated teller machine (ATM),'' and ''remote service facility*

[12] *See* 80 FR 66127 (Oct. 28, 2015).

(RSF)'' include mobile branches, ATMs, and RSFs?

A1. Yes. Staffed mobile offices that are authorized as branches are considered ''branches,'' and mobile ATMs and RSFs are considered ''ATMs'' and ''RSFs.''

§ ____.12(f)—2: *Are loan production offices (LPO) branches for purposes of the CRA?*

A2. LPOs and other offices are not ''branches'' unless they are authorized as branches of the institution through the regulatory approval process of the institution's supervisory Agency.

§ ____.12(g) Community Development

§ ____.12(g)—1: *Are community development activities limited to those that promote economic development?*

A1. No. Although the definition of ''community development'' includes activities that promote economic development by financing small businesses or farms, the rule does not limit community development loans and services and qualified investments to those activities. Community development also includes community- or tribal-based child care, educational, health, social services, or workforce development or job training programs targeted to low- or moderate-income persons, affordable housing for low- or moderate-income individuals, and activities that revitalize or stabilize low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income geographies.

§ ____.12(g)—2: *Must a community development activity occur inside a low- or moderate-income area, designated disaster area, or underserved or distressed nonmetropolitan middle-income area in order for an institution to receive CRA consideration for the activity?*

A2. No. Community development includes activities, regardless of their location, that provide affordable housing for, or community services targeted to, low- or moderate-income individuals and activities that promote economic development by financing small businesses and farms. Activities that stabilize or revitalize particular low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas (including by creating, retaining, or improving jobs for low- or moderate-income persons) also qualify as community development, even if the activities are not located in these areas. One example is financing a supermarket that serves as an anchor store in a small strip mall located at the edge of a middle-income area, if the mall stabilizes the adjacent low-income community by providing needed shopping services that are not otherwise available in the low-income community.

§ ____.12(g)—3: *Does the regulation provide flexibility in considering performance in high-cost areas?*

A3. Yes, the flexibility of the performance standards allows examiners to account in their evaluations for conditions in high-cost areas. Examiners consider lending and services to individuals and geographies of all income levels and businesses of all sizes and revenues. In addition, the flexibility in the requirement that community development loans, community development services, and qualified investments have as their ''primary'' purpose community development allows examiners to account for conditions in high-cost areas. For example, examiners could take into account the fact that activities address a credit shortage among middle-income people or areas caused by the disproportionately high cost of building, maintaining or acquiring a house when determining whether an institution's loan to or investment in an organization that funds affordable housing for middle-income people or areas, as well as low- and moderate-income people or areas, has as its primary purpose community development. See also Q&A § ____.12(h)–8 for more information on ''primary purpose.''

§ ____.12(g)—4: *Can examples of community development activities discussed in a particular Q&A also apply to other types of community development activities not specifically discussed in that Q&A if they have a similar community development purpose?*

A4. Yes. The Interagency Questions and Answers Regarding Community Reinvestment (Questions and Answers) provide examples of particular activities that may receive consideration as community development activities. Because a particular Q&A often describes a single type of community development activity, such as a community development loan, the corresponding examples are of community development loans. However, because community development loans, qualified investments, and community development services all must have a primary purpose of community development, a qualified investment or community development service that supports a community development purpose similar to the activity described in the context of the community development loan would likely receive consideration under the applicable test. The same would be true if the community development activity described in a particular Q&A were a qualified investment or community development service. For example, Q&A § ____.12(h)–1 provides an example of a community development loan to a not-for-profit organization supporting primarily low- or moderate-income housing needs. Similarly, a grant to the same not-for-profit organization would be considered a qualified investment or technical assistance, such as writing a grant proposal for the not-for-profit organization, would be considered as a community development service. Further if a financial institution engaged in all of these activities, each would be considered under the applicable test. *See* Q&A § ____.23(b)–1.

Moreover, lists of examples included throughout the Questions and Answers are not exhaustive. A Q&A may include examples to demonstrate activities that may qualify under that Q&A, but the examples are not the only activities that might qualify. Financial institutions may submit information about activities they believe meet the definition of community development loan, qualified investment, or community development service to examiners for consideration.

§ ____.12(g)(1) Affordable Housing (Including Multifamily Rental Housing) for Low- or Moderate-Income individuals

§ ____.12(g)(1)—1: *When determining whether a project is ''affordable housing for low- or moderate-income individuals,'' thereby meeting the definition of ''community development,'' will it be sufficient to use a formula that relates the cost of ownership, rental, or borrowing to the income levels in the area as the only factor, regardless of whether the users, likely users, or beneficiaries of that affordable housing are low- or moderate-income individuals?*

A1. The concept of ''affordable housing'' for low- or moderate-income individuals does hinge on whether low- or moderate-income individuals benefit, or are likely to benefit, from the housing. It would be inappropriate to give consideration to a project that exclusively or predominately houses families that are not low- or moderate-income simply because the rents or housing prices are set according to a particular formula.

For projects that do not yet have occupants, and for which the income of the potential occupants cannot be determined in advance, or in other projects where the income of occupants cannot be verified, examiners will review factors such as demographic, economic, and market data to determine the likelihood that the housing will ''primarily'' accommodate low- or moderate-income individuals. For example, examiners may look at median rents of the assessment area and the project; the median home value of either the assessment area, low- or moderate-income geographies or the project; the low- or moderate-income population in the area of the project; or the past performance record of the organization(s) undertaking the project. Further, such a project could receive consideration if its express, bona fide intent, as stated, for example, in a prospectus, loan proposal, or community action plan, is community development.

§ ____.12(g)(2) Community Services Targeted to Low- or Moderate-Income Individuals

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

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

- The community service is targeted to the clients of a nonprofit organization that has a defined mission of serving low- and moderate-income persons, or, because of government grants, for example, is limited to offering services only to low- or moderate-income persons.
- The community service is offered by a nonprofit organization that is located in and serves a low- or moderate-income geography.
- The community service is conducted in a low- or moderate-income area and targeted to the residents of the area.
- The community service is a clearly defined program that benefits primarily low- or moderate-income persons, even if it is provided by an entity that offers other programs that serve individuals of all income levels.
- The community service is offered at a workplace to workers who are low- and moderate-income, based on readily available data for the average wage for workers in that particular occupation or industry (*see, e.g., http://www.bls.gov/bls/blswage.htm* (Bureau of Labor Statistics)).
- The community service is provided to students or their families from a school at which the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture's National School Lunch Program.
- The community service is targeted to individuals who receive or are eligible to receive Medicaid.
- The community service is provided to recipients of government assistance programs that have income qualifications equivalent to, or stricter than, the definitions of low- and moderate-income as defined by the CRA Regulations. Examples include U.S. Department of Housing and Urban Development's section 8, 202, 515, and 811 programs or U.S. Department of Agriculture's section 514, 516, and Supplemental Nutrition Assistance programs.

§ ____.12(g)(3) Activities That Promote Economic Development by Financing Businesses or Farms That Meet Certain Size Eligibility Standards

§ ____.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. For consideration under the ''size test,'' the term financing is considered broadly and includes technical assistance that readies a business that meets the size eligibility standards to obtain financing. 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
  - for low- or moderate-income persons;
  - in low- or moderate-income geographies;
  - in areas targeted for redevelopment by Federal, state, local, or tribal governments;
  - by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms; or
  - 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 or to job training or workforce development programs.

The agencies will presume that any loan or service 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.)

Examiners will employ appropriate flexibility in reviewing any information provided by a financial institution that reasonably demonstrates that the purpose, mandate, or function of the activity meets the ''purpose test.'' Examiners will also consider the qualitative aspects of performance. For example, activities will be considered more responsive to community needs if a majority of jobs created, retained, and/or improved benefit low- or moderate-income individuals.

§ ____.12(g)(4) Activities That Revitalize or Stabilize Certain Geographies

§ ____.12(g)(4)—1: *Is the definition of ''community development'' applicable to all institutions?*

A1. The definition of ''community development'' is applicable to all institutions, regardless of a particular institution's size or the performance criteria under which it is evaluated.

§ ____.12(g)(4)–2: *Will activities that provide housing for middle-income and upper-income persons qualify for favorable consideration as community development activities when they help to revitalize or stabilize a distressed or underserved nonmetropolitan middle-income geography or designated disaster areas?*

A2. An activity that provides housing for middle- or upper-income individuals qualifies as an activity that revitalizes or stabilizes a *distressed* nonmetropolitan middle-income geography or a designated disaster area if the housing directly helps to revitalize or stabilize the community by attracting new, or retaining existing, businesses or residents and, in the case of a designated disaster area, is related to disaster recovery. The Agencies generally will consider all activities that revitalize or stabilize a *distressed* nonmetropolitan middle-income geography or designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods. Thus, for example, a loan solely to develop middle- or upper-income housing in a community in need of low- and moderate-income housing would be given very little weight if there is only a short-term benefit to low- and moderate-income individuals in the community through the creation of temporary construction jobs. (Except in connection with intermediate small institutions, a housing-related loan is not evaluated as a ''community development loan'' if it has been reported or collected by the institution or its affiliate as a home mortgage loan, unless it is a multifamily dwelling loan. *See* 12 CFR ____.12(h)(2)(i) and Q&As § ____.12(h)–2 and § ____.12(h)–3.) An activity will be presumed to revitalize or stabilize such a geography or area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan. *See* Q&As § ____.12(g)(4)(i)–1 and § ____.12(h)–5.

In *underserved* nonmetropolitan middle-income geographies, activities that provide housing for middle- and upper-income individuals may qualify as activities that revitalize or stabilize such *underserved* areas if the activities also provide housing for low- or moderate-income individuals. For example, a loan to build a mixed-income housing development that provides housing for middle- and upper-income individuals in an *underserved* nonmetropolitan middle-income geography would receive positive consideration if it also provides housing for low- or moderate-income individuals.

§ ____.12(g)(4)(i) Activities That Revitalize or Stabilize Low- or Moderate-Income Geographies

§ ____.12(g)(4)(i)—1: *What activities are considered to ''revitalize or stabilize'' a low- or moderate-income geography, and how are those activities considered?*

A1. Activities that revitalize or stabilize a low- or moderate-income geography are activities that help to attract new, or retain existing, businesses or residents. Examiners will presume that an activity revitalizes or stabilizes a low- or moderate-income geography if the activity has been approved by the governing board of an Enterprise Community or Empowerment Zone (designated pursuant to 26 U.S.C. 1391) and is consistent with the board's strategic plan. They will make the same presumption if the activity has received similar official designation as consistent with a Federal, state, local, or tribal government plan for the revitalization or stabilization of the low- or moderate-income geography. For example, foreclosure prevention programs with the objective of providing affordable, sustainable, long-term loan restructurings or modifications to homeowners in low- or moderate-income geographies, consistent with safe and sound banking practices, may help to revitalize or stabilize those geographies.

To determine whether other activities revitalize or stabilize a low- or moderate-income geography, examiners will evaluate the activity's actual impact on the geography, if information about this is available. If not, examiners will determine whether the activity is consistent with the community's formal or informal plans for the revitalization and stabilization of the low- or moderate-income geography. For more information on what activities revitalize or stabilize a low- or moderate-income geography, see Q&As § ____.12(g)–2 and § ____.12(h)–5.

§ ____.12(g)(4)(ii) Activities That Revitalize or Stabilize Designated Disaster Areas

§ ____.12(g)(4)(ii)—1: *What is a ''designated disaster area'' and how long does it last?*

A1. A ''designated disaster area'' is a major disaster area designated by the Federal government. Such disaster designations include, in particular, Major Disaster Declarations administered by the Federal Emergency Management Agency (FEMA) (*http://www.fema.gov*), but excludes counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures).

Examiners will consider institution activities related to disaster recovery that revitalize or stabilize a designated disaster area for 36 months following the date of designation. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this time period may be extended.

§ ____.12(g)(4)(ii)—2: *What activities are considered to ''revitalize or stabilize'' a designated disaster area, and how are those activities considered?*

A2. The Agencies generally will consider an activity to revitalize or stabilize a designated disaster area if it helps to attract new, or retain existing, businesses or residents and is related to disaster recovery. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan. The Agencies generally will consider all activities relating to disaster recovery that revitalize or stabilize a designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including the needs of low- or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to help retain businesses in the area that employ local residents, including low- and moderate-income individuals; providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals; providing financing or other assistance for essential community-wide infrastructure, community services, and rebuilding needs; and activities that provide housing, financial assistance, and services to individuals in designated disaster areas and to individuals who have been displaced from those areas, including low- and moderate-income individuals (*see, e.g.,* Q&As § ____.12(i)–3; § ____.12(t)–4; § ____.22(b)(2) & (3)–4; § ____.22(b)(2) & (3)–5; and § ____.24(d)(3)–1).

§ ____.12(g)(4)(iii) Activities That Revitalize or Stabilize Distressed or Underserved Nonmetropolitan Middle-Income Geographies

§ ____.12(g)(4)(iii)—1: *What criteria are used to identify distressed or underserved nonmetropolitan, middle-income geographies?*

A1. Eligible nonmetropolitan middle-income geographies are those designated by the Agencies as being in distress or that could have difficulty meeting essential community needs (underserved). A particular geography could be designated as both distressed and underserved. As defined in 12 CFR ____.12(k), a geography is a census tract delineated by the U.S. Bureau of the Census.

A nonmetropolitan middle-income geography will be designated as distressed if it is in a county that meets one or more of the following triggers: (1) An unemployment rate of at least 1.5 times the national average, (2) a poverty rate of 20 percent or more, or (3) a population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The Agencies will use as the basis for these designations the ''urban influence codes,'' numbered ''7,'' ''10,'' ''11,'' and ''12,'' maintained by the Economic Research Service of the U.S. Department of Agriculture.

The Agencies publish data source information along with the list of eligible nonmetropolitan census tracts on the Federal Financial Institutions Examination Council (FFIEC) Web site (*http://www.ffiec.gov*).

§ ____.12(g)(4)(iii)—2: *How often will the Agencies update the list of designated distressed and underserved nonmetropolitan middle-income geographies?*

A2. The Agencies will review and update the list annually. The list is published on the FFIEC Web site (*http://www.ffiec.gov*).

To the extent that changes to the designated census tracts occur, the Agencies have determined to adopt a one-year ''lag period.'' This lag period will be in effect for the 12 months immediately following the date when a census tract that was designated as distressed or underserved is removed from the designated list. Revitalization or stabilization activities undertaken during the lag period will receive consideration as community development activities if they would have been considered to have a primary purpose of community development if the census tract in which they were located were still designated as distressed or underserved.

§ ____.12(g)(4)(iii)—3: *What activities are considered to ''revitalize or stabilize'' a distressed nonmetropolitan middle-income geography, and how are those activities evaluated?*

A3. An activity revitalizes or stabilizes a distressed nonmetropolitan middle-income geography if it helps to attract new, or retain existing, businesses or residents. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization or stabilization plan. The Agencies generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals, and activities that provide financing or other assistance for essential infrastructure or facilities necessary to attract or retain businesses or residents. *See* Q&As § ____.12(g)(4)(i)–1 and § ____.12(h)–5.

§ ____.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;
- a new or rehabilitated communications infrastructure, such as broadband internet service, that serves the community, including low- and moderate-income residents; or
- a new or rehabilitated flood control measure, such as a levee or storm drain, 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. If an underserved geography is also designated as a 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.

§ ____.12(h) Community Development Loan

§ ____.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 (CDFI), New Markets Tax Credit-eligible Community Development Entities, Community Development Corporations (CDC), 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, energy-efficient, or water conservation equipment or projects that support the development, rehabilitation, improvement, or maintenance of affordable housing or community facilities, such as a health clinic that provides services for low- or moderate-income individuals. For example, the benefit to low- or moderate-income individuals may result in either a reduction in a tenant's utility cost or the cost of providing utilities to common areas in an affordable housing development. Further, a renewable energy facility may be located on-site or off-site, so long as the benefit from the energy generated is provided to an affordable housing project or a community facility that has a community development purpose.

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, asbestos, mold, or radon that are present in the housing, facilities, or site.

§ ____.12(h)—2: *If a retail institution that is not required to report under the Home Mortgage Disclosure Act (HMDA) makes affordable home mortgage loans that would be HMDA-reportable home mortgage loans if it were a reporting institution, or if a small institution that is not required to collect and report loan data under the CRA makes small business and small farm loans and consumer loans that would be collected and/or reported if the institution were a large institution, may the institution have these loans considered as community development loans?*

A2. No. Although small institutions are not required to report or collect information on small business and small farm loans and consumer loans, and some institutions are not required to report information about their home mortgage loans under HMDA, if these institutions are retail institutions, the Agencies will consider in their CRA evaluations the institutions' originations and purchases of loans that would have been collected or reported as small business, small farm, consumer or home mortgage loans, had the institution been a collecting and reporting institution under the CRA or the HMDA. Therefore, these loans will not be considered as community development loans, unless the small institution is an intermediate small institution (*see* Q&A § ____.12(h)–3). Multifamily dwelling loans, however, may be considered as community development loans as well as home mortgage loans. *See also* Q&A § ____.42(b)(2)–2.

§ ____.12(h)—3: *May an intermediate small institution that is not subject to HMDA reporting have home mortgage loans considered as community development loans? Similarly, may an intermediate small institution have small business and small farm loans and consumer loans considered as community development loans?*

A3. Yes. In instances where intermediate small institutions are not required to report HMDA or small business or small farm loans, these loans may be considered, at the institution's option, as community development loans, provided they meet the regulatory definition of ''community development.'' If small business or small farm loan data have been reported to the Agencies to preserve the option to be evaluated as a large institution, but the institution ultimately chooses to be evaluated under the intermediate small institution examination standards, then the institution would continue to have the option to have such loans considered as community development loans. However, if the institution opts to be evaluated under the lending, investment, and service tests applicable to large institutions, it may not choose to have home mortgage, small business, small farm, or consumer loans considered as community development loans.

Loans other than multifamily dwelling loans may not be considered under both the lending test and the community development test for intermediate small institutions. Thus, if an institution elects to have certain loans considered under the community development test, those loans may not also be considered under the lending test, and would be excluded from the lending test analysis.

Intermediate small institutions may choose individual loans within their portfolio for community development consideration. Examiners will evaluate an intermediate small institution's community development activities within the context of the responsiveness of the activity to the community development needs of the institution's assessment area(s).

§ ____.12(h)—4: *Do secured credit cards or other credit card programs targeted to low- or moderate-income individuals qualify as community development loans?*

A4. No. Credit cards issued to low- or moderate-income individuals for household, family, or other personal expenditures, whether as part of a program targeted to such individuals or otherwise, do not qualify as community development loans because they do not have as their primary purpose any of the activities included in the definition of ''community development.''

§ ____.12(h)—5: *The regulation indicates that community development includes ''activities that revitalize or stabilize low- or moderate-income geographies.'' Do all loans in a low- to moderate-income geography have a stabilizing effect?*

A5. No. Some loans may provide only indirect or short-term benefits to low- or moderate-income individuals in a low- or moderate-income geography. These loans are not considered to have a community development purpose. For example, a loan for upper-income housing in a low- or moderate-income area is not considered to have a community development purpose simply because of the indirect benefit to low- or moderate-income persons from construction jobs or the increase in the local tax base that supports enhanced services to low- and moderate-income area residents. On the other hand, a loan for an anchor business in a low- or moderate-income area (or a nearby area) that employs or serves residents of the area and, thus, stabilizes the area, may be considered to have a community development purpose. For example, in a low-income area, a loan for a pharmacy that employs and serves residents of the area promotes community development.

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

A6. No. The regulations recognize that community development organizations and programs are efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multistate basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The institution's assessment area(s) need not receive an immediate or direct benefit from the institution's participation in the organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s).

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

§ ____.12(h)—7: *What is meant by the term ''regional area''?*

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

§ ____.12(h)—8: *What is meant by the term ''primary purpose'' as that term is used to define what constitutes a community development loan, a qualified investment, or a community development service?*

A8. A loan, investment, or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or promoting economic development by financing small businesses or farms that meet the requirements set forth in 12 CFR ____ .12(g). To determine whether an activity is designed for an express community development purpose, the agencies apply one of two approaches. First, if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes, then the activity will be considered to possess the requisite primary purpose. Alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the activity may still be considered to possess the requisite primary purpose, and the institution may receive CRA consideration for the entire activity, if (1) the express, bona fide intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; (2) the activity is specifically structured (given any relevant market or legal constraints or performance context factors) to achieve the expressed community development purpose; and (3) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved.

Generally, a loan, investment, or service will be determined to have a ''primary purpose'' of community development only if it meets the criteria described above. However, an activity involving the provision of affordable housing also may be deemed to have a ''primary purpose'' of community development in certain other limited circumstances in which these criteria have not been met. Specifically, activities related to the provision of mixed-income housing, such as in connection with a development that has a mixed-income housing component or an affordable housing set-aside required by Federal, state, or local government, also would be eligible for consideration as an activity that has a ''primary purpose'' of community development at the election of the institution. In such cases, an institution may receive pro rata consideration for the portion of such activities that helps to provide affordable housing to low- or moderate-income individuals. For example, if an institution makes a $10 million loan to finance a mixed-income housing development in which 10 percent of the units will be set aside as affordable housing for low- and moderate-income individuals, the institution may elect to treat $1 million of such loan as a community development loan. In other words, the pro rata dollar amount of the total activity will be based on the percentage of units set-aside for affordable housing for low- or moderate-income individuals.

The fact that an activity provides indirect or short-term benefits to low- or moderate-income persons does not make the activity community development, nor does the mere presence of such indirect or short-term benefits constitute a primary purpose of community development. Financial institutions that want examiners to consider certain activities should be prepared to demonstrate the activities' qualifications.

§ ____.12(i) Community Development Service

§ ____.12(i)—1: *In addition to meeting the definition of ''community development'' in the regulation, community development services must also be related to the provision of financial services. What is meant by ''provision of financial services''?*

A1. Providing financial services means providing services of the type generally provided by the financial services industry. Providing financial services often involves informing community members about how to get or use credit or otherwise providing credit services or information to the community. For example, service on the board of directors of an organization that promotes credit availability or finances affordable housing is related to the provision of financial services. Providing technical assistance about financial services to community-based groups, local or tribal government agencies, or intermediaries that help to meet the credit needs of low- and moderate-income individuals or small businesses and farms is also providing financial services. By contrast, activities that do not take advantage of the employees' financial expertise, such as neighborhood cleanups, do not involve the provision of financial services.

§ ____.12(i)—2: *Are personal charitable activities provided by an institution's employees or directors outside the ordinary course of their employment considered community development services?*

A2. No. Services must be provided as a representative of the institution. For example, if a financial institution's director, on her own time and not as a representative of the institution, volunteers one evening a week at a local community development corporation's financial counseling program, the institution may not consider this activity a community development service.

§ ____.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 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' (FHLB) 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; and
- Providing foreclosure prevention programs to low- or moderate-income homeowners who are facing foreclosure on their primary residence with the objective of providing affordable, sustainable, long-term loan modifications and restructurings.

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

- serving on the board of directors;
- serving on a loan review committee;
- developing loan application and underwriting standards;
- developing loan-processing systems;
- developing secondary market vehicles or programs;
- assisting in marketing financial services, including development of advertising and promotions, publications, workshops and conferences;
- furnishing financial services training for staff and management;
- contributing accounting/bookkeeping services;
- assisting in fund raising, including soliciting or arranging investments; and
- providing services reflecting a financial institution's employees' areas of expertise at the institution, such as human resources, information technology, and legal services.

Refer to Q&A § ____.24(a)—1 for information about how retail services are evaluated under the large institution service test.

§ ____.12(j) Consumer Loan

§ ____.12(j)—1: *Are home equity loans considered ''consumer loans''?*

A1. Home equity loans made for purposes other than home purchase, home improvement, or refinancing home purchase or home improvement loans are consumer loans if they are extended to one or more individuals for household, family, or other personal expenditures.

§ ____.12(j)—2: *May a home equity line of credit be considered a ''consumer loan'' even if part of the line is for home improvement purposes?*

A2. If the predominant purpose of the line is home improvement, the line may only be reported under HMDA and may not be considered a consumer loan. However, the full amount of the line may be considered a ''consumer loan'' if its predominant purpose is for household, family, or other personal expenditures, and to a lesser extent home improvement, and the full amount of the line has not been reported under HMDA. This is the case even though there may be ''double counting'' because part of the line may also have been reported under HMDA.

§ ____.12(j)—3: *How should an institution collect or report information on loans the proceeds of which will be used for multiple purposes?*

A3. If an institution makes a single loan or provides a line of credit to a customer to be used for both consumer and small business purposes, consistent with the instructions for the Consolidated Reports of Condition and Income (Call Report), the institution should determine the major (predominant) component of the loan or the credit line and collect or report the entire loan or credit line in accordance with the regulation's specifications for that loan type.

§ ____.12(l) Home Mortgage Loan

§ ____.12(l)—1: *Does the term ''home mortgage loan'' include loans other than ''home purchase loans''?*

A1. Yes. ''Home mortgage loan'' includes ''home improvement loan,'' ''home purchase loan,'' and ''refinancing,'' as defined in the HMDA regulation, Regulation C, 12 CFR part 1003. This definition also includes multifamily (five-or-more families) dwelling loans, and loans for the purchase of manufactured homes. *See also* Q&A § ____.22(a)(2)–7.

§ ____.12(l)—2: *Some financial institutions broker home mortgage loans. They typically take the borrower's application and perform other settlement activities; however, they do not make the credit decision. The broker institutions may also initially fund these mortgage loans, then immediately assign them to another lender. Because the broker institution does not make the credit decision, under Regulation C (HMDA), they do not record the loans on their HMDA loan application registers (HMDA–LAR), even if they fund the loans. May an institution receive any consideration under CRA for its home mortgage loan brokerage activities?*

A2. Yes. A financial institution that funds home mortgage loans but immediately assigns the loans to the lender that made the credit decisions may present information about these loans to examiners for consideration under the lending test as ''other loan data.'' Under Regulation C, the broker institution does not record the loans on its HMDA–LAR because it does not make the credit decisions, even if it funds the loans. An institution electing to have these home mortgage loans considered must maintain information about all of the home mortgage loans that it has funded in this way. Examiners will consider these other loan data using the same criteria by which home mortgage loans originated or purchased by an institution are evaluated.

Institutions that do not provide funding but merely take applications and provide settlement services for another lender that makes the credit decisions will receive consideration for this service as a retail banking service. Examiners will consider an institution's mortgage brokerage services when evaluating the range of services provided to low-, moderate-, middle- and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies. Alternatively, an institution's mortgage brokerage service may be considered a community development service if the primary purpose of the service is community development. An institution wishing to have its mortgage brokerage service considered as a community development service must provide sufficient information to substantiate that its primary purpose is community development and to establish the extent of the services provided.

§ ____.12(m) Income Level

§ ____.12(m)—1: *Where do institutions find income level data for geographies and individuals?*

A1. The median family income (MFI) levels for *geographies, i.e.,* census tracts, are calculated using income data from the U.S. Census Bureau's American Community Survey (ACS) and geographic definitions from the Office of Management and Budget (OMB), and are updated approximately every five years. Geographic income data, along with detailed information about the FFIEC's calculation of geographic MFI data, are available on the FFIEC Web site at *http://www.ffiec.gov/cra.htm.*

The income levels for *individuals* are calculated annually by the FFIEC using geographic definitions from the OMB, income data from the ACS, and the Consumer Price Index from the Congressional Budget Office. Individual MFI data for metropolitan statistical areas (MSA) and statewide nonmetropolitan areas, along with detailed information about the FFIEC's calculation of individual MFI data, are available on the FFIEC Web site at *http://www.ffiec.gov/cra.htm.*

§ ____.12(n) Limited Purpose Institution

§ ____.12(n)—1: *What constitutes a ''narrow product line'' in the definition of ''limited purpose institution''?*

A1. An institution offers a narrow product line by limiting its lending activities to a product line other than a traditional retail product line required to be evaluated under the lending test (*i.e.,* home mortgage, small business, and small farm loans). Thus, an institution engaged only in making credit card or motor vehicle loans offers a narrow product line, while an institution limiting its lending activities to home mortgages is not offering a narrow product line.

§ ____.12(n)—2: *What factors will the Agencies consider to determine whether an institution that, if limited purpose, makes loans outside a narrow product line, or, if wholesale, engages in retail lending, will lose its limited purpose or wholesale designation because of too much other lending?*

A2. Wholesale institutions may engage in some retail lending without losing their designation if this activity is incidental *and* done on an accommodation basis. Similarly, limited purpose institutions continue to meet the narrow product line requirement if they provide other types of loans on an infrequent basis. In reviewing other lending activities by these institutions, the Agencies will consider the following factors:

- Is the retail lending provided as an incident to the institution's wholesale lending?
- Are the retail loans provided as an accommodation to the institution's wholesale customers?
- Are the other types of loans made only infrequently to the limited purpose institution's customers?
- Does only an insignificant portion of the institution's total assets and income result from the other lending?
- How significant a role does the institution play in providing that type(s) of loan(s) in the institution's assessment area(s)?
- Does the institution hold itself out as offering that type(s) of loan(s)?
- Does the lending test or the community development test present a more accurate picture of the institution's CRA performance?

§ ____.12(n)—3: *Do ''niche institutions'' qualify as limited purpose (or wholesale) institutions?*

A3. Generally, no. Institutions that are in the business of lending to the public, but specialize in certain types of retail loans (for example, home mortgage or small business loans) to certain types of borrowers (for example, to high-end income level customers or to corporations or partnerships of licensed professional practitioners) (''niche institutions'') generally would not qualify as limited purpose (or wholesale) institutions.

§ ____.12(t) Qualified Investment

§ ____.12(t)—1: *Does the CRA regulation provide authority for institutions to make investments?*

A1. No. The CRA regulation does not provide authority for institutions to make investments that are not otherwise allowed by Federal law.

§ ____.12(t)—2: *Are mortgage-backed securities or municipal bonds ''qualified investments''?*

A2. As a general rule, mortgage-backed securities and municipal bonds are not qualified investments because they do not have as their primary purpose community development, as defined in the CRA regulations. Nonetheless, mortgage-backed securities or municipal bonds designed primarily to finance community development generally are qualified investments. Municipal bonds or other securities with a primary purpose of community development need not be housing-related. For example, a bond to fund a community facility or park or to provide sewage services as part of a plan to redevelop a low-income neighborhood is a qualified investment. Certain municipal bonds in underserved nonmetropolitan middle-income geographies may also be qualified investments. *See* Q&A § ____ .12(g)(4)(iii)–4. Housing-related bonds or securities must primarily address affordable housing (including multifamily rental housing) needs of low- or moderate-income individuals in order to qualify. *See also* Q&A § ____ .23(b)–2.

§ ____.12(t)—3: *Are FHLB stocks or unpaid dividends and membership reserves with the Federal Reserve Banks ''qualified investments''?*

A3. No. FHLB stocks or unpaid dividends, and membership reserves with the Federal Reserve Banks do not have a sufficient connection to community development to be qualified investments. However, FHLB member institutions may receive CRA consideration as a community development service for technical assistance they provide on behalf of applicants and recipients of funding from the FHLB's Affordable Housing Program. *See* Q&A § ____.12(i)–3.

§ ____.12(t)—4: *What are examples of qualified investments?*

A4. Examples of qualified investments include, but are not limited to, investments, grants, deposits, or shares in or to:

- Financial intermediaries (including CDFIs, New Markets Tax Credit-eligible Community Development Entities, CDCs, minority- and women-owned financial institutions, community loan funds, and low-income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation;
- Organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing;
- Organizations, including, for example, SBICs, specialized SBICs, and Rural Business Investment Companies (RBIC) that promote economic development by financing small businesses;
- Community development venture capital companies that promote economic development by financing small businesses;
- Facilities that promote community development by providing community services for low- and moderate-income individuals, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's centers, and alcohol and drug recovery centers;
- Projects eligible for low-income housing tax credits;
- State and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development;
- Not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as counseling for credit, home-ownership, home maintenance, and other financial literacy programs; and
- Organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development, such as, for example, day care operations and job training programs or workforce development programs that enable low-

or moderate-income individuals to work.

See also Q&As § ____.12(g)(4)(ii)—2; § ____.12(g)(4)(iii)–3; § ____.12(g)(4)(iii)–4.

§ ____.12(t)—5: *Will an institution receive consideration for charitable contributions as ''qualified investments''?*

A5. Yes, provided they have as their primary purpose community development as defined in the regulations. A charitable contribution, whether in cash or an in-kind contribution of property, is included in the term ''grant.'' A qualified investment is not disqualified because an institution receives favorable treatment for it (for example, as a tax deduction or credit) under the Internal Revenue Code.

§ ____.12(t)—6: *An institution makes or participates in a community development loan. The institution provided the loan at below-market interest rates or ''bought down'' the interest rate to the borrower. Is the lost income resulting from the lower interest rate or buy-down a qualified investment?*

A6. No. The Agencies will, however, consider the responsiveness, innovativeness, and complexity of the community development loan within the bounds of safe and sound banking practices.

§ ____.12(t)—7: *Will the Agencies consider as a qualified investment the wages or other compensation of an employee or director who provides assistance to a community development organization on behalf of the institution?*

A7. No. However, the Agencies will consider donated labor of employees or directors of a financial institution as a community development service if the activity meets the regulatory definition of ''community development service.''

§ ____.12(t)—8: *When evaluating a qualified investment, what consideration will be given for prior-period investments?*

A8. When evaluating an institution's qualified investment record, examiners will consider investments that were made prior to the current examination, but that are still outstanding. Qualitative factors will affect the weight given to both current period and outstanding prior-period qualified investments. For example, a prior-period outstanding investment with a multi-year impact that addresses assessment area community development needs may receive more consideration than a current period investment of a comparable amount that is less responsive to area community development needs.

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

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

§ ____.12(u) Small Institution

§ ____.12(u)—1: *How are Federal and state branch assets of a foreign bank calculated for purposes of the CRA?*

A1. A Federal or state branch of a foreign bank is considered a small institution if the Federal or state branch has assets less than the asset threshold delineated in 12 CFR ____.12(u)(1) for small institutions.

§ ____.12(u)(2) Small Institution Adjustment

§ ____.12(u)(2)—1: *How often will the asset size thresholds for small institutions and intermediate small institutions be changed, and how will these adjustments be communicated?*

A1. The asset size thresholds for ''small institutions'' and ''intermediate small institutions'' will be adjusted annually based on changes to the Consumer Price Index. More specifically, the dollar thresholds will be adjusted annually based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted for each 12-month period ending in November, with rounding to the nearest million. Any changes in the asset size thresholds will be published in the **Federal Register**. Historical and current asset-size threshold information may be found on the FFIEC's Web site at *http://www.ffiec.gov/cra.*

§ ____.12(v) Small Business Loan

§ ____.12(v)—1: *Are loans to nonprofit organizations considered small business loans or are they considered community development loans?*

A1. To be considered a small business loan, a loan must meet the definition of ''loans to small businesses'' in the instructions in the Call Report. In general, a loan to a nonprofit organization, for business or farm purposes, where the loan is secured by nonfarm nonresidential property and the original amount of the loan is $1 million or less, if a business loan, or $500,000 or less, if a farm loan, would be reported in the Call Report as a small business or small farm loan. If a loan to a nonprofit organization is reportable as a small business or small farm loan, it cannot also be considered as a community development loan, except by a wholesale or limited purpose institution. Loans to nonprofit organizations that are not small business or small farm loans for Call Report purposes may be considered as community development loans if they meet the regulatory definition of ''community development.''

§ ____.12(v)—2: *Are loans secured by commercial real estate considered small business loans?*

A2. Yes, depending on their principal amount. Small business loans include loans secured by ''nonfarm nonresidential properties,'' as defined in the Call Report, in amounts of $1 million or less.

§ ____.12(v)—3: *Are loans secured by nonfarm residential real estate to finance small businesses ''small business loans''?*

A3. Typically not. Loans secured by nonfarm residential real estate that are used to finance small businesses are not included as ''small business'' loans for Call Report purposes unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution. (*See* Call Report Glossary definition of ''Loan Secured by Real Estate.'') The Agencies recognize that many small businesses are financed by loans that would not have been made or would have been made on less favorable terms had they not been secured by residential real estate. If these loans promote community development, as defined in the regulation, they may be considered as community development loans. Otherwise, at an institution's option, the institution may collect and maintain data separately concerning these loans and request that the data be considered in its CRA evaluation as ''Other Secured Lines/Loans for Purposes of Small Business.'' *See also* Q&A § ____.22(a)(2)–7.

§ ____.12(v)—4: *Are credit cards issued to small businesses considered ''small business loans''?*

A4. Credit cards issued to a small business or to individuals to be used, with the institution's knowledge, as business accounts are small business loans if they meet the definitional requirements in the Call Report instructions.

§ ____.12(x) Wholesale Institution

§ ____.12(x)—1: *What factors will the Agencies consider in determining whether an institution is in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers?*

A1. The Agencies will consider whether:

- The institution holds itself out to the retail public as providing such loans.
- the institution's revenues from extending such loans are significant when compared to its overall operations, including off-balance sheet activities.

A wholesale institution may make some retail loans without losing its wholesale designation as described above in Q&A § ____.12(n)–2.

§ ____.21—Performance Tests, Standards, and Ratings, in General

§ ____.21(a) Performance Tests and Standards

§ ____.21(a)—1: *How will examiners apply the performance criteria?*

A1. Examiners will apply the performance criteria reasonably and fairly, in accord with the regulations, the examination procedures, and this guidance. In doing so, examiners will disregard efforts by an institution to manipulate business operations or present information in an artificial light that does not accurately reflect an institution's overall record of lending performance.

§ ____.21(a)—2: *Are all community development activities weighted equally by examiners?*

A2. No. Examiners will consider the responsiveness to credit and community development needs, as well as the innovativeness and complexity, if applicable, of an institution's community development lending, qualified investments, and community development services. These criteria include consideration of the degree to which they serve as a catalyst for other community development activities. The criteria are designed to add a qualitative element to the evaluation of an institution's performance. (''Innovativeness'' and ''complexity'' are not factors in the community development test applicable to intermediate small institutions.)

§ ____.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?*

A3. There are three important factors that examiners consider when evaluating responsiveness: quantity, quality, and performance context. 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 credit and community development 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. In other words, when evaluated qualitatively, some activities are more responsive than others. Activities are more responsive if they are successful in meeting identified credit and community development needs. For example, investing in a community development organization that specializes in originating home mortgage loans to low- or moderate-income individuals would be considered more responsive than an investment of the same amount in a single-family mortgage-backed security in which the majority of the loans are to low- or moderate-income borrowers. Although both of these activities may receive consideration as a qualified investment, the former example would be considered to be more responsive than the latter.

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 assessment, examiners may consider information about credit and community development needs and opportunities 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;
- studies and reports from academic institutions and other research bodies;
- consumer complaint information; and
- any relevant information provided to examiners by the financial institution that is maintained by the institution in its ordinary course of business.

Responsiveness to community development needs and opportunities in an institution's assessment area(s) is also a key consideration when an institution plans to engage in community development activities that benefit areas outside of its assessment area(s). Q&A § ____.12(h)–6 states that an institution will receive consideration for activities that benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s) even if they will not benefit the institution's assessment area(s), as long as the institution has been responsive to community development needs and opportunities in its assessment area(s). When considering whether an institution has been responsive to community development needs and opportunities in its assessment area(s), examiners will consider all of the institution's community development activities in its assessment area(s). Examiners will also consider as responsive to assessment area needs community development activities that support an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). This is true if the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s), even though the institution's assessment area(s) did not receive an immediate or direct benefit from the institution's participation in the organization or activity. For example, suppose an institution were to invest in a statewide community development fund that was organized with the purpose of providing community development loans throughout the state in which the institution is located. Examiners would consider this investment when evaluating the institution's responsiveness to community development needs and opportunities in its assessment area(s) even if the fund had not provided a loan within the institution's assessment area(s).

§ ____.21(a)—4: *What is meant by ''innovativeness''?*

A4. ''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, all innovative practices or activities 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.

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. *See* Q&A § ____.28–1. Innovative activities are especially meaningful when they emphasize serving, for example, low- or moderate-income consumers or distressed or underserved nonmetropolitan middle-income geographies in new or more effective ways. Innovativeness may also include products, services, or delivery systems already present in the assessment area by institutions that are not leaders in innovation—due, for example, to the lack of available financial resources or technological expertise—when they subsequently introduce those products, services, or delivery systems 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.

§ ____.21(b) Performance Context

§ ____.21(b)—1: *What is the performance context?*

A1. The performance context is a broad range of economic, demographic, and institution- and community-specific information that an examiner reviews to understand the context in which an institution's record of performance should be evaluated. The Agencies will provide examiners with some of this information. The performance context is not a formal assessment of community credit needs.

§ ____.21(b)(2) Information Maintained by the Institution or Obtained From Community Contacts

§ ____.21(b)(2)—1: *Will examiners consider performance context information provided by institutions?*

A1. Yes. An institution may provide examiners with any information it deems relevant, including information on the lending, investment, and service opportunities in its assessment area(s). This information may include data on the business opportunities addressed by lenders not subject to the CRA. Institutions are not required, however, to prepare a formal needs assessment. If an institution provides information to examiners, the Agencies will not expect information other than what the institution normally would develop to prepare a business plan or to identify potential markets and customers, including low- and moderate-income persons and geographies in its assessment area(s). The Agencies will not evaluate an institution's efforts to ascertain community credit needs or rate an institution on the quality of any information it provides.

§ ____.21(b)(2)—2: *Will examiners conduct community contact interviews as part of the examination process?*

A2. Yes. Examiners will consider information obtained from interviews with local community, civic, and government leaders. These interviews provide examiners with knowledge regarding the local community, its economic base, and community development initiatives. To ensure that information from local leaders is considered—particularly in areas where the number of potential contacts may be limited—examiners may use information obtained through an interview with a single community contact for examinations of more than one institution in a given market. In addition, the Agencies may consider information obtained from interviews conducted by other Agency staff and by the other Agencies. In order to augment contacts previously used by the Agencies and foster a wider array of contacts, the Agencies may share community contact information.

§ ____.21(b)(4) Institutional Capacity and Constraints

§ ____.21(b)(4)—1: *Will examiners consider factors outside of an institution's control that prevent it from engaging in certain activities?*

A1. Yes. Examiners will take into account statutory and supervisory limitations on an institution's ability to engage in any lending, investment, and service activities. For example, a savings association that has made few or no qualified investments due to its limited investment authority may still receive a low satisfactory rating under the investment test if it has a strong lending record.

§ ____.21(b)(5) Institution's Past Performance and the Performance of Similarly Situated Lenders

§ ____.21(b)(5)—1: *Can an institution's assigned rating be adversely affected by poor past performance?*

A1. Yes. The Agencies will consider an institution's past performance in its overall evaluation. For example, an institution that received a rating of ''needs to improve'' in the past may receive a rating of ''substantial noncompliance'' if its performance has not improved.

§ ____.21(b)(5)—2: *How will examiners consider the performance of similarly situated lenders?*

A2. The performance context section of the regulation permits the performance of similarly situated lenders to be considered, for example, as one of a number of considerations in evaluating the geographic distribution of an institution's loans to low-, moderate-, middle-, and upper-income geographies. This analysis, as well as other analyses, may be used, for example, where groups of contiguous geographies within an institution's assessment area(s) exhibit abnormally low penetration. In this regard, the performance of similarly situated lenders may be analyzed if such an analysis would provide accurate insight into the institution's lack of performance in those areas. The regulation does not require the use of a specific type of analysis under these circumstances. Moreover, no ratio developed from any type of analysis is linked to any lending test rating.

§ ____.21(f) Activities in Cooperation With Minority- or Women-Owned Financial Institutions and Low-Income Credit Unions

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

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

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

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

§ ____.22—Lending Test

§ ____.22(a) Scope of Test

§ ____.22(a)—1: *Are there any types of lending activities that help meet the credit needs of an institution's assessment area(s) and that may warrant favorable consideration as activities that are responsive to the needs of the institution's assessment area(s)?*

A1. Credit needs vary from community to community. However, there are some lending activities that are likely to be responsive in helping to meet the credit needs of many communities. These activities include

• providing loan programs that include a financial education component about how to avoid lending activities that may be abusive or otherwise unsuitable;
• establishing loan programs that provide small, unsecured consumer loans in a safe and sound manner (*i.e.,* based on the borrower's ability to repay) and with reasonable terms;
• offering lending programs, which feature reporting to consumer reporting agencies, that transition borrowers from loans with higher interest rates and fees (based on credit risk) to lower-cost loans, consistent with safe and sound lending practices. Reporting to consumer reporting agencies allows borrowers accessing these programs the opportunity to improve their credit histories and thereby improve their access to competitive credit products; and
• establishing loan programs with the objective of providing affordable, sustainable, long-term relief, for example, through loan refinancings, restructures, or modifications, to homeowners who are facing foreclosure on their primary residences.

Examiners may consider favorably such lending activities, which have features augmenting the success and effectiveness of the small, intermediate small, or large institution's lending programs.

§ ____.22(a)(1) Types of Loans Considered

§ ____.22(a)(1)—1: *If a large retail institution is not required to collect and report home mortgage data under the HMDA, will the Agencies still evaluate the institution's home mortgage lending performance?*

A1. Yes. The Agencies will sample the institution's home mortgage loan files in order to assess its performance under the lending test criteria.

§ ____.22(a)(1)—2: *When will examiners consider consumer loans as part of an institution's CRA evaluation?*

A2. Consumer loans will be evaluated if the institution so elects and has collected and maintained the data; an institution that elects not to have its consumer loans evaluated will not be viewed less favorably by examiners than one that does. However, if consumer loans constitute a substantial majority of the institution's business, the Agencies will evaluate them even if the institution does not so elect. The Agencies interpret ''substantial majority'' to be so significant a portion of the institution's lending activity by number and dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded.

§ ____.22(a)(2) Loan Originations and Purchases/Other Loan Data

§ ____.22(a)(2)—1: *How are lending commitments (such as letters of credit) evaluated under the regulation?*

A1. The Agencies consider lending commitments (such as letters of credit) only at the option of the institution, regardless of examination type. Commitments must be legally binding between an institution and a borrower in order to be considered. Information about lending commitments will be used by examiners to enhance their understanding of an institution's performance, but will be evaluated separately from the loans.

§ ____.22(a)(2)—2: *Will examiners review application data as part of the lending test?*

A2. Application activity is not a performance criterion of the lending test. However, examiners may consider this information in the performance context analysis because this information may give examiners insight on, for example, the demand for loans.

§ ____.22(a)(2)—3: *May a financial institution receive consideration under CRA for home mortgage loan modification, extension, and consolidation agreements (MECA), in which it obtains home mortgage loans from other institutions without actually purchasing or refinancing the home mortgage loans, as those terms have been interpreted under CRA and HMDA, as implemented by 12 CFR part 1003?*

A3. Yes. In some states, MECAs, which are not considered loan refinancings because the existing loan obligations are not satisfied and replaced, are common. Although these transactions are not considered to be purchases or refinancings, as those terms have been interpreted under CRA, they do achieve the same results. A small, intermediate small, or large institution may present information about its MECA activities with respect to home mortgages to examiners for consideration under the lending test as ''other loan data.''

§ ____.22(a)(2)—4: *In addition to MECAs, what are other examples of ''other loan data''?*

A4. Other loan data include, for example,

- loans funded for sale to the secondary markets that an institution has not reported under HMDA;
- unfunded loan commitments and letters of credit;
- commercial and consumer leases;
- loans secured by nonfarm residential real estate, not taken as an abundance of caution, that are used to finance small businesses or small farms and that are not reported as small business/small farm loans or reported under HMDA; and
- an increase to a small business or small farm line of credit if the increase would cause the total line of credit to exceed $1 million, in the case of a small business line; or $500,000, in the case of a small farm line.

§ ____.22(a)(2)—5: *Do institutions receive consideration for originating or purchasing loans that are fully guaranteed?*

A5. Yes. For all examination types, examiners evaluate an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans. Examiners do not take into account whether or not such loans are guaranteed.

§ ____.22(a)(2)—6: *Do institutions receive consideration for purchasing loan participations?*

A6. Yes. Examiners will consider the amount of loan participations purchased when evaluating an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans, regardless of examination type. As with other loan purchases, examiners will evaluate whether loan participations purchased by an institution, which have been sold and purchased a number of times, artificially inflate CRA performance. *See, e.g.,* Q&A § ____.21(a)–1.

§ ____.22(a)(2)—7: *How are refinancings of small business loans, which are secured by a one-to-four family residence and that have been reported under HMDA as a refinancing, evaluated under CRA?*

A7. A loan of $1 million or less with a business purpose that is secured by a one-to-four family residence is considered a small business loan for CRA purposes only if the security interest in the residential property was taken as an abundance of caution and where the terms have not been made more favorable than they would have been in the absence of the lien. (See Call Report Glossary definition of ''Loan Secured by Real Estate.'') If this same loan is refinanced and the new loan is also secured by a one-to-four family residence, but only through an abundance of caution, this loan is reported not only as a refinancing under HMDA, but also as a small business loan under CRA. (Note that small farm loans are similarly treated.)

It is not anticipated that ''double-reported'' loans will be so numerous as to affect the typical institution's CRA rating. In the event that an institution reports a significant number or amount of loans as both home mortgage and small business loans, examiners will consider that overlap in evaluating the institution's performance and generally will consider the ''double-reported'' loans as small business loans for CRA consideration.

The origination of a small business or small farm loan that is secured by a one-to-four family residence is not reportable under HMDA, unless the purpose of the loan is home purchase or home improvement. Nor is the loan reported as a small business or small farm loan if the security interest is not taken merely as an abundance of caution. Any such loan may be provided to examiners as ''other loan data'' (''Other Secured Lines/Loans for Purposes of Small Business'') for consideration during a CRA evaluation. *See* Q&A § ____.12(v)—3. The refinancings of such loans *would be* reported under HMDA.

§ ____.22(b) Performance Criteria

§ ____.22(b)(1) Lending Activity

§ ____.22(b)(1)—1: *How will the Agencies apply the lending activity criterion to discourage an institution from originating loans that are viewed favorably under CRA in the institution itself and referring other loans, which are not viewed as favorably, for origination by an affiliate?*

A1. Examiners will review closely institutions with (1) a small number and amount of home mortgage loans with an unusually good distribution among low- and moderate-income areas and low- and moderate-income borrowers and (2) a policy of referring most, but not all, of their home mortgage loans to affiliated institutions. If an institution is making loans mostly to low- and moderate-income individuals and areas and referring the rest of the loan applicants to an affiliate for the purpose of receiving a favorable CRA rating, examiners may conclude that the institution's lending activity is not satisfactory because it has inappropriately attempted to influence the rating. In evaluating an institution's lending, examiners will consider legitimate business reasons for the allocation of the lending activity.

§ ____.22(b)(2) & (3) Geographic Distribution and Borrower Characteristics

§ ____.22(b)(2) & (3)—1: *How do the geographic distribution of loans and the distribution of lending by borrower characteristics interact in the lending test applicable to either large or small institutions?*

A1. Examiners generally will consider both the distribution of an institution's loans among geographies of different income levels, and among borrowers of different income levels and businesses and farms of different sizes. The importance of the borrower distribution criterion, particularly in relation to the geographic distribution criterion, will depend on the performance context. For example, distribution among borrowers with different income levels may be more important in areas without identifiable geographies of different income categories. On the other hand, geographic distribution may be more important in areas with the full range of geographies of different income categories.

§ ____.22(b)(2) & (3)—2: *Must an institution lend to all portions of its assessment area?*

A2. The term ''assessment area'' describes the geographic area within which the agencies assess how well an institution, regardless of examination type, has met the specific performance tests and standards in the rule. The Agencies do not expect that simply because a census tract is within an institution's assessment area(s), the institution must lend to that census tract. Rather the Agencies will be concerned with conspicuous gaps in loan distribution that are not explained by the performance context. Similarly, if an institution delineated the entire county in which it is located as its assessment area, but could have delineated its assessment area as only a portion of the county, it will not be penalized for lending only in that portion of the county, so long as that portion does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies. The capacity and constraints of an institution, its business decisions about how it can best help to meet the needs of its assessment area(s), including those of low- and moderate-income neighborhoods, and other aspects of the performance context, are all relevant to explain why the institution is serving or not serving portions of its assessment area(s).

§ ____.22(b)(2) & (3)—3: *Will examiners take into account loans made by affiliates when evaluating the proportion of an institution's lending in its assessment area(s)?*

A3. Examiners will not take into account loans made by affiliates when determining the proportion of an institution's lending in its assessment area(s), even if the institution elects to have its affiliate lending considered in the remainder of the lending test evaluation. However, examiners may consider an institution's business strategy of conducting lending through an affiliate in order to determine whether a low proportion of lending in the assessment area(s) should adversely affect the institution's lending test rating.

§ ____.22(b)(2) & (3)—4: *When will examiners consider loans (other than community development loans) made outside an institution's assessment area(s)?*

A4. Consideration will be given for loans to low- and moderate-income persons and small business and farm loans outside of an institution's assessment area(s), provided the institution has adequately addressed the needs of borrowers within its assessment area(s). The Agencies will apply this consideration not only to loans made by large retail institutions being evaluated under the lending test, but also to loans made by small and intermediate small institutions being evaluated under their respective performance standards. Loans to low- and moderate-income persons and small businesses and farms outside of an institution's assessment area(s), however, will not compensate for poor lending performance within the institution's assessment area(s).

§ ____.22(b)(2) & (3)—5: *Under the lending test applicable to small, intermediate small, or large institutions, how will examiners evaluate home mortgage loans to middle- or upper-income individuals in a low- or moderate-income geography?*

A5. Examiners will consider these home mortgage loans under the performance criteria of the lending test, *i.e.,* by number and amount of home mortgage loans, whether they are inside or outside the financial institution's assessment area(s), their geographic distribution, and the income levels of the borrowers. Examiners will use information regarding the financial institution's performance context to determine how to evaluate the loans under these performance criteria. Depending on the performance context, examiners could view home mortgage loans to middle-income individuals in a low-income geography very differently. For example, if the loans are for homes or multifamily housing located in an area for which the local, state, tribal, or Federal government or a community-based development organization has developed a revitalization or stabilization plan (such as a Federal enterprise community or empowerment zone) that includes attracting mixed-income residents to establish a stabilized, economically diverse neighborhood, examiners may give more consideration to such loans, which may be viewed as serving the low- or moderate-income community's needs as well as serving those of the middle- or upper-income borrowers. If, on the other hand, no such plan exists and there is no other evidence of governmental support for a revitalization or stabilization project in the area and the loans to middle- or upper-income borrowers significantly disadvantage or primarily have the effect of displacing low- or moderate-income residents, examiners may view these loans simply as home mortgage loans to middle- or upper-income borrowers who happen to reside in a low- or moderate-income geography and weigh them accordingly in their evaluation of the institution.

§ ____.22(b)(4) Community Development Lending

§ ____.22(b)(4)—1: *When evaluating an institution's record of community development lending under the lending test applicable to large institutions, may an examiner distinguish among community development loans on the basis of the actual amount of the loan that advances the community development purpose?*

A1. Yes. When evaluating the institution's record of community development lending under 12 CFR ____.22(b)(4), it is appropriate to give greater weight to the amount of the loan that is targeted to the intended community development purpose. For example, consider two $10 million projects (with a total of 100 units each) that have as their express primary purpose affordable housing and are located in the same community. One of these projects sets aside 40 percent of its units for low-income residents and the other project allocates 65 percent of its units for low-income residents. An institution would report both loans as $10 million community development loans under the 12 CFR ____.42(b)(2) aggregate reporting obligation. However, transaction complexity, innovation and all other relevant considerations being equal, an examiner should also take into account that the 65 percent project provides more affordable housing for more people per dollar expended.

Under 12 CFR ____.22(b)(4), the extent of CRA consideration an institution receives for its community development loans should bear a direct relation to the benefits received by the community and the innovation or complexity of the loans required to accomplish the activity, not simply to the dollar amount expended on a particular transaction. By applying all lending test performance criteria, a community development loan of a lower dollar amount could meet the credit needs of the institution's community to a greater extent than a community development loan with a higher dollar amount, but with less innovation, complexity, or impact on the community.

§ ____.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.

§ ____.22(b)(5) Innovative or Flexible Lending Practices

§ ____.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 product 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. Historically, many institutions have used innovative and flexible lending practices to customize loans to their customers' specific needs in a safe and sound manner. However, an innovative or flexible lending practice is not required in order to obtain a specific CRA rating. *See* Q&A § ____.28—1. Examples of lending practices that are considered innovative or flexible 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 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 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 needs 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 with reasonable terms and offered in a safe and sound manner, which includes evaluating an individual's ability to repay, 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 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, such as utility or rent payments, in an effort to evaluate low- or moderate-income individuals who lack sufficient conventional credit histories and who would be denied credit under the institution's traditional underwriting standards. The use of alternative credit histories in this manner to demonstrate that consumers have a timely and consistent record of paying their obligations may be considered as an innovative or flexible practice that augments the success and effectiveness of the lending program.

§ ____.22(c) Affiliate Lending

§ ____.22(c)(1) In General

§ ____.22(c)(1)—1: If an institution, regardless of examination type, elects to have loans by its affiliate(s) considered, may it elect to have only certain categories of loans considered?

A1. Yes. An institution may elect to have only a particular category of its affiliate's lending considered. The basic categories of loans are home mortgage loans, small business loans, small farm loans, community development loans, and the five categories of consumer loans (motor vehicle loans, credit card loans, home equity loans, other secured loans, and other unsecured loans).

§ ____.22(c)(2) Constraints on Affiliate Lending

§ ____.22(c)(2)(i) No Affiliate May Claim a Loan Origination or Loan Purchase if Another Institution Claims the Same Loan Origination or Purchase

§ ____.22(c)(2)(i)—1: Regardless of examination type, how is this constraint on affiliate lending applied?

A1. This constraint prohibits one affiliate from claiming a loan origination or purchase claimed by another affiliate. However, an institution can count as a purchase a loan originated by an affiliate that the institution subsequently purchases, or count as an origination a loan later sold to an affiliate, provided the same loans are not sold several times to inflate their value for CRA purposes. For example, assume that two institutions are affiliated. Institution A originates a loan and claims it as a loan origination. Institution B later purchases the loan. Institution B may count the loan as a purchased loan.

The same institution may not count both the origination and purchase. Thus, for example, if an institution claims loans made by an affiliated mortgage company as loan originations, the institution may not also count the loans as purchased loans if it later purchases the loans from its affiliate. *See also* Q&As § ____.22(c)(2)(ii)—1 and § ____.22(c)(2)(ii)—2.

§ ____.22(c)(2)(ii) If an Institution Elects to Have its Supervisory Agency Consider Loans Within a Particular Lending Category Made by One or More of the Institution's Affiliates in a Particular Assessment Area, the Institution Shall Elect to Have the Agency Consider all Loans Within That Lending Category in That Particular Assessment Area Made by all of the Institution's Affiliates

§ ____.22(c)(2)(ii)—1: Regardless of examination type, how is this constraint on affiliate lending applied?

A1. This constraint prohibits "cherry-picking" affiliate loans within any one category of loans. The constraint requires an institution that elects to have a particular category of affiliate lending in a particular assessment area considered to include all loans of that type made by all of its affiliates in that particular assessment area. For example, assume that an institution has several affiliates, including a mortgage company that makes loans in the institution's assessment area. If the institution elects to include the mortgage company's home mortgage loans, it must include all of its affiliates' home mortgage loans made in its assessment area. In addition, the institution cannot elect to include only those low- and moderate-income home mortgage loans made by its affiliates and not home mortgage loans to middle- and upper-income individuals or areas.

§ ____.22(c)(2)(ii)—2: Regardless of examination type, how is this constraint applied if an institution's affiliates are also insured depository institutions subject to the CRA?

A2. Strict application of this constraint against ''cherry-picking'' to loans of an affiliate that is also an insured depository institution covered by the CRA would produce the anomalous result that the other institution would, without its consent, not be able to count its own loans. Because the Agencies did not intend to deprive an institution subject to the CRA of receiving consideration for its own lending, the Agencies read this constraint slightly differently in cases involving a group of affiliated institutions, some of which are subject to the CRA and share the same assessment area(s). In those circumstances, an institution that elects to include all of its mortgage affiliate's home mortgage loans in its assessment area would not automatically be required to include all home mortgage loans in its assessment area of another affiliate institution subject to the CRA. However, all loans of a particular type made by any affiliate in the institution's assessment area(s) must either be counted by the lending institution or by another affiliate institution that is subject to the CRA. This reading reflects the fact that a holding company may, for business reasons, choose to transact different aspects of its business in different subsidiary institutions. However, the method by which loans are allocated among the institutions for CRA purposes must reflect actual business decisions about the allocation of banking activities among the institutions and should not be designed solely to enhance their CRA evaluations.

§ ____.22(d) Lending by a Consortium or a Third Party

§ ____.22(d)—1: Will equity and equity-type investments in a third party receive consideration under the lending test?

A1. If an institution has made an equity or equity-type investment in a third party, community development loans made by the third party may be considered under the lending test. On the other hand, asset-backed and debt securities that do not represent an equity-type interest in a third party will not be considered under the lending test unless the securities are booked by the purchasing institution as a loan. For example, if an institution purchases stock in a CDC that primarily lends in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, the institution may claim a pro rata share of the CDC's loans as community development loans. The institution's pro rata share is based on its percentage of equity ownership in the CDC. Q&A § ____.23(b)—1 provides information concerning consideration of an equity or equity-type investment under the investment test and both the lending and investment tests. (Note that in connection with an intermediate small institution's CRA performance evaluation, community development loans, including pro rata shares of community development loans, are considered only in the community development test.)

§ ____.22(d)—2: *Regardless of examination type, how will examiners evaluate loans made by consortia or third parties?*

A2. Loans originated or purchased by consortia in which an institution participates or by third parties in which an institution invests will be considered only if they qualify as community development loans and will be considered only under the community development criterion. However, loans originated directly on the books of an institution or purchased by the institution are considered to have been made or purchased directly by the institution, even if the institution originated or purchased the loans as a result of its participation in a loan consortium. These loans would be considered under the lending test or community development test criteria appropriate to them depending on the type of loan and type of examination.

§ ____.22(d)—3: *In some circumstances, an institution may invest in a third party, such as a community development bank, that is also an insured depository institution and is thus subject to CRA requirements. If the investing institution requests its supervisory Agency to consider its pro rata share of community development loans made by the third party, as allowed under 12 CFR ____.22(d), may the third party also receive consideration for these loans?*

A3. Yes, regardless of examination type, as long as the financial institution and the third party are not affiliates. The regulations state, at 12 CFR ____ .22(c)(2)(i), that two affiliates may not both claim the same loan origination or loan purchase. However, if the financial institution and the third party are not affiliates, the third party may receive consideration for the community development loans it originates, and the financial institution that invested in the third party may also receive consideration for its pro rata share of the same community development loans under 12 CFR ____.22(d).

§ ____.23—Investment Test

§ ____.23(a) Scope of Test

§ ____.23(a)—1: *May an institution, regardless of examination type, receive consideration under the CRA regulations if it invests indirectly through a fund, the purpose of which is community development, as that is defined in the CRA regulations?*

A1. Yes, the direct or indirect nature of the qualified investment does not affect whether an institution will receive consideration under the CRA regulations because the regulations do not distinguish between ''direct'' and ''indirect'' investments. Thus, an institution's investment in an equity fund that, in turn, invests in projects that, for example, provide affordable housing to low- and moderate-income individuals, would receive consideration as a qualified investment under the CRA regulations, provided the investment benefits one or more of the institution's assessment area(s) or a broader statewide or regional area(s) that includes one or more of the institution's assessment area(s). Similarly, an institution may receive consideration for a direct qualified investment in a nonprofit organization that, for example, supports affordable housing for low- and moderate-income individuals in the institution's assessment area(s) or a broader statewide or regional area(s) that includes the institution's assessment area(s).

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

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

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

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

§ ____.23(b) Exclusion

§ ____.23(b)—1: *Even though the regulations state that an activity that is considered under the lending or service tests cannot also be considered under the investment test, may parts of an activity be considered under one test and other parts be considered under another test?*

A1. Yes, in some instances the nature of an activity may make it eligible for consideration under more than one of the performance tests. For example, certain investments and related support provided by a large retail institution to a CDC may be evaluated under the lending, investment, and service tests. Under the service test, the institution may receive consideration for any community development services that it provides to the CDC, such as service by an executive of the institution on the CDC's board of directors. If the institution makes an investment in the CDC that the CDC uses to make community development loans, the institution may receive consideration under the lending test for its pro rata share of community development loans made by the CDC. Alternatively, the institution's investment may be considered under the investment test, assuming it is a qualified investment. In addition, an institution may elect to have a part of its investment considered under the lending test and the remaining part considered under the investment test. If the investing institution opts to have a portion of its investment evaluated under the lending test by claiming its pro rata share of the CDC's community development loans, the amount of investment considered under the investment test will be offset by that portion. Thus, the institution would receive consideration under the investment test for only the amount of its investment multiplied by the percentage of the CDC's assets that meet the definition of a qualified investment.

§ ____.23(b)—2: *If home mortgage loans to low- and moderate-income borrowers have been considered under an institution's lending test, may the institution that originated or purchased them also receive consideration under the investment test if it subsequently purchases mortgage-backed securities that are primarily or exclusively backed by such loans?*

A2. No. Because the institution received lending test consideration for the loans that underlie the securities, the institution may not also receive consideration under the investment test for its purchase of the securities. Of course, an institution may receive investment test consideration for purchases of mortgage-backed securities that are backed by loans to low- and moderate-income individuals as long as the securities are not backed primarily or exclusively by loans that the same institution originated or purchased.

§ ____.23(e) Performance Criteria

§ ____.23(e)—1: *When applying the four performance criteria of 12 CFR ____.23(e), may an examiner distinguish among qualified investments based on how much of the investment actually supports the underlying community development purpose?*

A1. Yes. By applying all the criteria, a qualified investment of a lower dollar amount may be weighed more heavily under the investment test than a qualified investment with a higher dollar amount that has fewer qualitative enhancements. The criteria permit an examiner to qualitatively weight certain investments differently or to make other appropriate distinctions when evaluating an institution's record of making qualified investments. For instance, an examiner should take into account that a targeted mortgage-backed security that qualifies as an affordable housing issue that has only 60 percent of its face value supported by loans to low- or moderate-income borrowers would not provide as much affordable housing for low- and moderate-income individuals as a targeted mortgage-backed security with 100 percent of its face value supported by affordable housing loans to low- and moderate-income borrowers. The examiner should describe any differential weighting (or other adjustment), and its basis in the Performance Evaluation. See also Q&A § ____.12(t)—8 for a discussion about the qualitative consideration of prior-period investments.

§ ____.23(e)—2: *How do examiners evaluate an institution's qualified investment in a fund, the primary purpose of which is community development, as defined in the CRA regulations?*

A2. When evaluating qualified investments that benefit an institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s), examiners will look at the following four performance criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

With respect to the first criterion, examiners will determine the dollar amount of qualified investments by relying on the figures recorded by the institution according to generally accepted accounting principles (GAAP). Although institutions may exercise a range of investment strategies, including short-term investments, long-term investments, investments that are immediately funded, and investments with a binding, up-front commitment that are funded over a period of time, institutions making the same dollar amount of investments over the same number of years, all other performance criteria being equal, would receive the same level of consideration. Examiners will include both new and outstanding investments in this determination. The dollar amount of qualified investments also will include the dollar amount of legally binding commitments recorded by the institution according to GAAP.

The extent to which qualified investments receive consideration, however, depends on how examiners evaluate the investments under the remaining three performance criteria—innovativeness and complexity, responsiveness, and degree to which the investment is not routinely provided by private investors. Examiners also will consider factors relevant to the institution's CRA performance context, such as the effect of outstanding long-term qualified investments, the pay-in schedule, and the amount of any cash call, on the capacity of the institution to make new investments.

§ ____.24—Service Test

§ ____.24(a) Scope of Test

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

A1. Retail banking services and community development services are the two components of the service test and are both important in evaluating a large institution's performance. In evaluating retail banking services, examiners consider the availability and effectiveness of an institution's systems for delivering 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. Examples of retail banking services that improve access to financial services, or decrease costs, for low- or moderate-income individuals include

- low-cost deposit accounts;
- electronic benefit transfer accounts and point of sale terminal systems;
- individual development accounts;
- free or low-cost government, payroll, or other check cashing services; and
- reasonably priced international remittance services.

In evaluating community development services, examiners consider the extent to which the institution provides such services and their innovativeness and responsiveness to community needs. Examples of community development services are listed in Q&A § ____.12(i)—3. Examiners will consider any information provided by the institution that demonstrates community development services benefit low- or moderate-income individuals or are responsive to community development needs.

§ ____.24(d) Performance Criteria—Retail Banking Services

§ ____.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 within a community is an important factor in determining the availability of credit and non-credit services. Therefore, the service test performance standards place primary emphasis on full service branches while still considering alternative systems. The principal focus is on 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. Under the service test, alternative systems for delivering retail banking services are considered only to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals.

§ ____.24(d)—2: *How do examiners evaluate an institution's activities in connection with Individual Development Accounts (IDA)?*

A2. Although there is no standard IDA program, IDAs typically are deposit accounts targeted to low- and moderate-income families that are designed to help them accumulate savings for education or job-training, down-payment and closing costs on a new home, or start-up capital for a small business. Once participants have successfully funded an IDA, their personal IDA savings are matched by a public or private entity. Financial institution participation in IDA programs comes in a variety of forms, including providing retail banking services to IDA accountholders, providing matching dollars or operating funds to an IDA program, designing or implementing IDA programs, providing consumer financial education to IDA accountholders or prospective accountholders, or other means. The extent of financial institutions' involvement in IDAs and the products and services they offer in connection with the accounts will vary. Thus, subject to 12 CFR ____.23(b), examiners evaluate the actual services and products provided by an institution in connection with IDA programs as one or more of the following: community development services, retail banking services, qualified investments, home mortgage loans, small business loans, consumer loans, or community development loans. *See, e.g.,* Q&A § ____.12(i)—3.

Note that all types of institutions may participate in IDA programs. Their IDA activities are evaluated under the performance criteria of the type of examination applicable to the particular institution.

§ ____.24(d)(3) Availability and Effectiveness of Alternative Systems for Delivering Retail Banking Services

§ ____.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 institutions 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 individuals. To determine whether a financial institution's alternative delivery system is an available and effective means of delivering retail banking services in low- and moderate-income geographies and to low- and 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 the institution's other delivery systems;
- the range of services delivered;
- the ease of use;
- the rate of adoption and use; 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.

§ ____.24(d)(3)—2: *Are debit cards considered under the service test as an alternative delivery system?*

A2. By themselves, no. However, if debit cards are a part of a larger combination of products, such as a comprehensive electronic banking service, that allows an institution to deliver needed services to low- and moderate-income areas and individuals in its community, the overall delivery system that includes the debit card feature would be considered an alternative delivery system.

§ ____.24(d)(4) Range of Services Provided in Geographies of Different Incomes

§ ____.24(d)(4)—1: *How do examiners evaluate the range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which those services are tailored to meet the needs of those geographies?*

A1. Examiners review both information from the institution's public file and other information provided related to the range of services offered and how they are tailored to meet the particular needs of low- and moderate-income geographies. Examiners always review the information that institutions must maintain in their public files: A list of services generally offered at their branches, including their hours of operation; available loan and deposit products; transaction fees, as well as descriptions, where applicable, of material differences in the availability or cost of services at particular branches. *See* 12 CFR ____.43(a)(5). The information provided by the financial institution to identify the types of services offered and any differences in services among its branches in different geographies may indicate how its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals. *See* 12 CFR ____, appendix A, section (b)(3). Examiners also review any other information provided by the institution, such as data regarding the costs and features of loan and deposit products, account usage and retention, geographic location of accountholders, the availability of information in languages other than English, and any other relevant information demonstrating that its services are tailored to meet the needs of its customers in the various geographies in its assessment area(s). Any information that institutions may maintain regarding services offered through alternative delivery systems (*see* Q&A § ____.24(d)(3)—1) and through collaborations with government, community, educational or employer organizations to offer or expand the range of services or access to services, particularly designed to meet the needs of their assessment area(s), including low- and moderate-income communities will also be considered. Examiners will also review information provided by the public through comments or community contacts.

§ ____.24(e) Performance Criteria—Community Development Services

§ ____.24(e)—1: *Under what conditions may an institution receive consideration for community development services offered by affiliates or third parties?*

A1. At an institution's option, the Agencies will consider services performed by an affiliate or by a third party on the institution's behalf under the service test if the services provided enable the institution to help meet the credit needs of its community. Indirect services that enhance an institution's ability to deliver credit products or deposit services within its community and that can be quantified may be considered under the service test, if those services have not been considered already under the lending or investment test. *See* Q&A § ____.23(b)–1. For example, an institution that contracts with a community organization to provide home ownership counseling to low- and moderate-income home buyers as part of the institution's mortgage program may receive consideration for that indirect service under the service test. In contrast, donations to a community organization that offers financial services to low- or moderate-income individuals may be considered under the investment test, but would not also be eligible for consideration under the service test. Services performed by an affiliate will be treated the same as affiliate loans and investments made in the institution's assessment area and may be considered if the service is not claimed by any other institution. *See* 12 CFR ____.22(c) and ____.23(c).

§ ____.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. According to the regulation, the Agencies evaluate the extent to which the financial institution provides community development services as well as the innovativeness and responsiveness of such services. Examiners consider both quantitative and qualitative aspects of community development services during the evaluation. Examiners assess quantitative factors to determine the extent to which community development services are offered and used. The review is not limited to a single quantitative factor. For example, quantitative factors may include the number of

- low- or moderate-income participants;
- organizations served;
- sessions sponsored; or
- financial institution staff hours devoted.

Examiners will also consider qualitative factors by assessing the degree to which community development services are innovative or responsive to community needs. *See* Q&As § ____.21(a)—4 and § ____.21(a)—3. These performance criteria recognize that community development services sometimes require special expertise and effort on the part of the institution and provide benefit to the community that would not otherwise be possible. Such an assessment will depend on the impact of a particular activity on community needs and the benefits received by a community. *See* Q&A § ____.28(b)—1. For example, a financial institution employee's unique expertise and service on the board of a community organization may demonstrate these qualitative factors when the employee's ongoing engagement significantly improves the products, services or operations of the community development organization.

Examiners will consider any relevant information provided by the institution and from third parties that documents the extent, innovativeness, and responsiveness of community development services.

§ ____.25—Community Development Test for Wholesale or Limited Purpose Institutions

§ ____.25(a) Scope of Test

§ ____.25(a)—1: *How can certain credit card banks help to meet the credit needs of their communities without losing their exemption from the definition of ''bank'' in the Bank Holding Company Act (BHCA), as amended by the Competitive Equality Banking Act of 1987 (CEBA)?*

A1. Although the BHCA restricts institutions known as CEBA credit card banks to credit card operations, a CEBA credit card bank can engage in community development activities without losing its exemption under the BHCA. A CEBA credit card bank could provide community development services and investments without engaging in operations other than credit card operations. For example, the bank could provide credit card counseling, or the financial expertise of its executives, free of charge, to community development organizations. In addition, a CEBA credit card bank could make qualified investments, as long as the investments meet the guidelines for passive and noncontrolling investments provided in the BHCA and the Board's Regulation Y. Finally, although a CEBA credit card bank cannot make any loans other than credit card loans, under 12 CFR ____.25(d)(2) (community development test—indirect activities), the bank could elect to have part of its qualified passive and noncontrolling investments in a third-party lending consortium considered as community development lending, provided that the consortium's loans otherwise meet the requirements for community development lending. When assessing a CEBA credit card bank's CRA performance under the community development test, examiners will take into account the bank's performance context. In particular, examiners will consider the legal constraints imposed by the BHCA on the bank's activities, as part of the bank's performance context in 12 CFR ____.21(b)(4).

§ ____.25(d) Indirect Activities

§ ____.25(d)—1: *How are investments in third-party community development organizations considered under the community development test?*

A1. Similar to the lending test for retail institutions, investments in third-party community development organizations may be considered as qualified investments or as community development loans or both (provided there is no double counting), at the institution's option, as described above in the discussion regarding 12 CFR ____.22(d) and ____.23(b).

§ ____.25(e) Benefit to Assessment Area(s)

§ ____.25(e)—1: *How do examiners evaluate a wholesale or limited purpose institution's qualified investment in a fund that invests in projects nationwide and which has a primary purpose of community development, as that is defined in the regulations?*

A1. If examiners find that a wholesale or limited purpose institution has adequately addressed the needs of its assessment area(s), they will give consideration to qualified investments, as well as community development loans and community development services, by that institution nationwide. In determining whether an institution has adequately addressed the needs of its assessment area(s), examiners will consider qualified investments that benefit a broader statewide or regional area that includes the institution's assessment area(s).

§ ____.25(f) Community Development Performance Rating

§ ____.25(f)—1: *Must a wholesale or limited purpose institution engage in all three categories of community development activities (lending, investment, and service) to perform well under the community development test?*

A1. No, a wholesale or limited purpose institution may perform well under the community development test by engaging in one or more of these activities.

§ ____.26—Small Institution Performance Standards

§ ____.26—1: *When evaluating a small or intermediate small institution's performance, will examiners consider, at the institution's request, retail and community development loans originated or purchased by affiliates, qualified investments made by affiliates, or community development services provided by affiliates?*

A1. Yes. However, a small institution that elects to have examiners consider affiliate activities must maintain sufficient information that the examiners may evaluate these activities under the appropriate performance criteria and ensure that the activities are not claimed by another institution. The constraints applicable to affiliate activities claimed by large institutions also apply to small and intermediate small institutions. *See* Q&As addressing 12 CFR ____.22(c)(2) and related guidance provided to large institutions regarding affiliate activities. Examiners will not include affiliate lending in calculating the percentage of loans and, as appropriate, other lending-related activities located in an institution's assessment area(s).

§ ____.26(a) Performance Criteria

§ ____.26(a)(2) Intermediate Small Institutions

§ ____.26(a)(2)—1: *When is an institution examined as an intermediate small institution?*

A1. When a small institution has met the intermediate small institution asset threshold delineated in 12 CFR ____.12(u)(1) for two consecutive calendar year-ends, the institution may be examined under the intermediate small institution examination procedures. The regulation does not specify an additional lag period between becoming an intermediate small institution and being examined as an intermediate small institution, as it does for large institutions, because an intermediate small institution is not subject to CRA data collection and reporting requirements. Institutions should contact their primary regulator for information on examination schedules.

§ ____.26(b) Lending Test

§ ____.26(b)—1: *May examiners consider, under one or more of the performance criteria of the small institution performance standards, lending-related activities, such as community development loans and lending-related qualified investments, when evaluating a small institution?*

A1. Yes. Examiners can consider ''lending-related activities,'' including community development loans and lending-related qualified investments, when evaluating the first four performance criteria of the small institution performance test. Although lending-related activities are specifically mentioned in the regulation in connection with only the first three criteria (*i.e.,* loan-to-deposit ratio, percentage of loans in the institution's assessment area(s), and lending to borrowers of different incomes and businesses of different sizes), examiners can also consider these activities when they evaluate the fourth criteria—geographic distribution of the institution's loans.

Although lending-related community development activities are evaluated under the community development test applicable to intermediate small institutions, these activities may also augment the loan-to-deposit ratio analysis (12 CFR ____.26(b)(1)) and the percentage of loans in the intermediate small institution's assessment area(s) analysis (12 CFR ____.26(b)(2)), if appropriate.

§ ____.26(b)—2: *What is meant by ''as appropriate'' when referring to the fact that lending-related activities will be considered, ''as appropriate,'' under the various small institution performance criteria?*

A2. ''As appropriate'' means that lending-related activities will be considered when it is necessary to determine whether an institution meets or exceeds the standards for a satisfactory rating. Examiners will also consider other lending-related activities at an institution's request, provided they have not also been considered under the community development test applicable to intermediate small institutions.

§ ____.26(b)—3: *When evaluating a small institution's lending performance, will examiners consider, at the institution's request, community development loans originated or purchased by a consortium in which the institution participates or by a third party in which the institution has invested?*

A3. Yes. However, a small institution that elects to have examiners consider community development loans originated or purchased by a consortium or third party must maintain sufficient information on its share of the community development loans so that the examiners may evaluate these loans under the small institution performance criteria.

§ ____.26(b)—4: *Under the small institution lending test performance standards, will examiners consider both loan originations and purchases?*

A4. Yes, consistent with the other assessment methods in the regulation, examiners will consider both loans originated and purchased by the institution. Likewise, examiners may consider any other loan data the small institution chooses to provide, including data on loans outstanding, commitments, and letters of credit.

§ ____.26(b)—5: *Under the small institution lending test performance standards, how will qualified investments be considered for purposes of determining whether a small institution receives a satisfactory CRA rating?*

A5. The small institution lending test performance standards focus on lending and other lending-related activities. Therefore, examiners will consider only lending-related qualified investments for the purpose of determining whether a small institution that is not an intermediate small institution receives a satisfactory CRA rating.

§ ____.26(b)(1) Loan-to-Deposit Ratio

§ ____.26(b)(1)—1: *How is the loan-to-deposit ratio calculated?*

A1. A small institution's loan-to-deposit ratio is calculated in the same manner that the Uniform Bank Performance Report (UBPR) determines the ratio. It is calculated by dividing the institution's net loans and leases by its total deposits. The ratio is found in the Liquidity and Investment Portfolio section of the UBPR. Examiners will use this ratio to calculate an average since the last examination by adding the quarterly loan-to-deposit ratios and dividing the total by the number of quarters.

§ ____.26(b)(1)—2: *How is the ''reasonableness'' of a loan-to-deposit ratio evaluated?*

A2. No specific ratio is reasonable in every circumstance, and each small institution's ratio is evaluated in light of information from the performance context, including the institution's capacity to lend, demographic and economic factors present in the assessment area(s), and the lending opportunities available in the assessment area(s). If a small institution's loan-to-deposit ratio appears unreasonable after considering this information, lending performance may still be satisfactory under this criterion taking into consideration the number and the dollar volume of loans sold to the secondary market or the number and amount and innovativeness or complexity of community development loans and lending-related qualified investments.

§ ____.26(b)(1)—3: *If an institution makes a large number of loans off-shore, will examiners segregate the domestic loan-to-deposit ratio from the foreign loan-to-deposit ratio?*

A3. No. Examiners will look at the institution's net loan-to-deposit ratio for the whole institution, without any adjustments.

§ ____.26(b)(2) Percentage of Lending Within Assessment Area(s)

§ ____.26(b)(2)—1: *Must a small institution have a majority of its lending in its assessment area(s) to receive a satisfactory performance rating?*

A1. No. The percentage of loans and, as appropriate, other lending-related activities located in the institution's assessment area(s) is but one of the performance criteria upon which small institutions are evaluated. If the percentage of loans and other lending-related activities in an institution's assessment area(s) is less than a majority, then the institution does not meet the standards for satisfactory performance only under this criterion. The effect on the overall performance rating of the institution, however, is considered in light of the performance context, including information regarding economic conditions; loan demand; the institution's size, financial condition, business strategies, and branching network; and other aspects of the institution's lending record.

§ ____.26(b)(3) & (4) Distribution of Lending Within Assessment Area(s) by Borrower Income and Geographic Location

§ ____.26(b)(3) & (4)—1: *How will a small institution's performance be assessed under these lending distribution criteria?*

A1. Distribution of loans, like other small institution performance criteria, is considered in light of the performance context. For example, a small institution is not required to lend evenly throughout its assessment area(s) or in any particular geography. However, in order to meet the standards for satisfactory performance under this criterion, conspicuous gaps in a small institution's loan distribution must be adequately explained by performance context factors such as lending opportunities in the institution's assessment area(s), the institution's product offerings and business strategy, and institutional capacity and constraints. In addition, it may be impracticable to review the geographic distribution of the lending of an institution with very few demographically distinct geographies within an assessment area. If sufficient information on the income levels of individual borrowers or the revenues or sizes of business borrowers is not available, examiners may use loan size as a proxy for estimating borrower characteristics, where appropriate.

§ ____.26(c) Intermediate Small Institution Community Development Test

§ ____.26(c)—1: *How will the community development test be applied flexibly for intermediate small institutions?*

A1. Generally, intermediate small institutions engage in a combination of community development loans, qualified investments, and community development services. An institution may not simply ignore one or more of these categories of community development, nor do the regulations prescribe a required threshold for community development loans, qualified investments, and community development services. Instead, based on the institution's assessment of community development needs in its assessment area(s), it may engage in different categories of community development activities that are responsive to those needs and consistent with the institution's capacity.

An intermediate small institution has the flexibility to allocate its resources among community development loans, qualified investments, and community development services in amounts that it reasonably determines are most responsive to community development needs and opportunities. Appropriate levels of each of these activities would depend on the capacity and business strategy of the institution, community needs, and number and types of opportunities for community development.

§ ____.26(c)(3) Community Development Services

§ ____.26(c)(3)—1: *What will examiners consider when evaluating the provision of community development services by an intermediate small institution?*

A1. In addition to the examples listed in Q&A § ____.12(i)–3, examiners will consider retail banking services as community development services if they provide benefit to low- or moderate-income individuals. Examples include:

- Low-cost deposit accounts;
- electronic benefit transfer accounts and point of sale terminal systems;
- individual development accounts;
- free or low-cost government, payroll, or other check cashing services; and
- reasonably priced international remittance services.

In addition, providing services to low- and moderate-income individuals through branches and other facilities located in low- and moderate-income, designated disaster, or distressed or underserved nonmetropolitan middle-income areas is considered. Generally, the presence of branches located in low- and moderate-income geographies will help to demonstrate the availability of banking services to low- and moderate-income individuals.

§ ____.26(c)(4) Responsiveness to Community Development Needs

§ ____.26(c)(4)—1: *When evaluating an intermediate small institution's community development record, what will examiners consider when reviewing the responsiveness of community development lending, qualified investments, and community development services to the community development needs of the area?*

A1. When evaluating an intermediate small institution's community development record, examiners will consider not only quantitative measures of performance, such as the number and amount of community development loans, qualified investments, and community development services, but also qualitative aspects of performance. In particular, examiners will evaluate the responsiveness of the institution's community development activities in light of the institution's capacity, business strategy, the needs of the community, and the number and types of opportunities for each type of community development activity (its performance context). Examiners also will consider the results of any assessment by the institution of community development needs, and how the institution's activities respond to those needs.

An evaluation of the degree of responsiveness considers the following factors: The volume, mix, and qualitative aspects of community development loans, qualified investments, and community development services. Consideration of the qualitative aspects of performance recognizes that community development activities sometimes require special expertise or effort on the part of the institution or provide a benefit to the community that would not otherwise be made available. (However, ''innovativeness'' and ''complexity''—factors examiners consider when evaluating a large institution under the lending, investment, and service tests—are not criteria in the intermediate small institutions' community development test.) In some cases, a smaller loan may have more qualitative 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 in low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies. Activities are also considered particularly responsive to community development needs if they benefit low- or moderate-income geographies.

§ ____.26(d) Performance Rating

§ ____.26(d)—1: *How can a small institution that is not an intermediate small institution achieve an ''outstanding'' performance rating?*

A1. A small institution that is not an intermediate small institution that meets each of the standards in the lending test for a ''satisfactory'' rating and exceeds some or all of those standards may warrant an ''outstanding'' performance rating. In assessing performance at the ''outstanding'' level, the Agencies consider the extent to which the institution exceeds each of the performance standards and, at the institution's option, its performance in making qualified investments and providing services that enhance credit availability in its assessment area(s). In some cases, a small institution may qualify for an ''outstanding'' performance rating solely on the basis of its lending activities, but only if its performance materially exceeds the standards for a ''satisfactory'' rating, particularly with respect to the penetration of borrowers at all income levels and the dispersion of loans throughout the geographies in its assessment area(s) that display income variation. An institution with a high loan-to-deposit ratio and a high percentage of loans in its assessment area(s), but with only a reasonable penetration of borrowers at all income levels or a reasonable dispersion of loans throughout geographies of differing income levels in its assessment area(s), generally will not be rated ''outstanding'' based only on its lending performance. However, the institution's performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s) may augment the institution's satisfactory rating to the extent that it may be rated ''outstanding.''

§ ____.26(d)—2: *Will a small institution's qualified investments, community development loans, and community development services be considered if they do not directly benefit its assessment area(s)?*

A2. Yes. These activities are eligible for consideration if they benefit a broader statewide or regional area that includes a small institution's assessment area(s), as discussed more fully in Q&As § ____.12(h)–6 and § ____.12(h)–7.

§ ____.27—Strategic Plan

§ ____.27(c) Plans in General

§ ____.27(c)—1: *To what extent will the Agencies provide guidance to an institution during the development of its strategic plan?*

A1. An institution will have an opportunity to consult with and provide information to the Agencies on a proposed strategic plan. Through this process, an institution is provided guidance on procedures and on the information necessary to ensure a complete submission. For example, the Agencies will provide guidance on whether the level of detail as set out in the proposed plan would be sufficient to permit Agency evaluation of the plan. However, the Agencies' guidance during plan development and, particularly, prior to the public comment period, will not include commenting on the merits of a proposed strategic plan or on the adequacy of measurable goals.

§ ____.27(c)—2: *How will a joint strategic plan be reviewed if the affiliates have different primary Federal supervisors?*

A2. The Agencies will coordinate review of and action on the joint plan. Each Agency will evaluate the measurable goals for those affiliates for which it is the primary regulator.

§ ____.27(f) Plan Content

§ ____.27(f)(1) Measurable Goals

§ ____.27(f)(1)—1: *How should annual measurable goals be specified in a strategic plan?*

A1. Annual measurable goals (*e.g.,* number of loans, dollar amount, geographic location of activity, and benefit to low- and moderate-income areas or individuals) must be stated with sufficient specificity to permit the public and the Agencies to quantify what performance will be expected. However, institutions are provided flexibility in specifying goals. For example, an institution may provide ranges of lending amounts in different categories of loans. Measurable goals may also be linked to funding requirements of certain public programs or indexed to other external factors as long as these mechanisms provide a quantifiable standard.

§ ____.27(g) Plan Approval

§ ____.27(g)(2) Public Participation

§ ____.27(g)(2)—1: *How will the public receive notice of a proposed strategic plan?*

A1. An institution submitting a strategic plan for approval by the Agencies is required to solicit public comment on the plan for a period of 30 days after publishing notice of the plan at least once in a newspaper of general circulation. The notice should be sufficiently prominent to attract public attention and should make clear that public comment is desired. An institution may, in addition, provide notice to the public in any other manner it chooses.

§ ____.28—Assigned Ratings

§ ____.28—1: *Are innovative lending practices, innovative or complex qualified investments, and innovative community development services required for a ''satisfactory'' or ''outstanding'' CRA rating?*

A1. No. The performance criterion of ''innovativeness'' applies only under the lending, investment, and service tests applicable to large institutions and the community development test applicable to wholesale and limited purpose institutions. Moreover, even under these tests, the lack of innovative lending practices, innovative or complex qualified investments, or innovative community development services alone will not result in a ''needs to improve'' CRA rating. However, under these tests, the use of innovative lending practices, innovative or complex qualified investments, and innovative community development services may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher performance rating. See also Q&A § ____.26(c)(4)–1 for a discussion about responsiveness to community development needs under the community development test applicable to intermediate small institutions.

§ ____.28(a) Ratings in General

§ ____.28(a)—1: *How are institutions with domestic branches in more than one state assigned a rating?*

A1. The evaluation of an institution that maintains domestic branches in more than one state (''multistate institution'') will include a written evaluation and rating of its CRA record of performance as a whole and in each state in which it has a domestic branch. The written evaluation will contain a separate presentation on a multistate institution's performance for each MSA and the nonmetropolitan area within each state, if it maintains one or more domestic branch offices in these areas. This separate presentation will contain conclusions, supported by facts and data, on performance under the performance tests and standards in the regulation. The evaluation of a multistate institution that maintains a domestic branch in two or more states in a multistate metropolitan area will include a written evaluation (containing the same information described above) and rating of its CRA record of performance in the multistate metropolitan area. In such cases, the statewide evaluation and rating will be adjusted to reflect performance in the portion of the state not within the multistate MSA.

§ ____.28(a)—2: *How are institutions that operate within only a single state assigned a rating?*

A2. An institution that operates within only a single state (''single-state institution'') will be assigned a rating of its CRA record based on its performance within that state. In assigning this rating, the Agencies will separately present a single-state institution's performance for each metropolitan area in which the institution maintains one or more domestic branch offices. This separate presentation will contain conclusions, supported by facts and data, on the single-state institution's performance under the performance tests and standards in the regulation.

§ ____.28(a)—3: *How do the Agencies weight performance under the lending, investment, and service tests for large retail institutions?*

A3. A rating of ''outstanding,'' ''high satisfactory,'' ''low satisfactory,'' ''needs to improve,'' or ''substantial noncompliance,'' based on a judgment supported by facts and data, will be assigned under each performance test. Points will then be assigned to each rating as described in the first matrix set forth below. A large retail institution's overall rating under the lending, investment and service tests will then be calculated in accordance with the second matrix set forth below, which incorporates the rating principles in the regulation.

POINTS ASSIGNED FOR PERFORMANCE UNDER LENDING, INVESTMENT AND SERVICE TESTS

	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

COMPOSITE RATING POINT REQUIREMENTS

[Add points from three tests]

Rating	Total points
Outstanding	20 or over.
Satisfactory	11 through 19.
Needs to Improve	5 through 10.
Substantial Noncompliance	0 through 4.

Note: There is one exception to the Composite Rating matrix. An institution may not receive a rating of "satisfactory" unless it receives at least "low satisfactory" on the lending test. Therefore, the total points are capped at three times the lending test score.

§ ____.28(b) Lending, Investment, and Service Test Ratings

§ ____.28(b)—1: *How is performance under the quantitative and qualitative performance criteria weighed when examiners assign a CRA rating?*

A1. The lending, investment, and service tests each contain a number of performance criteria designed to measure whether an institution is effectively helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, in a safe and sound manner. Some of these performance criteria are quantitative, such as number and amount, and others, such as the use of innovative or flexible lending practices, the innovativeness or complexity of qualified investments, and the innovativeness and responsiveness of community development services, are qualitative. The performance criteria that deal with these qualitative aspects of performance recognize that these loans, qualified investments, and community development services sometimes require special expertise and effort on the part of the institution and provide a benefit to the community that would not otherwise be possible. As such, the Agencies consider the qualitative aspects of an institution's activities when measuring the benefits received by a community. An institution's performance under these qualitative criteria may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance and rating.

§ ____.28(c) Effect of Evidence of Discriminatory or Other Illegal Credit Practices

§ ____.28(c)—1: *What is meant by "discriminatory or other illegal credit practices"?*

A1. An institution engages in discriminatory credit practices if it discourages or discriminates against credit applicants or borrowers on a prohibited basis, in violation, for example, of the Fair Housing Act or the Equal Credit Opportunity Act (as implemented by Regulation B). Examples of other illegal credit practices inconsistent with helping to meet community credit needs include violations of

- the Truth in Lending Act regarding rescission of certain mortgage transactions and regarding disclosures and certain loan term restrictions in connection with credit transactions that are subject to the Home Ownership and Equity Protection Act;
- the Real Estate Settlement Procedures Act regarding the giving and accepting of referral fees, unearned fees, or kickbacks in connection with certain mortgage transactions; and
- the Federal Trade Commission Act regarding unfair or deceptive acts or practices. Examiners will determine the effect of evidence of illegal credit practices as set forth in examination procedures and § ____.28(c) of the regulation.

Violations of other provisions of the consumer protection laws generally will not adversely affect an institution's CRA rating, but may warrant the inclusion of comments in an institution's performance evaluation. These comments may address the institution's policies, procedures, training programs, and internal assessment efforts.

§ ____.29—Effect of CRA Performance on Applications

§ ____.29(a) CRA Performance

§ ____.29(a)—1: *What weight is given to an institution's CRA performance examination in reviewing an application?*

A1. In reviewing applications in which CRA performance is a relevant factor, information from a CRA examination of the institution is a particularly important consideration. The examination is a detailed evaluation of the institution's CRA performance by its supervisory Agency. In this light, an examination is an important, and often controlling, factor in the consideration of an institution's record. In some cases, however, the examination may not be recent, or a specific issue raised in the application process, such as progress in addressing weaknesses noted by examiners, progress in implementing commitments previously made to the reviewing Agency, or a supported allegation from a commenter, is relevant to CRA performance under the regulation and was not addressed in the examination. In these circumstances, the applicant should present sufficient information to supplement its record of performance and to respond to the substantive issues raised in the application proceeding.

§ ____.29(a)—2: *What consideration is given to an institution's commitments for future action in reviewing an application by those Agencies that consider such commitments?*

A2. Commitments for future action are not viewed as part of the CRA record of performance. In general, institutions cannot use commitments made in the applications process to overcome a seriously deficient record of CRA performance. However, commitments for improvements in an institution's performance may be appropriate to address specific weaknesses in an otherwise satisfactory record or to address CRA performance when a financially troubled institution is being acquired.

§ ____.29(b) Interested Parties

§ ____.29(b)—1: *What consideration is given to comments from interested parties in reviewing an application?*

A1. Materials relating to CRA performance received during the application process can provide valuable information. Written comments, which may express either support for or opposition to the application, are made a part of the record in accordance with the Agencies' procedures, and are carefully considered in making the Agencies' decisions. Comments should be supported by facts about the applicant's performance and should be as specific as possible in explaining the basis for supporting or opposing the application. These comments must be submitted within the time limits provided under the Agencies' procedures.

§ ____.29(b)—2: *Is an institution required to enter into agreements with private parties?*

A2. No. Although communications between an institution and members of its community may provide a valuable method for the institution to assess how best to address the credit needs of the community, the CRA does not require an institution to enter into agreements with private parties. The Agencies do not monitor compliance with nor enforce these agreements.

§ ____.41—Assessment Area Delineation

§ ____.41(a) In General

§ ____.41(a)—1: *How do the Agencies evaluate "assessment areas" under the CRA regulations?*

A1. The rule focuses on the distribution and level of an institution's lending, investments, and services rather than on how and why an institution delineated its assessment area(s) in a particular manner. Therefore, the Agencies will not evaluate an institution's delineation of its assessment area(s) as a separate performance criterion. Rather, the Agencies will only review whether the assessment area(s) delineated by the institution complies with the limitations set forth in the regulations at 12 CFR ____.41(e).

§ ____.41(a)—2: *If an institution elects to have the Agencies consider affiliate lending, will this decision affect the institution's assessment area(s)?*

A2. If an institution elects to have the lending activities of its affiliates considered in the evaluation of the institution's lending, the geographies in which the affiliate lends do not affect the institution's delineation of assessment area(s).

§ ____.41(a)—3: *Can a financial institution identify a specific racial or ethnic group rather than a geographic area as its assessment area?*

A3. No, assessment areas must be based on geography. The only exception to the requirement to delineate an assessment area based on geography is that an institution, the business of which predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area, may delineate its entire deposit customer base as its assessment area.

§ ____.41(c) Geographic Area(s) for Institutions Other Than Wholesale or Limited Purpose Institutions

§ ____.41(c)(1) Generally Consist of One or More MSAs or Metropolitan Divisions or One or More Contiguous Political Subdivisions

§ ____.41(c)(1)—1: *Besides cities, towns, and counties, what other units of local government are political subdivisions for CRA purposes?*

A1. Townships and Indian reservations are political subdivisions for CRA purposes. Institutions should be aware that the boundaries of townships and Indian reservations may not be consistent with the boundaries of the census tracts (*i.e.,* geographies) in the area. In these cases, institutions must ensure that their assessment area(s) consists only of whole geographies by adding any portions of the geographies that lie outside the political subdivision to the delineated assessment area(s).

§ ____.41(c)(1)—2: *Are wards, school districts, voting districts, and water districts political subdivisions for CRA purposes?*

A2. No. However, an institution that determines that it predominantly serves an area that is smaller than a city, town, or other political subdivision may delineate as its assessment area the larger political subdivision and then, in accordance with 12 CFR ____.41(d), adjust the boundaries of the assessment area to include only the portion of the political subdivision that it reasonably can be expected to serve. The smaller area that the institution delineates must consist of entire geographies, may not reflect illegal discrimination, and may not arbitrarily exclude low- or moderate-income geographies.

§ ____.41(d) Adjustments to Geographic Area(s)

§ ____.41(d)—1: *When may an institution adjust the boundaries of an assessment area to include only a portion of a political subdivision?*

A1. Institutions must include whole geographies (*i.e.,* census tracts) in their assessment areas and generally should include entire political subdivisions. Because census tracts are the common geographic areas used consistently nationwide for data collection, the Agencies require that assessment areas be made up of whole geographies. If including an entire political subdivision would create an area that is larger than the area the institution can reasonably be expected to serve, an institution may, but is not required to, adjust the boundaries of its assessment area to include only portions of the political subdivision. For example, this adjustment is appropriate if the assessment area would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers (such as a river, mountain, or major highway system). When adjusting the boundaries of their assessment areas, institutions must not arbitrarily exclude low- or moderate-income geographies or set boundaries that reflect illegal discrimination.

§ ____.41(e) Limitations on Delineation of an Assessment Area

§ ____.41(e)(3) May Not Arbitrarily Exclude Low- or Moderate-Income Geographies

§ ____.41(e)(3)—1: *How will examiners determine whether an institution has arbitrarily excluded low- or moderate-income geographies?*

A1. Examiners will make this determination on a case-by-case basis after considering the facts relevant to the institution's assessment area delineation. Information that examiners will consider may include

• income levels in the institution's assessment area(s) and surrounding geographies;

• locations of branches and deposit-taking ATMs;

• loan distribution in the institution's assessment area(s) and surrounding geographies;

• the institution's size;

• the institution's financial condition; and

• the business strategy, corporate structure, and product offerings of the institution.

§ ____.41(e)(4) May Not Extend Substantially Beyond an MSA Boundary or Beyond a State Boundary Unless Located in a Multistate MSA

§ ____.41(e)(4)—1: *What are the maximum limits on the size of an assessment area?*

A1. An institution may not delineate an assessment area extending substantially across the boundaries of an MSA unless the MSA is in a combined statistical area (CSA)). Although more than one MSA in a CSA may be delineated as a single assessment area, an institution's CRA performance in individual MSAs in those assessment areas will be evaluated using separate median family incomes and other relevant information at the MSA level rather than at the CSA level.

An assessment area also may not extend substantially across state boundaries unless the assessment area is located in a multistate MSA. An institution may not delineate a whole state as its assessment area unless the entire state is contained within an MSA. These limitations apply to wholesale and limited purpose institutions as well as other institutions.

An institution must delineate separate assessment areas for the areas inside and outside an MSA if the area served by the institution's branches outside the MSA extends substantially beyond the MSA boundary. Similarly, the institution must delineate separate assessment areas for the areas inside and outside of a state if the institution's branches extend substantially beyond the boundary of one state (unless the assessment area is located in a multistate MSA). In addition, the institution should also delineate separate assessment areas if it has branches in areas within the same state that are widely separate and not at all contiguous. For example, an institution that has its main office in New York City and a branch in Buffalo, New York, and each office serves only the immediate areas around it, should delineate two separate assessment areas.

§ ____.41(e)(4)—2: *May an institution delineate one assessment area that consists of an MSA and two large counties that abut the MSA but are not adjacent to each other?*

A2. As a general rule, an institution's assessment area should not extend substantially beyond the boundary of an MSA. Therefore, the MSA would be a separate assessment area, and because the two abutting counties are not adjacent to each other and, in this example, extend substantially beyond the boundary of the MSA, the institution would delineate each county as a separate assessment area, assuming branches or deposit-taking ATMs are located in each county and the MSA. So, in this example, there would be three assessment areas. However, if the MSA and the two counties were in the same CSA, then the institution could delineate only one assessment area including them all. But, the institution's CRA performance in the MSAs and the non-MSA counties in that assessment area would be evaluated using separate median family incomes and other relevant information at the MSA and state, non-MSA level, rather than at the CSA level.

§ ____.42—Data Collection, Reporting, and Disclosure

§ ____.42—1: *When must an institution collect and report data under the CRA regulations?*

A1. All institutions except small institutions are subject to data collection and reporting requirements. (''Small institution'' is defined in the Agencies' CRA regulations at 12 CFR ____.12(u).) Examples describing the data collection requirements of institutions, in particular those that have just surpassed the asset-size threshold of a small institution, may be found on the FFIEC Web site at *http://www.ffiec.gov/cra.* All institutions that are subject to the data collection and reporting requirements must report the data for a calendar year (CY) by March 1 of the subsequent year. For example, data for CY 2015 would be reported by March 1, 2016.

The Board of Governors of the Federal Reserve System processes the reports for all of the primary regulators. Data may be submitted on diskette, CD–ROM, or via Internet email.

CRA respondents are encouraged to use the free FFIEC Data Entry Software to send their CRA data. ''Submission via Web'' is the preferred option. CRA respondents may also send a properly encrypted CRA file (using the ''Export to Federal Reserve Board via Internet email'' option) to *CRASUB@FRB.GOV.*

Please mail diskette or CD–ROM submissions to: Federal Reserve Board, Attention: CRA Processing, 20th & Constitution Avenue NW., MS N402, Washington, DC 20551–0001.

For questions about submitting or resubmitting CRA data, please contact the FFIEC at *CRAHELP@FRB.GOV.*

§ ____.42—2: *Should an institution develop its own program for data collection, or will the regulators require a certain format?*

A2. An institution may use the free software that is provided by the FFIEC to reporting institutions for data collection and reporting or develop its own program. Those institutions that develop their own programs may create a data submission using the File Specifications and Edit Validation Rules that have been set forth to assist with electronic data submissions. For information about specific electronic formatting procedures, contact *CRAHELP@FRB.GOV.*

§ ____.42—3: *How should an institution report data on lines of credit?*

A3. Institutions must collect and report data on lines of credit in the same way that they provide data on loan originations. Lines of credit are considered originated at the time the line is approved or increased; and an increase is considered a new origination. Generally, the full amount of the credit line is the amount that is considered originated. In the case of an increase to an existing line, the amount of the increase is the amount that is considered originated and that amount should be reported. However, consistent with the Call Report instructions, institutions would not report an increase to a small business or small farm line of credit if the increase would cause the total line of credit to exceed $1 million, in the case of a small business line, or $500,000, in the case of a small farm line. Of course, institutions may provide information about such line increases to examiners as ''other loan data.''

§ ____.42—4: *Should renewals of lines of credit be collected and/or reported?*

A4. Renewals of lines of credit for small business, small farm, consumer, or community development purposes should be collected and reported, if applicable, in the same manner as renewals of small business or small farm loans. *See* Q&A § ____.42(a)–5. Institutions that are HMDA reporters continue to collect and report home equity lines of credit at their option in accordance with the requirements of 12 CFR part 1003.

§ ____.42—5: *When should merging institutions collect data?*

A5. Three scenarios of data collection responsibilities for the calendar year of a merger and subsequent data reporting responsibilities are described below.

- Two institutions are exempt from CRA collection and reporting requirements because of asset size. The institutions merge. No data collection is required for the year in which the merger takes place, regardless of the resulting asset size. Data collection would begin after two consecutive years in which the combined institution had year-end assets at least equal to the small institution asset-size threshold amount described in 12 CFR ____.12(u)(1).
- Institution A, an institution required to collect and report the data, and Institution B, an exempt institution, merge. Institution A is the surviving institution. For the year of the merger, data collection is required for Institution A's transactions. Data collection is optional for the transactions of the previously exempt institution. For the following year, all transactions of the surviving institution must be collected and reported.
- Two institutions that each are required to collect and report the data merge. Data collection is required for the entire year of the merger and for subsequent years so long as the surviving institution is not exempt. The surviving institution may file either a consolidated submission or separate submissions for the year of the merger but must file a consolidated report for subsequent years.

§ ____.42—6: *Can small institutions get a copy of the data collection software even though they are not required to collect or report data?*

A6. Yes. Any institution that is interested in receiving a copy of the software may download it from the FFIEC Web site at *http://www.ffiec.gov/cra.* For assistance, institutions may send an email to *CRAHELP@FRB.GOV.*

§ ____.42—7: *If a small institution is designated a wholesale or limited purpose institution, must it collect data that it would not otherwise be required to collect because it is a small institution?*

A7. No. However, small institutions that are designated as wholesale or limited purpose institutions must be prepared to identify those loans, investments, and services to be evaluated under the community development test.

§ ____.42(a) Loan Information Required To be Collected and Maintained

§ ____.42(a)—1: *Must institutions collect and report data on all commercial loans of $1 million or less at origination?*

A1. No. Institutions that are not exempt from data collection and reporting are required to collect and report only those commercial loans that they capture in Call Report Schedule RC–C, Part II. Small business loans are defined as those whose original amounts are $1 million or less *and* that were reported as either ''Loans secured by nonfarm or nonresidential real estate'' or ''Commercial and industrial loans'' in Call Report Schedule RC–C, Part I.

§ ____.42(a)—2: *For loans defined as small business loans, what information should be collected and maintained?*

A2. Institutions that are not exempt from data collection and reporting are required to collect and maintain, in a standardized, machine-readable format, information on each small business loan originated or purchased for each calendar year:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file.
- The loan amount at origination.
- The loan location.
- An indicator whether the loan was to a business with gross annual revenues of $1 million or less.

The location of the loan must be maintained by census tract. In addition, supplemental information contained in the file specifications includes a date associated with the origination or purchase and whether a loan was originated or purchased by an affiliate. The same requirements apply to small farm loans.

§ ____.42(a)—3: *Will farm loans need to be segregated from business loans?*

A3. Yes.

§ ____.42(a)—4: *Should institutions collect and report data on all agricultural loans of $500,000 or less at origination?*

A4. Institutions are to report those farm loans that they capture in Call Report Schedule RC–C, Part II. Small farm loans are defined as those whose original amounts are $500,000 or less *and* were reported as either ''Loans to finance agricultural production and other loans to farmers'' or ''Loans secured by farmland'' in Call Report Schedule RC–C, Part I.

§ ____.42(a)—5: *Should institutions collect and report data about small business and small farm loans that are refinanced or renewed?*

A5. An institution should collect information about small business and small farm loans that it refinances or renews as loan originations. (A *refinancing* generally occurs when the existing loan obligation or note is satisfied and a new note is written, while a *renewal* refers to an extension of the term of a loan. However, for purposes of small business and small farm CRA data collection and reporting, it is not necessary to distinguish between the two.) When reporting small business and small farm data, however, an institution may only report one origination (including a renewal or refinancing treated as an origination) per loan per year, unless an increase in the loan amount is granted. However, a demand loan that is merely reviewed annually is not reported as a renewal because the term of the loan has not been extended.

If an institution increases the amount of a small business or small farm loan when it extends the term of the loan, it should always report the amount of the increase as a small business or small farm loan origination. The institution should report only the amount of the increase if the original or remaining amount of the loan has already been reported one time that year. For example, a financial institution makes a term loan for $25,000; principal payments have resulted in a present outstanding balance of $15,000. In the next year, the customer requests an additional $5,000, which is approved, and a new note is written for $20,000. In this example, the institution should report both the $5,000 increase and the renewal or refinancing of the $15,000 as originations for that year. These two originations may be reported together as a single origination of $20,000.

§ ____.42(a)—6: *Does a loan to the ''fishing industry'' come under the definition of a small farm loan?*

A6. Yes. Instructions for Call Report Schedule RC—C, Part I include loans ''made for the purpose of financing fisheries and forestries, including loans to commercial fishermen'' as a component of the definition for ''Loans to finance agricultural production and other loans to farmers.'' Call Report Schedule RC–C, Part II, which serves as the basis of the definition for small business and small farm loans in the regulation, captures both ''Loans to finance agricultural production and other loans to farmers'' and ''Loans secured by farmland.''

§ ____.42(a)—7: *How should an institution report a home equity line of credit, part of which is for home improvement purposes and part of which is for small business purposes?*

A7. When an institution originates a home equity line of credit that is for both home improvement and small business purposes, the institution has the option of reporting the portion of the home equity line that is for home improvement purposes as a home improvement loan under HMDA. Examiners would consider that portion of the line when they evaluate the institution's home mortgage lending. When an institution refinances a home equity line of credit into another home equity line of credit, HMDA reporting continues to be optional. If the institution opts to report the refinanced line, the entire amount of the line would be reported as a refinancing and examiners will consider the entire refinanced line when they evaluate the institution's home mortgage lending.

If an institution that has originated a home equity line of credit for both home improvement and small business purposes (or if an institution that has refinanced such a line into another line) chooses not to report a home improvement loan (or a refinancing) under HMDA, and if the line meets the regulatory definition of a ''community development loan,'' the institution should collect and report information on the entire line as a community development loan. If the line does not qualify as a community development loan, the institution has the option of collecting and maintaining (but not reporting) the entire line of credit as ''Other Secured Lines/Loans for Purposes of Small Business.''

§ ____.42(a)—8: *When collecting small business and small farm data for CRA purposes, may an institution collect and report information about loans to small businesses and small farms located outside the United States?*

A8. At an institution's option, it may collect data about small business and small farm loans located outside the United States; however, it cannot report this data because the CRA data collection software will not accept data concerning loan locations outside the United States.

§ ____.42(a)—9: *Is an institution that has no small farm or small business loans required to report under CRA?*

A9. Each institution subject to data reporting requirements must, at a minimum, submit a transmittal sheet, definition of its assessment area(s), and a record of its community development loans. If the institution does not have community development loans to report, the record should be sent with ''0'' in the community development loan composite data fields. An institution that has not purchased or originated any small business or small farm loans during the reporting period would not submit the composite loan records for small business or small farm loans.

§ ____.42(a)—10: *How should an institution collect and report the location of a loan made to a small business or farm if the borrower* *provides an address that consists of a post office box number or a rural route and box number?*

A10. Prudent banking practices and Bank Secrecy Act regulations dictate that institutions know the location of their customers and loan collateral. Further, Bank Secrecy Act regulations specifically state that a post office box is not an acceptable address. Therefore, institutions typically will know the actual location of their borrowers or loan collateral beyond an address consisting only of a post office box.

Many borrowers have street addresses in addition to rural route and box numbers. Institutions should ask their borrowers to provide the street address of the main business facility or farm or the location where the loan proceeds otherwise will be applied. Moreover, in many cases in which the borrower's address consists only of a rural route number, the institution knows the location (*i.e.,* the census tract) of the borrower or loan collateral. Once the institution has this information available, it should assign the census tract to that location (geocode) and report that information as required under the regulation.

However, if an institution cannot determine a rural borrower's street address, and does not know the census tract, the institution should report the borrower's state, county, MSA or metropolitan division, if applicable, and ''NA,'' for ''not available,'' in lieu of a census tract code.

§ ____.42(a)(2) Loan Amount at Origination

§ ____.42(a)(2)—1: *When an institution purchases a small business or small farm loan, in whole or in part, which amount should the institution collect and report—the original amount of the loan or the amount at purchase?*

A1. When collecting and reporting information on purchased small business and small farm loans, including loan participations, an institution collects and reports the amount of the loan at origination, not at the time of purchase. This is consistent with the Call Report's use of the ''original amount of the loan'' to determine whether a loan should be reported as a ''loan to a small business'' or a ''loan to a small farm'' and in which loan size category a loan should be reported. When assessing the volume of small business and small farm loan purchases for purposes of evaluating lending test performance under CRA, however, examiners will evaluate an institution's activity based on the amounts at purchase.

§ ____.42(a)(2)—2: *How should an institution collect data about multiple loan originations to the same business?*

A2. If an institution makes multiple originations to the same business, the loans should be collected and reported as separate originations rather than combined and reported as they are on the Call Report, which reflects loans outstanding, rather than originations. However, if institutions make multiple originations to the same business solely to inflate artificially the number or volume of loans evaluated for CRA lending performance, the Agencies may combine these loans for purposes of evaluation under the CRA.

§ ____.42(a)(2)—3: *How should an institution collect data pertaining to credit cards issued to small businesses?*

A3. If an institution agrees to issue credit cards to a business's employees, all of the credit card lines opened on a particular date for that single business should be reported as one small business loan origination rather than reporting each individual credit card line, assuming the criteria in the ''small business loan'' definition in the regulation are met. The credit card program's ''amount at origination'' is the sum of all of the employee/business credit cards' credit limits opened on a particular date. If subsequently issued credit cards increase the small business credit line, the added amount is reported as a new origination.

§ ____.42(a)(3) The Loan Location

§ ____.42(a)(3)—1: *Which location should an institution record if a small business loan's proceeds are used in a variety of locations?*

A1. The institution should record the loan location by either the location of the small business borrower's headquarters or the location where the greatest portion of the proceeds are applied, as indicated by the borrower.

§ ____.42(a)(4) Indicator of Gross Annual Revenue

§ ____.42(a)(4)—1: *When indicating whether a small business borrower had gross annual revenues of $1 million or less, upon what revenues should an institution rely?*

A1. Generally, an institution should rely on the revenues that it considered in making its credit decision. For example, in the case of affiliated businesses, such as a parent corporation and its subsidiary, if the institution considered the revenues of the entity's parent or a subsidiary corporation of the parent as well, then the institution would aggregate the revenues of both corporations to determine whether the revenues are $1 million or less. Alternatively, if the institution considered the revenues of only the entity to which the loan is actually extended, the institution should rely solely upon whether gross annual revenues are above or below $1 million for that entity. However, if the institution considered and relied on revenues or income of a cosigner or guarantor that is not an affiliate of the borrower, such as a sole proprietor, the institution should not adjust the borrower's revenues for reporting purposes.

§ ____.42(a)(4)—2: *If an institution that is not exempt from data collection and reporting does not request or consider revenue information to make the credit decision regarding a small business or small farm loan, must the institution collect revenue information in connection with that loan?*

A2. No. In those instances, the institution should enter the code indicating ''revenues not known'' on the individual loan portion of the data collection software or on an internally developed system. Loans for which the institution did not collect revenue information may not be included in the loans to businesses and farms with gross annual revenues of $1 million or less when reporting this data.

§ ____.42(a)(4)—3: *What gross revenue should an institution use in determining the gross annual revenue of a start-up business?*

A3. The institution should use the actual gross annual revenue to date (including $0 if the new business has had no revenue to date). Although a start-up business will provide the institution with pro forma projected revenue figures, these figures may not accurately reflect actual gross revenue and, therefore, should not be used.

§ ____.42(a)(4)—4: *When indicating the gross annual revenue of small business or small farm borrowers, do institutions rely on the gross annual revenue or the adjusted gross annual revenue of their borrowers?*

A4. Institutions rely on the gross annual revenue, rather than the adjusted gross annual revenue, of their small business or small farm borrowers when indicating the revenue of small business or small farm borrowers. The purpose of this data collection is to enable examiners and the public to judge whether the institution is lending to small businesses and small farms or whether it is only making small loans to larger businesses and farms.

The regulation does not require institutions to request or consider revenue information when making a loan; however, if institutions do gather this information from their borrowers, the Agencies expect them to collect and rely upon the borrowers' gross annual revenue for purposes of CRA. The CRA regulations similarly do not require institutions to verify revenue amounts; thus, institutions may rely on the gross annual revenue amount provided by borrowers in the ordinary course of business. If an institution does not collect gross annual revenue information for its small business and small farm borrowers, the institution should enter the code ''revenues not known.'' *See* Q&A § ____.42(a)(4)–2.

§ ____.42(b) Loan Information Required To Be Reported

§ ____.42(b)(1) Small Business and Small Farm Loan Data

§ ____.42(b)(1)—1: *For small business and small farm loan information that is collected and maintained, what data should be reported?*

A1. Each institution that is not exempt from data collection and reporting is required to report in machine-readable form annually by March 1 the following information, aggregated for each census tract in which the institution originated or purchased at least one small business or small farm loan during the prior year:

- The number and amount of loans originated or purchased with original amounts of $100,000 or less.
- The number and amount of loans originated or purchased with original amounts of more than $100,000 but less than or equal to $250,000.
- The number and amount of loans originated or purchased with original amounts of more than $250,000 but not more than $1 million, as to small business loans, or $500,000, as to small farm loans.
- To the extent that information is available, the number and amount of loans to businesses and farms with gross annual revenues of $1 million or less (using the revenues the institution considered in making its credit decision).

§ ____.42(b)(2) Community Development Loan Data

§ ____.42(b)(2)—1: *What information about community development loans must institutions report?*

A1. Institutions subject to data reporting requirements must report the aggregate number and amount of community development loans originated and purchased during the prior calendar year.

§ ____.42(b)(2)—2: *If a loan meets the definition of a home mortgage, small business, or small farm loan AND qualifies as a community development loan, where should it be reported? Can Federal Housing Administration, Veterans Affairs, and Small Business Administration loans be reported as community development loans?*

A2. Except for multifamily affordable housing loans, which may be reported by retail institutions both under HMDA as home mortgage loans and as community development loans, in order to avoid double counting, retail institutions must report loans that meet the definition of ''home mortgage loan,'' ''small business loan,'' or ''small farm loan'' only in those respective categories even if they also meet the definition of ''community development loan.'' As a practical matter, this is not a disadvantage for institutions evaluated under the lending, investment, and service tests because any affordable housing mortgage, small business, small farm, or consumer loan that would otherwise meet the definition of ''community development loan'' will be considered elsewhere in the lending test. Any of these types of loans that occur outside the institution's assessment area(s) can receive consideration under the borrower characteristic criteria of the lending test. *See* Q&A § ____.22(b)(2) & (3)–4.

Limited purpose and wholesale institutions that meet the size threshold for reporting purposes also must report loans that meet the definitions of home mortgage, small business, or small farm loans in those respective categories. However, these institutions must also report any loans from those categories that meet the regulatory definition of ''community development loan'' as community development loans. There is no double counting because wholesale and limited purpose institutions are not subject to the lending test and, therefore, are not evaluated on their level and distribution of home mortgage, small business, small farm, and consumer loans.

§ ____.42(b)(2)—3: *When the primary purpose of a loan is to finance an affordable housing project for low- or moderate-income individuals, but, for example, only 40 percent of the units in question will actually be occupied by individuals or families with low or moderate incomes, should the entire loan amount be reported as a community development loan?*

A3. It depends. As long as the primary purpose of the loan is a community development purpose as described in Q&A § ____.12(h)–8, the full amount of the institution's loan should be included in its reporting of aggregate amounts of community development lending. Even though the entire amount of the loan is reported, as noted in Q&A § ____.22(b)(4)–1, examiners may make qualitative distinctions among community development loans on the basis of the extent to which the loan advances the community development purpose.

In addition, if an institution that reports CRA data elects to request consideration for loans that provide mixed-income housing where only a portion of the loan has community development as its primary purpose, such as in connection with a development that has a mixed-income housing component or an affordable housing set-aside required by Federal, state, or local government, the institution must report only the pro rata dollar amount of the portion of the loan that provides affordable housing to low- or moderate-income individuals. The pro rata dollar amount of the total activity will be based on the percentage of units that are affordable. See Q&A § ____.12(h)–8 for a discussion of ''primary purpose'' of community development describing the distinction between the types of loans that would be reported in full and those for which only the pro rata amount would be reported.

§ ____.42(b)(2)—4: *When an institution purchases a participation in a community development loan, which amount should the institution report—the entire amount of the credit originated by the lead lender or the amount of the participation purchased?*

A4. The institution reports only the amount of the participation purchased as a community development loan. However, the institution uses the entire amount of the credit originated by the lead lender to determine whether the original credit meets the definition of a ''loan to a small business,'' ''loan to a small farm,'' or ''community development loan.'' For example, if an institution purchases a $400,000 participation in a business credit that has a community development purpose, and the entire amount of the credit originated by the lead lender is over $1 million, the institution would report $400,000 as a community development loan.

§ ____.42(b)(2)—5: *Should institutions collect and report data about community development loans that are refinanced or renewed?*

A5. Yes. Institutions should collect information about community development loans that they refinance or renew as loan originations. Community development loan refinancings and renewals are subject to the reporting limitations that apply to refinancings and renewals of small business and small farm loans. *See* Q&A § ____.42(a)–5.

§ ____.42(b)(3) Home Mortgage Loans

§ ____.42(b)(3)—1: *Must institutions that are not required to collect home mortgage loan data by the HMDA collect home mortgage loan data for purposes of the CRA?*

A1. No. If an institution is not required to collect home mortgage loan data by the HMDA, the institution need not collect home mortgage loan data under the CRA. Examiners will sample these loans to evaluate the institution's home mortgage lending. If an institution wants to ensure that examiners consider all of its home mortgage loans, the institution may collect and maintain data on these loans.

§ ____.42(c) Optional Data Collection and Maintenance

§ ____.42(c)(1) Consumer Loans

§ ____.42(c)(1)—1: *What are the data requirements regarding consumer loans?*

A1. There are no data reporting requirements for consumer loans. Institutions may, however, opt to collect and maintain data on consumer loans. If an institution chooses to collect information on consumer loans, it may collect data for one or more of the following categories of consumer loans: Motor vehicle, credit card, home equity, other secured, and other unsecured. If an institution collects data for loans in a certain category, it must collect data for all loans originated or purchased within that category. The institution must maintain these data separately for each category for which it chooses to collect data. The data collected and maintained should include for each loan

- a unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- the loan amount at origination or purchase;
- the loan location; and
- the gross annual income of the borrower that the institution considered in making its credit decision.

Generally, guidance given with respect to data collection of small business and small farm loans, including, for example, guidance regarding collecting loan location data, and whether to collect data in connection with refinanced or renewed loans, will also apply to consumer loans.

§ ____.42(c)(1)(iv) Income of Borrower

§ ____.42(c)(1)(iv)—1: *If an institution does not consider income when making an underwriting decision in connection with a consumer loan, must it collect income information?*

A1. No. Further, if the institution routinely collects, but does not verify, a borrower's income when making a credit decision, it need not verify the income for purposes of data maintenance.

§ ____.42(c)(1)(iv)—2: *May an institution list ''0'' in the income field on consumer loans made to employees when collecting data for CRA purposes as the institution would be permitted to do under HMDA?*

A2. Yes.

§ ____.42(c)(1)(iv)—3: *When collecting the gross annual income of consumer borrowers, do institutions collect the gross annual income or the adjusted gross annual income of the borrowers?*

A3. Institutions collect the gross annual income, rather than the adjusted gross annual income, of consumer borrowers. The purpose of income data collection in connection with consumer loans is to enable examiners to determine the distribution, particularly in the institution's assessment area(s), of the institution's consumer loans, based on borrower characteristics, including the number and amount of consumer loans to low-, moderate-, middle-, and upper-income borrowers, as determined on the basis of gross annual income.

The regulation does not require institutions to request or consider income information when making a loan; however, if institutions do gather this information from their borrowers, the Agencies expect them to collect the borrowers' gross annual income for purposes of CRA. The CRA regulations similarly do not require institutions to verify income amounts; thus, institutions may rely on the gross annual income amount provided by borrowers in the ordinary course of business.

§ ____.42(c)(1)(iv)—4: *Whose income does an institution collect when a consumer loan is made to more than one borrower?*

A4. An institution that chooses to collect and maintain information on consumer loans collects the gross annual income of all primary obligors for consumer loans, to the extent that the institution considered the income of the obligors when making the decision to extend credit. Primary obligors include co-applicants and co-borrowers, including co-signers. An institution does not, however, collect the income of guarantors on consumer loans, because guarantors are only secondarily liable for the debt.

§ ____.42(c)(2) Other Loan Data

§ ____.42(c)(2)—1: *Call Report Schedule RC–C, Part II does not allow institutions to report loans for commercial and industrial purposes that are secured by residential real estate, unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution.* (See *Q&A § ____.12(v)–3.) Loans extended to small businesses with gross annual revenues of $1 million or less may, however, be secured by residential real estate. May an institution collect this information to supplement its small business lending data at the time of examination?*

A1. Yes. If these loans promote community development, as defined in the regulation, the institution should collect and report information about the loans as community development loans. Otherwise, *at the institution's option,* it may collect and maintain data concerning loans, purchases, and lines of credit extended to small businesses and secured by nonfarm residential real estate for consideration in the CRA evaluation of its small business lending. An institution may collect this information as ''Other Secured Lines/Loans for Purposes of Small Business'' in the individual loan data. This information should be maintained at the institution but should *not* be submitted for central reporting purposes.

§ ____.42(c)(2)—2: *Must an institution collect data on loan commitments and letters of credit?*

A2. No. Institutions are not required to collect data on loan commitments and letters of credit. Institutions may, however, provide for examiner consideration information on letters of credit and commitments.

§ ____.42(c)(2)—3: *Are commercial and consumer leases considered loans for purposes of CRA data collection?*

A3. Commercial and consumer leases are not considered small business or small farm loans or consumer loans for purposes of the data collection requirements in 12 CFR ____.42(a) & (c)(1). However, if an institution wishes to collect and maintain data about leases, the institution may provide this data to examiners as ''other loan data'' under 12 CFR ____.42(c)(2) for consideration under the lending test.

§ ____.42(d) Data on Affiliate Lending

§ ____.42(d)—1: *If an institution elects to have an affiliate's home mortgage lending considered in its CRA evaluation, what data must the institution make available to examiners?*

A1. If the affiliate is a HMDA reporter, the institution must identify those loans reported by its affiliate under 12 CFR part 1003 (Regulation C, implementing HMDA). At its option, the institution may provide examiners with either the affiliate's entire HMDA Disclosure

Statement or just those portions covering the loans in its assessment area(s) that it is electing to consider. If the affiliate is not required by HMDA to report home mortgage loans, the institution must provide sufficient data concerning the affiliate's home mortgage loans for the examiners to apply the performance tests.

§ ____.43—Content and Availability of Public File

§ ____.43(a) Information Available to the Public

§ ____.43(a)(1) Public Comments Related to an Institution's CRA Performance

§ ____.43(a)(1)—1: *What happens to comments received by the Agencies?*

A1. Comments received by an Agency will be on file at the Agency for use by examiners. Those comments are also available to the public unless they are exempt from disclosure under the Freedom of Information Act.

§ ____.43(a)(1)—2: *Is an institution required to respond to public comments?*

A2. No. All institutions should review comments and complaints carefully to determine whether any response or other action is warranted. A small institution subject to the small institution performance standards is specifically evaluated on its record of taking action, if warranted, in response to written complaints about its performance in helping to meet the credit needs in its assessment area(s). See 12 CFR ____.26(b)(5). For all institutions, responding to comments may help to foster a dialogue with members of the community or to present relevant information to an institution's supervisory Agency. If an institution responds in writing to a letter in the public file, the response must also be placed in that file, unless the response reflects adversely on any person or placing it in the public file violates a law.

§ ____.43(a)(2) CRA Performance Evaluation

§ ____.43(a)(2)—1: *May an institution include a response to its CRA performance evaluation in its public file?*

A1. Yes. However, the format and content of the evaluation, as transmitted by the supervisory Agency, may not be altered or abridged in any manner. In addition, an institution that received a less than satisfactory rating during it most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. *See* 12 CFR ____.43(b)(5). The institution must update the description on a quarterly basis.

§ ____.43(b) Additional Information Available to the Public

§ ____.43(b)(1) Institutions Other Than Small Institutions

§ ____.43(b)(1)—1: *Must an institution that elects to have affiliate lending considered include data on this lending in its public file?*

A1. Yes. The lending data to be contained in an institution's public file covers the lending of the institution's affiliates, as well as of the institution itself, considered in the assessment of the institution's CRA performance. An institution that has elected to have mortgage loans of an affiliate considered must include either the affiliate's HMDA Disclosure Statements for the two prior years or the parts of the Disclosure Statements that relate to the institution's assessment area(s), at the institution's option.

§ ____.43(b)(1)—2: *May an institution retain its CRA disclosure statement in electronic format in its public file, rather than printing a hard copy of the CRA disclosure statement for retention in its public file?*

A2. Yes, if the institution can readily print out its CRA disclosure statement from an electronic medium (*e.g.,* CD, DVD, or Internet Web site) when a consumer requests the public file. If the request is at a branch other than the main office or the one designated branch in each state that holds the complete public file, the institution should provide the CRA disclosure statement in a paper copy, or in another format acceptable to the requestor, within five calendar days, as required by 12 CFR ____.43(c)(2)(ii).

§ ____.43(c) Location of Public Information

§ ____.43(c)—1: *What is an institution's ''main office''?*

A1. An institution's main office is the main, home, or principal office as designated in its charter.

§ ____.43(c)—2: *May an institution maintain a copy of its public file on an intranet or the Internet?*

A2. Yes, an institution may keep all or part of its public file on an intranet or the Internet, provided that the institution maintains all of the information, either in paper or electronic form, that is required in 12 CFR ____.43. An institution that opts to keep part or all of its public file on an intranet or the Internet must follow the rules in 12 CFR ____.43(c)(1) and (2) as to what information is required to be kept at a main office and at a branch. The institution also must ensure that the information required to be maintained at a main office and branch, if kept electronically, can be readily downloaded and printed for any member of the public who requests a hard copy of the information.

§ ____.44—Public Notice by Institutions

§ ____.44—1: *Are there any placement or size requirements for an institution's public notice?*

A1. The notice must be placed in the institution's public lobby, but the size and placement may vary. The notice should be placed in a location and be of a sufficient size that customers can easily see and read it.

§ ____.45—Publication of Planned Examination Schedule

§ ____.45—1: *Where will the Agencies publish the planned examination schedule for the upcoming calendar quarter?*

A1. The Agencies may use the **Federal Register**, a press release, the Internet, or other existing Agency publications for disseminating the list of the institutions scheduled for CRA examinations during the upcoming calendar quarter. Interested parties should contact the appropriate Federal financial supervisory Agency for information on how the Agency is publishing the planned examination schedule.

§ ____.45—2: *Is inclusion on the list of institutions that are scheduled to undergo CRA examinations in the next calendar quarter determinative of whether an institution will be examined in that quarter?*

A2. No. The Agencies attempt to determine as accurately as possible which institutions will be examined during the upcoming calendar quarter. However, whether an institution's name appears on the published list does not conclusively determine whether the institution will be examined during that quarter. The Agencies may need to defer a planned examination or conduct an unforeseen examination because of scheduling difficulties or other circumstances.

Appendix A to Part ____—Ratings

Appendix A to Part ____—1: *Must an institution's performance fit each aspect of a particular rating profile in order to receive that rating?*

A1. No. Exceptionally strong performance in some aspects of a particular rating profile may compensate for weak performance in others. For example, a retail institution other than an intermediate small institution that uses non-branch delivery systems to obtain deposits and to deliver loans may have almost all of its loans outside the institution's assessment area(s). Assume that an examiner, after consideration of performance context and other applicable regulatory criteria, concludes that the institution has weak performance under the lending criteria applicable to lending activity, geographic distribution, and borrower characteristics within the assessment area(s). The institution may compensate for such weak performance by exceptionally strong performance in community development lending in its assessment area(s) or a broader statewide or regional area that includes its assessment area(s).

Appendix B to Part ____—CRA Notice

Appendix B to Part ____—1: *What agency information should be added to the CRA notice form?*

A1. The following information should be added to the form:

OCC-supervised institutions only: For all national banks and Federal savings associations (collectively, banks), in connection with the nationwide list of banks that are scheduled for CRA evaluation in a particular quarter, you may insert the following Web site along with the postal mailing address of the deputy comptroller: *http://www.occ.treas.gov.* In addition, in connection with the invitation for comments on the bank's performance in helping to meet community credit needs, you may insert the following email address along with the postal mailing address of the deputy comptroller: *CRACOMMENTS@OCC.TREAS.GOV.*

For community banks, insert in the appropriate blank the postal mailing address of the deputy comptroller of the district in which the institution is located. These addresses can be found at *http://www.occ.gov.* For banks supervised under the large bank program, insert in the appropriate blank the following postal mailing address: ''Large Bank Supervision, 400 7th Street SW., Washington, DC 20219–0001.'' For banks supervised under the midsize/credit card bank program, insert in the appropriate blank the following postal mailing address: ''Midsize and Credit Card Bank Supervision, 400 7th Street SW., Washington, DC 20219–0001.''

OCC-, FDIC-, and Board-supervised institutions: ''Officer in Charge of Supervision'' is the title of the responsible official at the appropriate Federal Reserve Bank.

End of text of the Interagency Questions and Answers

Dated: July 6, 2016.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 7, 2016.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 6th day of July, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

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