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Part II

Department of the Treasury

Office of the Comptroller of the
Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Department of the Treasury

Office of Thrift Supervision

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

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency**

[Docket ID OCC–2008–0027]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1349]

FEDERAL DEPOSIT INSURANCE CORPORATION**DEPARTMENT OF THE TREASURY****Office of Thrift Supervision**

[Docket ID OTS–2008–0022]

RIN 3064–AC97

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

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

ACTION: Notice and request for comment.

SUMMARY: The OCC, Board, FDIC, and OTS (the agencies) are adopting as final the Interagency Questions and Answers Regarding Community Reinvestment (Questions and Answers) that were proposed on July 11, 2007. In response to comments received, the agencies clarified several of the new and revised questions and answers that were proposed and are withdrawing the proposed revisions to an existing question and answer. Also, in response to comments we received, the agencies are proposing a new question and answer that would provide examples of how an institution can determine that community services it provides are targeted to low- and moderate-income individuals. The agencies are also proposing to revise two existing questions and answers to allow pro rata consideration in certain circumstances for an activity that provides affordable housing targeted to low- or moderate-income individuals. The agencies invite public comment on these proposed new and revised questions and answers.

DATES: Effective date of amended Interagency Questions and Answers Regarding Community Reinvestment: January 6, 2009. We request that comments on the proposed questions and answers be submitted on or before: March 9, 2009.

ADDRESSES: Comments should be directed to:

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

- *E-mail:*
regs.comments@occ.treas.gov.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Fax:* (202) 874–4448.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn.: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC–2008–0027” in your comment. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC’s Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

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

Board: You may submit comments, identified by Docket No. OP–1349, by any of the following methods:

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

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

- *E-mail:*
regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

- *Fax:* 202–452–3819 or 202–452–3102.

- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board’s Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board’s Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN number 3064–AC97 by any of the following methods:

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

- *E-mail:* Comments@FDIC.gov. Include the RIN number in the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN number. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html> including any personal information provided.

OTS: You may submit comments, identified by OTS–2008–0022, by any of the following methods:

- *E-mail:*
regs.comments@ots.treas.gov. Please include ID OTS–2008–0022 in the subject line of the message and include your name and telephone number in the message.

- *Fax:* (202) 906–6518.

- *Mail:* Regulation Comments, Chief Counsel’s Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2008–0022.

• *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, *Attention:* Regulation Comments, Chief Counsel's Office, *Attention:* OTS-2008-0022.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Viewing Comments Electronically: OTS will post comments on the OTS Internet Site at <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>.

Viewing Comments On-Site: You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Karen Tucker, National Bank Examiner, Compliance Policy Division, (202) 874-4428; or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874-5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Anjanette M. Kichline, Senior Supervisory Consumer Financial Services Analyst, (202) 785-6054; or Brent Lattin, Attorney, (202) 452-3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Deirdre Foley, Senior Policy Analyst, Division of Supervision and Consumer Protection, Compliance Policy Branch, (202) 898-6612; or Susan van den Toorn, Counsel, Legal Division, (202) 898-8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Celeste Anderson, Senior Project Manager, Compliance and Consumer

Protection, (202) 906-7990; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906-7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The OCC, Board, FDIC, and OTS implement the Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) through their CRA regulations. See 12 CFR parts 25, 228, 345, and 563e. The OCC, Board, and FDIC revised their CRA regulations in a joint final rule published on August 2, 2005 (70 FR 44256) (2005 joint final rule). OTS did not join the agencies in adopting the August 2005 joint final rule; OTS published separate final rules on August 18, 2004 (69 FR 51155), March 2, 2005 (70 FR 10023), April 12, 2006 (71 FR 18614), and March 22, 2007 (72 FR 13429). On July 1, 2007, the March 2007 revisions to OTS's CRA regulation became effective, making OTS's CRA regulation substantially the same as the CRA regulations of the OCC, Board, and FDIC.

The agencies' regulations are interpreted primarily through the "Interagency Questions and Answers Regarding Community Reinvestment" (Questions and Answers), which provide guidance for use by agency personnel, financial institutions, and the public. The Questions and Answers were first published under the auspices of the Federal Financial Institution Examination Council (FFIEC) in 1996 (61 FR 54647), and were revised on July 12, 2001 (2001 Questions and Answers) (66 FR 36620).

Subsequent to the adoption of the 2005 joint final rule, the OCC, Board, and FDIC, after notice and public comment, published new guidance in the form of questions and answers on March 10, 2006 (71 FR 12424) (2006 Questions and Answers). The 2006 Questions and Answers addressed primarily matters related to the 2005 joint final rule. On September 5, 2006, after notice and public comment, OTS published new guidance in the form of questions and answers pertaining to the revised definition of "community development" and certain other provisions of the CRA rule common to all four agencies (OTS's September 2006 Questions and Answers). 71 FR 52375.

On July 11, 2007, the agencies published for comment proposed guidance, which updated and revised the 2001 Questions and Answers and combined the 2006 Questions and Answers and OTS's September 2006 Questions and Answers. The proposal

also introduced nine proposed new questions and answers (Q&As). 72 FR 37922. OTS also proposed four new and revised Q&As that the OCC, Board, and FDIC had adopted in the 2006 Questions and Answers, primarily relating to intermediate small savings associations.

Together, the agencies received comments from 58 different parties. The commenters represented financial institutions and their trade associations, community development advocates and organizations, members of Congress, and others.

As discussed below, this document adopts the nine new Q&As that were proposed in 2007, with revisions, as appropriate, in response to comments received. The agencies are also adopting, with minor revisions, as appropriate, all but one of the proposed revised Q&As. The agencies are withdrawing the proposed revisions to Q&A § ___.23(e)-2.

The agencies also are proposing one new and two revised Q&As, which are discussed below. These proposed Q&As have been developed in response to comments received by the agencies.

The Interagency Questions and Answers are grouped by the provision of the CRA regulations that they discuss, are presented in the same order as the regulatory provisions, and employ an abbreviated method of citing to the regulations. For example, the small bank performance standards for national banks appear at 12 CFR 25.26; for Federal Reserve System member banks supervised by the Board, they appear at 12 CFR 228.26; for state nonmember banks, they appear at 12 CFR 345.26; and for thrifts, the small savings association performance standards appear at 12 CFR 563e.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 be found under 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 also consult the guidance that describes the lending, investment, and service tests.

The Questions and Answers are indexed to aid readers in locating specific information in the document.

The index contains keywords, listed alphabetically, along with numerical indicators of questions and answers that relate to that keyword. The list of Q&As addressing each keyword in the index is not intended to be exhaustive. We welcome suggestions for additional entries to the index.

Discussion of the Q&As Being Adopted as Final

New Q&As Proposed in 2007

I. *Investments in minority- or women-owned financial institutions and low-income credit unions.* The agencies proposed a new Q&A § ____ .12(g)-4 that would interpret the statutory provision that allows the agencies to consider as a factor a majority-owned financial institution's activities in cooperation with a minority- or women-owned financial institution or low-income credit union. See 12 U.S.C. 2903(b). Twenty-five commenters addressed the new Q&A as proposed. Although five commenters believed that the proposed guidance went directly against the intent of the CRA regulations, the rest of the commenters were generally in favor of the new Q&A. Several commenters, however, suggested additions or modifications that could be made to the guidance.

We are modifying the proposed Q&A to address some of these comments. Four commenters urged the agencies to allow consideration of activities in cooperation with minority- or women-owned financial institutions or low-income credit unions only if the majority-owned institution had adequately addressed the credit needs of its assessment area(s). The agencies believe that the statute currently does not impose such a limitation. However, in response to the comment, we have clarified that the impact of such activities on a majority-owned institution's rating will be determined in conjunction with an assessment of its overall performance in its assessment area(s).

Two commenters specifically asked the agencies to provide examples of "other ventures" that could receive consideration if engaged in by a majority-owned financial institution in cooperation with a minority- or women-owned financial institution or low-income credit union. Several examples of "other ventures" have been added to the answer.

Six commenters suggested that activities in cooperation with community development financial institutions (CDFIs) should be allowed the same broader geographic allowance that the statute allows for activities in

cooperation with minority- or women-owned financial institutions or low-income credit unions. The statute does not provide a similar provision for activities in cooperation with CDFIs. Because the statute and regulation otherwise generally focus on a financial institution's activities that benefit its local community, the agencies do not believe it is appropriate to apply the relaxed geographic requirement to CDFIs or other entities.

One other commenter suggested that the agencies should delete the final sentence of the proposed Q&A: "The activities must, however, help meet the credit needs of the local communities in which the minority- or women-owned institutions or low-income credit unions are chartered." The commenter's concern was that this sentence might be read to require the majority-owned financial institution to prove that its involvement with the minority- or women-owned institution or low-income credit union ultimately can be directly linked to a specific CRA-related activity of the minority bank. The CRA statute specifically conditions consideration of activities in cooperation with minority- or women-owned institutions or low-income credit unions on those activities helping to meet the credit needs of the local communities in which the minority- or women-owned institutions or low-income credit unions are chartered. Therefore, the sentence has not been removed. The majority-owned financial institution should have a general understanding, prior to engaging in an activity in cooperation with a minority- or women-owned institution or low-income credit union, about how the activity will help to meet the credit needs of the community in which the minority- or women-owned institution or low-income credit union is chartered; however, no specific type of proof is required.

II. *Intermediate small institutions' affordable home mortgage loans and small business and small farm loans.* The agencies received eleven comments addressing proposed new Q&A § ____ .12(h)-3, which would allow an intermediate small institution to select certain home mortgage, small business, and small farm loans, which are not required to be reported under the CRA or Home Mortgage Disclosure Act (HMDA) regulations, to be considered as community development loans. All of the commenters supported the proposed Q&A.

The agencies are adopting the Q&A with clarifying revisions based on commenters' questions and suggestions. For example, one commenter asked

whether an intermediate small institution's voluntary reporting of small business or small farm loan data would disqualify it from the optional selection of some of those loans as community development loans. The guidance clarifies that optional reporting of small business or small farm loan data will not prevent an intermediate small institution from choosing some of those loans to be considered as community development loans unless the intermediate small institution opts to be evaluated under the lending, investment, and service tests applicable to large institutions.

One commenter asked whether an intermediate small institution that is required to report home mortgage lending under HMDA would be able to opt to have some of its home mortgage loans considered as community development loans. Because the home mortgage loans are required to be reported under HMDA, they may be considered only as home mortgage loans (unless they are multifamily dwelling loans).

The guidance has also been revised to clarify that an intermediate small institution may select individual loans (other than home mortgage loans reported under HMDA) to be considered as community development loans. An institution need not select an entire portfolio for consideration as community development loans.

The agencies note that intermediate small institutions that opt to have certain home mortgage, small business, and small farm loans considered as community development loans should notify their examiners which loans it has elected for this consideration prior to or at the start of their CRA examinations.

III. *Examples of "other loan data."* The agencies received seventeen comments addressing proposed new Q&A § ____ .22(a)(2)-4, which listed examples of "other loan data" that would be considered under the lending test. Most of the commenters supported the proposed Q&A. However, a number of commenters suggested that some of the types of "other loan data" should be treated the same as direct lending.

Several commenters asserted that letters of credit should be treated as loan originations. They noted that, although letters of credit are not immediately (if ever) funded, the institution must underwrite them in the same way direct loans are underwritten and must also ensure that funds are available for eventual funding. Further, many community development projects would not be financed without the back-up support provided by a financial

institution's letter of credit. For these reasons, commenters urged that letters of credit be considered as loan originations.

The CRA regulations provide that letters of credit will be considered as "other loan data." The agencies cannot change treatment of letters of credit in the regulations through interpretation. However, the agencies will consider the issue again in the event they undertake more comprehensive changes to the CRA regulations. The agencies also plan to remind examiners that letters of credit may deserve specific mention in the narrative of an institution's public performance evaluation.

Commenters also asserted that an institution's loans for mixed-income housing should not be considered under "other loan data." Instead, commenters proposed that institutions should receive consideration for such loans (or investments) that enable community development, such as mixed-income projects that have an affordable housing component, as community development loans (or qualified investments).

The agencies are adopting Q&A § _____.22(a)(2)-4 as proposed. However, as discussed below, we are also proposing for comment a revised Q&A § _____.12(h)-8 discussing what is meant by a "primary purpose of community development." If this proposed revision is adopted as final, "loans that do not have a primary purpose of community development, but where a certain amount or percentage of units is set aside for affordable housing" would be deleted from the list of examples of "other loan data" because these would be covered in that revised guidance which would allow an institution to receive pro rata consideration for the portion of a loan or investment that helps to provide affordable housing to low- or moderate-income individuals. In the meantime, however, institutions may continue to present such loans to examiners as "other loan data."

IV. Purchased loan participations. Ten commenters addressed proposed Q&A § _____.22(a)(2)-6, which clarified that the purchase of a loan participation is treated as the purchase of a loan. The majority of the commenters supported the proposed guidance; however, one commenter expressed concern that loans could be resold numerous times merely to inflate their value for CRA evaluation purposes. We have modified this Q&A to clarify that examiners will consider whether loan participations (and other loan purchases) have been resold merely to inflate their value for CRA purposes when they evaluate an institution's lending activity.

V. Small business loans secured by a one-to-four family residence. The agencies proposed § _____.22(a)(2)-7 to provide guidance about small business and small farm loans where a dwelling serves as collateral. As discussed in the supplementary information published with the proposed guidance, the new Q&A was called for because of changes to the Board's Regulation C regarding the treatment of refinancings of home mortgage loans. See 72 FR at 37925. We received twelve comments addressing this proposed Q&A, primarily in support of the proposed Q&A. We are adopting the Q&A as proposed.

VI. Investments in a national or regional fund. The agencies proposed Q&A § _____.23(a)-2 to clarify how an institution that makes a loan or investment in a national or regional community development fund may demonstrate that the investment meets the geographic requirements of the CRA regulation. The proposed Q&A suggested alternative methods for documenting that the investment was intended to benefit the institution's assessment area.

Thirty-three commenters addressed this guidance. One theme in many of the comments was that investments in national funds should be treated in the same manner as statewide or regional funds. The regulations state that the investment test evaluates an institution's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). See 12 CFR 25.23(a), 228.23(a), 345.23(a), and 563e.23(a). Investments in nationwide funds, like investments in other funds, are subject to these standards. An institution may wish to provide documentation from a nationwide fund to demonstrate the geographic benefit to the institution's assessment area(s) or the broader statewide or regional area that includes its assessment area(s).

Because the proposed Q&A addressed investments in both national and regional funds, some commenters were confused about the types of investments the agencies intended to address in the proposed Q&A. The proposed Q&A was intended to address investments in nationwide funds or in any fund that is not limited to the statewide or regional area that includes the institution's assessment area(s). Because other existing Q&As address investments in statewide and regional funds, Q&A § _____.23(a)-2 has been revised to address specifically investments in "nationwide" funds. Institutions that

invest in statewide or regional funds should refer to Q&As § _____.12(h)-6 and § _____.12(h)-7 for guidance. The guidance in these Q&As has not been changed.

Commenters also addressed a number of other issues. One commenter believed that the requirements in the proposed Q&A for an investment in a nationwide fund were more rigorous than the regulations required, in that the proposed Q&A focused on benefit to an institution's assessment area, without also considering benefit to the broader statewide or regional area that includes the institution's assessment area(s). The Q&A has been revised to clarify that investments in nationwide funds will be reviewed to determine whether they directly or indirectly benefit one or more of an institution's assessment areas or a broader statewide or regional area that includes the institution's assessment area(s).

Several commenters understood the proposal to suggest that the documentation methods put forward in the proposed Q&A was an exclusive, mandatory list. The agencies have clarified the final Q&A to provide that the documentation methods identified are among those that may, at the institution's option, be provided. The agencies will accept any information provided by an institution that reasonably demonstrates that the purpose, mandate, or function of a nationwide fund includes serving geographies or individuals located within the institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s). Typically, information about where a fund's investments are expected to be made or targeted often 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.

Some commenters also asserted that institutions should receive consideration for the full dollar amount of any investment in a nationwide fund if at least one project in which the fund invests is located in the institution's assessment area or the broader statewide or regional area that includes the institution's assessment area. The agencies have not incorporated this specific recommendation into the text of the Q&A. The agencies believe that the final Q&A provides sufficient flexibility to address a variety of different circumstances, given the evolving nature and significance of nationwide funds.