

RESCINDED



Comptroller of the Currency
Administrator of National Banks
US Department of the Treasury

This issuance has been replaced by OCC 2009-6

OCC 1996-18

Subject: National Bank Appeals Process
Date: February 23, 1996

To: Chief Executive Officers of all National Banks, Federal Branches and Agencies, Department and Division Heads, and all Examining Personnel

Description: Guidance for Bankers

Purpose

This issuance consolidates the Office of the Comptroller of the Currency's (OCC) procedures for national banks to appeal agency decisions and actions. This guidance includes matters subject to the National Bank Appeals Process, published as revised in the Federal Register on February 23, 1996, and the Shared National Credit (SNC) Appeals Process. It also introduces a new process for appealing fair lending-related decisions. This issuance, along with the Federal Register document, supersedes Banking Circular 272, "National Bank Appeals Process," issued June 11, 1993, and OCC Bulletin 94-28, "Appeals Procedures for Bankers," dated April 11, 1994.

Policy

The OCC is responsible for fostering the safety and soundness of the national banking system and monitoring and enforcing national banks' compliance with laws and regulations. It is also responsible for encouraging competitiveness, integrity, and stability of financial services provided by the national banking system. In fulfilling this mission, the OCC maintains open and ongoing communication with both the institutions it supervises and other affected persons. The agency also fosters the fair and equitable administration of the supervisory process.

The OCC ombudsman functions outside the bank supervision area and reports directly to the Comptroller of the Currency. With the prior consent of the Comptroller, the ombudsman may supersede any appealable agency decision or action during the resolution of an appealable matter. The ombudsman also may report weaknesses in OCC policy to the Comptroller, and may make recommendations regarding changes in OCC policy. The establishment of a formal national bank appeals process does not change the core philosophy of the OCC concerning dispute resolution. The agency remains committed to making every effort to resolve disputes arising during the supervisory process fairly and expeditiously, in an amicable, informal manner.

National banks and federal branches and agencies of foreign banks (collectively referred to as "national banks" for the purpose of this issuance) are encouraged to contact the ombudsman to discuss any agency policy, decision, or action that might develop into an appealable matter. The ombudsman's objective in these cases is to seek an agreeable resolution to the dispute before it develops into a formal appeal. This avenue provides national banks with an opportunity to resolve issues in the most efficient and expeditious manner possible.

If national banks cannot resolve disagreements through informal discussions, they are encouraged to seek a further review of the OCC decisions or actions that are in dispute. In addition, the OCC official involved in the dispute should specifically encourage the national bank to seek such further review.

This issuance establishes the process through which a national bank can seek such a review of agency decisions and actions. These procedures also ensure that no one is disadvantaged by filing an appeal. If a national bank questions whether it should make use of this appeal authority, it should contact the ombudsman. In addition, the ombudsman is available to act as a liaison between the OCC and any affected person with respect to any problem such person may have in dealing with the OCC resulting from its regulatory activities. Interested parties should direct all communications with the ombudsman to the following address:

Office of the Ombudsman
1000 Louisiana Street, Suite 950
Houston, Texas 77002-5008
Phone - (713) 650-0475, Fax - (713) 650-6248

Procedures

Appealable Matters

Except as otherwise provided, a national bank may seek a review of any agency decision or action, including a material supervisory determination. Examples of material supervisory determinations include determinations relating to: (1) examination ratings; (2) adequacy of loan loss reserve provisions; and (3) classifications on loans that are significant to an institution.

A national bank may not appeal to the ombudsman or its immediate OCC supervisory office: (1) appointments of receivers and conservators; (2) preliminary examination conclusions communicated to the national bank before a final report of examination or other written communication from the OCC is issued (although a national bank is encouraged to discuss any concerns or disagreements regarding these conclusions with its examiner-in-charge or its supervisory office); (3) enforcement-related actions or decisions, including decisions to take prompt corrective action pursuant to Section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o); (4) formal and informal rulemakings pursuant to the Administrative

Procedure Act, 5 U.S.C. 500 et seq.; and, (5) requests for agency records or information under, and submission of information to the OCC that are governed by, the Freedom of Information Act, 5 U.S.C. 552, or 12 CFR Part 4.

An enforcement-related action or decision commences, and therefore becomes un-appealable, when the national bank receives notice from the OCC indicating its intention to pursue available remedies under applicable statutes or published enforcement-related policies of the OCC. Such policies include OCC's Policy for Corrective Action (PPM 5310-3)(REV), Civil Money Penalty Policy (PPM 5000-7)(REV), and Securities Enforcement Policy (PPM 5310-5). These policies are available on request from the OCC's Communications Division, 250 E Street, SW, Washington, DC 20219-0001, or by telephone at (202) 874-4700. For purposes of this issuance only, remarks in a report of examination do not constitute notice of intent to pursue enforcement remedies.

Filing an Appeal

A national bank may seek review of appealable matters by filing an appeal with either the ombudsman or the bank's immediate OCC supervisory office. (In the case of an appealable matter specifically relating to an individual as opposed to a national bank, such as section 914 or Change in Bank Control Act notices, a national bank may file an appeal on behalf of that individual.) Except as otherwise provided in the process for appealing Shared National Credit decisions and fair lending-related matters, all appealable matters can be received in either location. The choice of where to file is left to the discretion of the bank, with a few exceptions. The procedures for filing an appeal under these options are outlined below.

- Appeals to the Ombudsman. Formal appeals to the ombudsman may arise from two sources: (1) appeals filed directly with the ombudsman, or (2) second-tier appeals of supervisory office appeal decisions and decisions rendered under one of the appeals procedures designed specifically for the issue in dispute [fair lending-related appeals and Shared National Credit appeals].

Appeals Directly to the Ombudsman: National banks filing appeals with the ombudsman should submit information in writing fully describing the matter in dispute. When the ombudsman receives an appeal, he/she will contact the OCC management official(s) involved in the dispute. That management official(s) will submit written materials and relevant OCC documents pertaining to the appeal within 10 calendar days of the notice from the ombudsman. The ombudsman will contact the bank to ensure that the OCC has all relevant materials. If requested by either the OCC management involved in the dispute or a senior bank official, the ombudsman will arrange a meeting or a telephone call to more fully discuss the appeal and any related issues. In the absence of any extenuating circumstances, the ombudsman will issue a written response to the appeal within 45 calendar days of receipt.

Second-Tier Appeals: If a national bank disagrees with the decision rendered through a supervisory office appeal or a decision rendered under one of the specifically designated appeals procedures, the bank may further appeal the matter to the ombudsman. The bank must file written notice of this second-tier appeal within 30 calendar days of receiving the appeal decision letter from the appropriate deputy comptroller or district administrator.

When the ombudsman receives the second-tier appeal, he/she shall review any material considered in the preparation of the initial appeal response. The ombudsman will contact the national bank to ensure that the OCC is in possession of all relevant material. If requested by either OCC management involved in the appeal or a senior official of the national bank filing the appeal, the ombudsman will arrange a meeting or a telephone call to more fully discuss the appeal and related issues. In the absence of any extenuating circumstances, the ombudsman will issue a written response to the second-tier appeal within 30 calendar days of the filing of that appeal.

Recusal of the Ombudsman: In cases where the ombudsman should be recused from reviewing the decision under appeal, the ombudsman will transfer the appeal to a senior official designated by the Comptroller.

- Supervisory Office Appeals. Supervisory office appeals should be filed with the deputy comptroller or district administrator representing the OCC supervisory office that supervises the bank. Community banks and regional banks should file such appeals with the deputy comptroller or district administrator of the OCC district in which the bank is headquartered. Banks in the Multinational Banking and Special Supervision programs using this option should file appeals with the deputy comptroller for the appropriate program in the Washington Office. National banks which choose not to file appeals of corporate decisions directly with the ombudsman should file with the deputy comptroller for Bank Organization and Structure.

National banks filing supervisory office appeals should submit information in writing fully describing the matter in dispute and setting forth their bases for requesting an appeal. Upon receipt of an appeal, a supervisory office official will contact the OCC employee(s) involved in the matter under appeal. The supervisory office official includes the appropriate deputy comptroller or district administrator, or a designee who has not directly or indirectly participated in making the decision in dispute. The supervisory office official should also not be directly or indirectly responsible to the agency official who made the decision under review. The OCC employee(s) will submit written or oral information concerning the basis of the appeal. If requested by a senior official of the national bank filing the appeal, the appropriate deputy comptroller or district administrator will arrange a meeting or a telephone call to more fully discuss the appeal and related issues.

In the absence of any extenuating circumstances, the appropriate deputy comptroller or district administrator will issue an appeal decision letter within 45 calendar days of the filing of the appeal. Immediately after issuing a decision letter, the deputy comptroller or district administrator will forward to the ombudsman copies of all relevant materials considered in the preparation of the decision letter, including all written submissions by the bank.

If the national bank disagrees with the response from the deputy comptroller or district administrator, a senior official of the bank may further appeal the matter to the ombudsman. The appeal decision letter from the deputy comptroller to the bank will notify the bank of this option. The bank must file written notice of this second-tier appeal within 30 calendar days of receiving the appeal decision letter from the appropriate deputy comptroller or district administrator.

Recusal of the Deputy Comptroller or District Administrator: In cases where the deputy comptroller or district administrator directly or indirectly participated in making the decision under review, he/she must transfer the appeal to the ombudsman after advising the appellant. The same is true if he/she directly or indirectly reports to the agency official who made the decision under review.

- Fair Lending-Related Matters. When the OCC has made a determination that there is reason to believe there exists an instance or pattern or practice of discrimination that will result in either a referral to the Department of Justice or notification to the Department of Housing and Urban Development, the senior deputy comptroller for Bank Supervision-Operations will provide written notice to the bank of this finding. National banks may file an appeal to the ombudsman for reconsideration of this decision within 15 calendar days of the date of this letter.
- Shared National Credits. Bank senior management should notify the examiner-in-charge assigned to the bank when any significant

disagreement becomes apparent with a decision rendered through the Shared National Credit Program. If the bank and the examining team are unable to resolve the disagreement through informal discussions, the bank is encouraged to appeal the decision to the deputy comptroller for Multinational Banking.

Who May Submit a SNC Appeal: A SNC appeal may be submitted by the agent bank directly, or on behalf of any of the participating national banks. If the agent bank refuses, for whatever reason, to file the appeal on behalf of the bank group, Multinational Banking will accept an appeal from any one participating bank. Banks must file SNC appeals with the regulator that supervises the agent bank. Therefore, if a state member bank is a participant in a credit that is agented by a national bank, the state-member bank must file its appeal with the OCC. Conversely, if a national bank is a participant in a credit for which a state-member bank is agent, the national bank must file its appeal with the Federal Reserve Board. When there is no agent bank named, the appeal should be filed through the regulator that supervises the bank at which the SNC was reviewed. To ensure that the bank's senior management supports the appeal, the chief executive officer (CEO) must submit all SNC appeals.

Timing of SNC Appeals: The agent bank should normally file a SNC appeal within 14 days of notification by the examiner-in-charge of the preliminary disposition of the credit. Multinational Banking will evaluate the timing of SNC appeals filed by a participant bank(s) (in the absence of an appeal by the agent), if not filed within the 14-day period. Multinational Banking will also evaluate on a case-by-case basis the reasonableness of appeals delayed by other extenuating circumstances.

Participating banks sometimes comment that they are unable to file an appeal within the prescribed time frames. This is because they are not aware of the disposition of any credit until officially notified by OCC at the end of the SNC processing period (usually late July or early August). Agent and participant banks should follow standards for "prudent transfer of credit information" as described in Banking Circular 181 (REV), "Purchases of Loans in Whole or in Part À Participations." The guidance set forth in that issuance applies to all participating banks, whatever their relationship to the lead or agent bank. The SNC preliminary notification letter authorizes agent or review banks, at their option, to notify participating banks of the preliminary disposition of each credit. The regulatory agencies perform the SNC review at the same time each year. In the absence of such preliminary notification from the agent during the Spring review or Fall re-reviews, participating banks should request from the agent the information on facts underlying any examiner criticisms of loans in the SNC program.

The report of shared national credits is issued annually to national banks participating in the SNC Program at the end of each SNC review. Because of processing deadlines, the report may not reflect decisions on SNC appeals submitted beyond the 14-day filing period. In such cases, Multinational Banking will send a supplemental letter to each participating institution notifying them of the results of the appeal. The letter will also communicate any necessary revisions to each bank's report of shared national credits.

SNC Appeal Letter: In drafting a SNC appeal letter, senior bank management should explain why it disagrees with the SNC decision. The SNC appeal letter must identify the credit, commitment amount, disposition, basis for the bank's disagreement, and any documentation that supports management's position on the matter(s) in dispute. Banks should address all SNC appeals as follows: Deputy Comptroller for Multinational Banking, Comptroller of the Currency, Washington, DC 20219.

SNC Appeal Processing: Once a SNC appeal is received in the Washington Office, the deputy comptroller for Multinational Banking will immediately acknowledge receipt by letter to the CEO of the bank filing the appeal. Multinational Banking will normally forward a copy of the appeal letter and supporting information to the voting team within three working days of the receipt date. The voting team will then confirm the accuracy of the facts presented in the appeal letter.

Multinational Banking will also forward a copy of the appeal letter to the examiner-in-charge of the bank and to the appropriate SNC field coordinator. Each individual should provide his/her formal comments and opinions to the deputy comptroller for Multinational Banking within 10 working days after the receipt date. The deputy comptroller for Multinational Banking will normally grant requests by bank management for a meeting to discuss the issues in dispute.

A SNC appeals panel, consisting of examiners designated by the deputy comptroller of Multinational Banking, or his/her designee, will evaluate the decision of the voting team. Until the regulatory agencies develop an interagency statement on SNC appeals, the OCC will consult with FRB and FDIC on all appeals from national banks. Multinational Banking will normally conclude the entire SNC appeal process by July 31. Immediately after issuing a decision letter, the deputy comptroller for Multinational Banking will forward to the ombudsman copies of all relevant materials considered in preparation of the response, including all written submissions by the bank. If a bank disagrees with the decision rendered through the SNC appeals process, it may further appeal the matter to the ombudsman. The appeal decision letter from the deputy comptroller to the bank will notify the bank of this option. The bank must file written notice of this second-tier appeal within 30 calendar days of receiving the appeal decision letter from the deputy comptroller for Multinational Banking.

For more information concerning the appeal of a Shared National Credit decision, please contact the Washington SNC Program Manager in Multinational Banking at (202) 874-4610.

Effect of Filing an Appeal

As a general rule, filing an appeal under any of the options available serves to stay all agency decisions and actions until the appropriate OCC official resolves the appeal. A stay does not allow a corporate matter to be approved simply by the passage of time. In the appropriate circumstances, however, the ombudsman or appropriate OCC official may put the disputed agency decision or action into effect while the appeal is still pending.

Follow-up by the Ombudsman

After the appropriate OCC official renders a decision on an appeal, the ombudsman will contact the appellant bank to ask whether the bank believes OCC examiners have taken actions against the bank in retaliation for its appeal. The ombudsman will make these contacts (1) six months after the date of the decision letter, and (2) six months after the date of completion of the first examination of the appellant bank following its appeal. A national bank may, of course, contact the ombudsman any time during or after the appeal if the bank reasonably believes that an OCC official is retaliating against it for its appeal.

Upon identifying or learning of any possible retaliatory actions, the ombudsman will investigate the complaint. In the absence of extenuating

circumstances, such investigations will be completed within 30 days. If the ombudsman finds that retaliation has occurred, he/she will forward the complaint to the senior deputy comptroller for Bank Supervision-Operations or inspector general for appropriate action, including disciplinary action consistent with OCC policies and procedures. In addition, to prevent future retaliation for an appeal, the ombudsman may recommend to the Comptroller that the next examination of the national bank exclude personnel involved in a ruling appealed by that bank. The Comptroller will make the final decision on any exclusion.

Liaison Activity of Ombudsman

In addition to hearing and deciding appeals brought by national banks, the ombudsman is available to act as a liaison between the OCC and any affected person(s). Such help may relate to any problem or question the party may have in dealing with the OCC resulting from the OCC's regulatory activities. The ombudsman will either provide the requested information or direct the person to the appropriate point of contact. In so doing, the ombudsman will ensure that safeguards exist to encourage persons to come forward and to preserve the confidentiality of those seeking information or identifying a concern.

Interested parties may also call the OCC's Customer Assistance Hotline, located in the OCC's Washington office, to report any problems or concerns they may have regarding national banks. The toll-free number is 1-800-613-6743. In addition, interested persons may also comment on proposed OCC rulemakings published in the Federal Register for notice and comment by filing written comments with the OCC, as described in the rulemaking.

Eugene A. Ludwig
Comptroller of the Currency

Related Links

- [Fed. Reg. 61 FR 7042, February 23, 1996](#)

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DEPARTMENT OF THE TREASURY

**Office of the Comptroller of the
Currency**

[Docket No. 06-03]

FEDERAL RESERVE SYSTEM

[Docket No. OP-1240]

**FEDERAL DEPOSIT INSURANCE
CORPORATION**

[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).

ACTION: Notice.

SUMMARY: The OCC, Board, and FDIC (collectively, "the Agencies") are publishing revised guidance (Questions and Answers) relating to the Community Reinvestment Act ("the Act" or "CRA"). The Questions and Answers primarily addresses topics included in the revisions that the Agencies made to their CRA regulations, which became effective September 1, 2005.

DATES: *Effective Date:* March 10, 2006.

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

Board: Anjanette M. Kichline, Supervisory Consumer Financial Services Analyst, (202) 785-6054; Catherine M.J. Gates, Senior Supervisory Consumer Financial Services Analyst, (202) 452-3946; Kathleen C. Ryan, Counsel, (202) 452-3667; or Dan S. Sokolov, Counsel, (202) 452-2412, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Pamela Freeman, Policy Analyst, (202) 898-6568, CRA and Fair Lending Policy Section, Division of Supervision and Consumer Protection; or Susan van den Toorn, Counsel, Legal Division, (202) 898-8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2005, the OCC, Board, and FDIC published in the **Federal Register** a joint final rule revising their Community Reinvestment Act regulations (70 FR 44256). The joint final rule became effective September 1, 2005.

The joint final rule addressed regulatory burden on banks with assets between \$250 million and \$1 billion by exempting them from CRA loan data collection and reporting obligations. It also made such banks, called intermediate small banks, eligible for evaluation under the small bank lending test and a flexible new community development test, rather than the lending, investment and service tests that are used to evaluate larger banks.

Holding company affiliation is no longer a factor in determining which CRA evaluation standards apply to a bank.

The joint final rule also revised the term "community development" to include banks' activities that revitalize or stabilize designated distressed or underserved nonmetropolitan middle-income areas or designated disaster areas. Finally, the rule addressed the impact on a bank's CRA rating of evidence of discrimination or other credit practices that violate an applicable law, rule, or regulation.

To help financial institutions meet their responsibilities under the CRA and to increase public understanding of the CRA regulations, the staffs of the OCC, Board, FDIC, and Office of Thrift Supervision have previously published answers to the most frequently asked questions about the community reinvestment regulations of the four Federal financial regulatory agencies. This guidance has been intended to provide informal staff guidance for use by examiners and other agency personnel, financial institutions, and the public, and is supplemented periodically. The four agencies' Interagency Questions and Answers Regarding Community Reinvestment (2001 Interagency Questions and Answers) were last published July 12, 2001 (65 FR 36620).

On November 10, 2005, the staffs of the OCC, Board, and FDIC jointly published for comment in the **Federal Register** proposed Questions and Answers to provide additional guidance specific to the new OCC, Board, and FDIC rules issued on August 2, 2005, that apply to their institutions. (Because the OTS's CRA regulation varies from the OCC's, Board's, and FDIC's CRA regulations, the proposed Questions and Answers were not, and this final guidance is not, applicable to thrifts regulated by OTS.)

In response to the Agencies' request for comment on the proposed Questions and Answers, the OCC received 193 letters, the Board received 182 letters, and the FDIC received 183 letters. Most commenters submitted letters to all three Agencies. Comment letters were submitted by community organizations, individuals, banks and financial institution trade organizations, and state and local governments.

The Agencies carefully considered the comments received. As discussed below, some of the proposed questions and answers have been revised in this final guidance to address suggestions by commenters, while other questions and answers are being adopted as proposed.

The Questions and Answers that are being adopted today are grouped by the

provision of the CRA regulations that they discuss, are presented in the same order as the regulatory provisions, and employ the same abbreviated method to cite 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; and for nonmember state banks, at 12 CFR 345.26. Accordingly, the citation in this document would be to § ___.26. Each question is numbered using a system that consists of the regulatory citation (as described above) and a number, connected by a dash. For example, the first question addressing § ___.12(g)(4) would be identified as § ___.12(g)(4)-1.

As a result of technical changes made to the Agencies' regulations (70 FR 15570 (March 28, 2005)) and the substantive regulatory revisions mentioned above (70 FR 44256 (August 2, 2005)), some of the citation numbering in the 2001 Interagency Questions and Answers does not correspond to the current section citations of the revised regulations. In this final guidance, if a reference is made to guidance in the 2001 Interagency Questions and Answers, the number of the question and answer, as published in the 2001 Interagency Questions and Answers, is given, even if that reference does not reflect the current regulatory citation. The Agencies' staffs are working to update the 2001 Interagency Questions and Answers to reflect the revisions to the regulations made by the three Agencies, as discussed above, and will correct the citation references in the next publication of the Interagency Questions and Answers. When the 2001 Interagency Questions and Answers document is revised and republished later this year, the Agencies will publish an integrated document containing the questions and answers that are being published in this final guidance and the revised 2001 interagency guidance.

Discussion of Final Guidance and Comments Received

All of the questions and answers that were proposed in November are being adopted today, either as proposed or with revisions. In addition, one of the proposed questions and answers (§ ___.12(g)(4)(iii)-3) has been divided into two questions and answers for purposes of clarity.

§ ___.12(g)(4)-1:

This proposed question and answer stated that the new definition of "community development" applies to all banks, and not to intermediate small banks only. The Agencies received very

few comments on this proposed question and answer; all commenters were in agreement with the proposed guidance. The guidance is adopted as proposed.

§ ____ .12(g)(4)-2:

This proposed question and answer addressed whether activities that provide housing for middle- and upper-income individuals may qualify for favorable consideration as community development activities when they help to revitalize or stabilize designated disaster areas or designated distressed or underserved nonmetropolitan middle-income geographies. The Agencies received comments primarily from representatives of community organizations in connection with this guidance. These commenters opposed aspects of the proposed guidance.

Commenters asserted that projects that provided housing for only middle- and upper-income individuals should not receive favorable consideration for CRA purposes in designated disaster areas or designated distressed nonmetropolitan middle-income geographies even when such development was part of a bona fide revitalization plan that would provide long-term benefits to the entire community, such as in connection with attracting a new employer that would provide jobs to low- and moderate-income individuals. Some of the community organization commenters stated that it would be appropriate to provide favorable consideration to mixed-income housing, which may include housing for middle- or upper-income individuals. Only one commenter from an industry trade organization commented on this proposed guidance. That commenter supported the proposed guidance. No commenters disagreed with the guidance addressing the provision of housing in underserved nonmetropolitan middle-income areas.

The Agencies have carefully considered these comments and revised the proposed question and answer to address the concerns that have been raised. The question and answer, as adopted, clarifies that 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 for middle- or upper-income housing in a community in need of financing for 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. 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.

The portion of the answer addressing underserved nonmetropolitan middle-income geographies is adopted as proposed.

§ ____ .12(g)(4)(ii)-1:

This proposed question and answer provided guidance on what is meant by a "designated disaster area." The proposed guidance stated that a "designated disaster area" would be a disaster area designated by Federal or state government. The Agencies have further reviewed how, when, and for what purposes disaster areas are designated. State disasters or emergencies are usually declared as a prerequisite for Federal disaster assistance. Thus, the Agencies have determined that restricting the term "designated disaster area" to federally designated disaster areas would not limit the scope of that term in any meaningful way. Some Federal disaster area designations are solely for the purpose of providing short-term public assistance to address debris removal or emergency protective measures immediately following an incident—specifically, Federal Emergency Management Agency (FEMA) Public Assistance Emergency Work Category A (Debris Removal) and Category B (Emergency Protective Measures). The Agencies believe that designations for these purposes do not exhibit the type of conditions that would require sustained disaster recovery-related revitalization or stabilization activities.

Therefore, based on comments received and information from FEMA staff, the Agencies are revising the guidance to state that 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 FEMA, but exclude counties designated to receive only

FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures).

The proposed guidance also described a "lag period" following the expiration of a "designated disaster," during which a bank's revitalization and stabilization activities would continue to receive consideration as community development activities. The Agencies asked for specific comment on the description of the duration of a designated disaster and the appropriateness of the proposed lag period.

Most community organization commenters agreed that a one-year lag period would be appropriate, particularly if a bank's revitalization or stabilization activity commenced during the duration of the disaster period. Some other commenters, including some banks and bank trade organizations, believed a longer lag period, generally three years or longer, would be appropriate because it often takes a number of years for a community to recover from the economic impact of a disaster, particularly a major disaster.

As to the description of the disaster designation, several community organization commenters and one industry trade organization commenter believed that the proposed use of the official governmental designation of the start and expiration of the disaster would be appropriate. On the other hand, one bank commenter indicated that, after looking at government Web sites, it was impossible to determine when a local disaster designation expired. This commenter suggested that, at a minimum, the Agencies should provide guidance on specific reference sites where at least the Federal disaster designation information could be located.

Although FEMA makes a public announcement of a disaster designation, FEMA generally does not announce an "expiration" of the disaster designation, nor do its regulations provide for the designation's "expiration." FEMA's regulations and practices entail different stages relevant to a disaster designation period, such as the incident period, the application period, the work completion deadlines, and the period that a joint field office is open, but these periods may vary from incident to incident, and may not be relevant to all designated disasters. FEMA's regulations establish a requirement that permanent public assistance work relating to a major disaster must be completed within 18 months of the disaster designation (44 CFR 206.204(c)) unless FEMA grants an extension.

After carefully considering this information and the comments received, the Agencies have revised the proposed guidance addressing the period of time that a bank's activities will receive consideration in a designated disaster area. The final guidance states that the Agencies have determined to consider disaster recovery-related activities that help to revitalize or stabilize a designated disaster area for 36 months following the date of *designation* by the Federal government. The Agencies believe that providing a uniform 36-month period following disaster designation, during which a bank will receive CRA consideration of disaster recovery-related activities that help to revitalize or stabilize a disaster area, generally should be adequate to address the variety of community revitalization or stabilization needs that may arise depending on the nature, extent and severity of the particular disaster. 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.

Finally, the Agencies plan to extend substantially the time periods for recovery-related activities in the Gulf Coast areas designated as disaster areas because of hurricanes Katrina and Rita beyond 36 months from the dates of the disaster designations because of the demonstrated community need for long-term involvement by financial institutions in helping to address the widespread devastation caused by these hurricanes.

§ ____ .12(g)(4)(ii)–2:

This proposed question and answer discussed how revitalization or stabilization activities in a designated disaster area would be considered. The proposed guidance stated that bank activities in designated disaster areas would be evaluated in the same manner as they would be evaluated in a low- or moderate-income geography or a designated distressed nonmetropolitan middle-income geography. It explained that examiners would determine whether the activities have a primary purpose of community development by helping to attract and retain residents and businesses (including by providing jobs) or are part of a bona fide plan to revitalize or stabilize the geography. The proposed guidance also stated that examiners would give greater weight to those activities that are most responsive to community needs, including those of low- or moderate-income individuals or neighborhoods. The proposed guidance also clarified that investments in

entities that provide community services for, and direct loans and financial services provided to, individuals in designated disaster areas and to individuals who are displaced by disasters also receive consideration under the CRA and cited previous interagency guidance.

Many commenters addressed this proposed guidance. Community organizations generally urged the Agencies to give the greatest weight to activities that benefit low- and moderate-income individuals and neighborhoods.

Two financial institution trade organizations, on the other hand, emphasized that the entire community, without regard to income, is affected by most natural disasters and the recovery of the entire community through housing, job creation, and investments is critical. These commenters urged the Agencies not to unnecessarily restrict CRA consideration of recovery-related efforts to those activities that benefit only low- and moderate-income individuals or communities.

Finally, several commenters favorably addressed the portion of the answer stating that bank activities that provide assistance to persons displaced by disasters would receive consideration.

The Agencies have revised this question and answer to address commenters' concerns and to provide consistent guidance on the standards that apply to what qualifies as revitalization or stabilization activities. The revised answer states that 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 and stabilization plan or disaster recovery plan. The Agencies generally will consider all activities related 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 needs of low- or moderate-income individuals or neighborhoods.

In response to commenters, the question and answer provides additional examples of activities that will be considered to revitalize or stabilize a designated disaster area. 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; activities that provide 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.

§ ____ .12(g)(4)(iii)–1:

This proposed question and answer explained what criteria the Agencies would use to designate nonmetropolitan middle-income geographies that are "distressed" or "underserved." The proposed guidance also stated that the Agencies will publish data source information along with the list of designated census tracts on the Federal Financial Institutions Examination Council (FFIEC) Web site (<http://www.ffiec.gov>).

The Agencies received very few comments on this proposed guidance. One commenter suggested that the distressed areas designated for CRA purposes should be the same as Community Development Financial Institution (CDFI) Fund distressed areas. Although the Agencies considered using CDFI Fund distressed areas, the Agencies learned that the CDFI Fund designates distressed areas based on data that is not updated annually. Because data sources are available that provide updated data annually, the Agencies decided to designate distressed nonmetropolitan middle-income geographies based on the more current data.

Another commenter suggested that the criteria used to identify distressed or underserved areas would serve to exclude needy areas because they are based on a relatively large geographic unit, the census tract. This commenter pointed out that rural census tracts are relatively large and contain a wide variety of types of populations, with pockets of distress encompassed within relatively better-off areas. The commenter suggested that basing the distressed or underserved designation at the block group level, rather than at the census tract level, would be more effective in identifying distressed areas. This suggestion is not adopted because the regulation refers to "distressed or underserved nonmetropolitan middle-income geographies"

(§ ____ .12(g)(4)(iii)), and a "geography" is defined in the Agencies' regulations as "a census tract delineated by the United States Bureau of the Census in the most recent decennial census."

The question and answer is adopted as proposed.

§ ____ .12(g)(4)(iii)–2:

This proposed question and answer stated that the Agencies will update the list of designated distressed and underserved nonmetropolitan middle-income geographies annually and will publish the list on the FFIEC Web site (<http://www.ffiec.gov>). The Agencies also proposed a twelve-month “lag period” immediately after a census tract is reclassified as no longer distressed or underserved. During the lag period, revitalization and stabilization activities would receive consideration as community development if the activities 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. The Agencies specifically asked for comment on the appropriateness of the lag period.

The Agencies received several comments on this proposed guidance. One commenter believed that no lag period was necessary, but if a lag period were adopted, then one year should be the maximum length considered. Several commenters believed that a one-year lag period would be appropriate, while several other commenters, including representatives of financial institutions, urged the Agencies to provide a lag period of three or more years.

One commenter asked whether the Agencies would publish the list of designated distressed or underserved nonmetropolitan middle-income geographies more frequently than annually. The Agencies will update the list annually based on annual changes in source data; the list will be published continuously on the FFIEC Web site.

The proposed question and answer is being adopted with a twelve-month lag period. In addition, the Agencies will indicate which designated census tracts are in their lag periods.

§ ____ .12(g)(4)(iii)–3:

This proposed question and answer explained how revitalization and stabilization activities in designated distressed or underserved nonmetropolitan middle-income geographies would be evaluated.

Several commenters asserted that the proposed question and answer was too complicated because there was one answer for designated distressed nonmetropolitan middle-income areas and another answer for designated underserved nonmetropolitan middle-income areas. To help clarify the guidance, the issues are addressed in separate questions and answers—one

addressing designated distressed nonmetropolitan middle-income areas (§ ____ .12(g)(4)(iii)–3), and the other addressing designated underserved nonmetropolitan middle-income areas (§ ____ .12(g)(4)(iii)–4).

As proposed, in designated distressed nonmetropolitan middle-income geographies, examiners would determine whether the activities have a primary purpose of community development by helping to attract and retain residents and businesses (including by providing jobs) or are part of a bona fide plan to revitalize or stabilize the geography. The activities must have had a long-term direct benefit to the entire community, including low- and moderate-income individuals and neighborhoods.

Similar to the comments addressing the proposed guidance dealing with revitalization or stabilization activities in designated disaster areas, some community organization commenters were concerned that not enough emphasis was placed on benefits to low- and moderate-income individuals in designated distressed nonmetropolitan middle-income geographies. The question and answer as adopted revises and clarifies the guidance addressing revitalization or stabilization activities in distressed nonmetropolitan middle-income geographies to make it consistent with the similar guidance applicable to banks’ revitalization and stabilization activities in designated disaster areas. The guidance specifically states that examiners 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.

The proposed guidance addressing evaluation of revitalization or stabilization activities in underserved nonmetropolitan middle-income geographies stated that bank activities that facilitate the construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, or affordable housing generally would be considered to meet essential community needs and qualify for consideration as a community development activity, so long as the infrastructure, facility, or affordable housing serves low- and moderate-income individuals. One commenter asked how much benefit to low- or moderate-income individuals there must be for an activity in an underserved nonmetropolitan middle-income area to qualify for consideration. Another commenter suggested that a significant percentage of the people that

benefit from the activity should be low- or moderate-income. Other commenters suggested that the Agencies should give more weight to revitalization or stabilization activities that benefit low- or moderate-income individuals in underserved nonmetropolitan middle-income geographies.

The question and answer has been revised to include a restatement of the standard that appears in the regulations, that is, that activities revitalize or stabilize an underserved nonmetropolitan middle-income geography if they help to meet essential community needs, including the 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, or affordable housing, will be evaluated under these criteria to determine if they qualify for revitalization or stabilization consideration.

§ ____ .12(i)–3:

The proposal would have revised the existing question and answer from the 2001 Interagency Questions and Answers, which lists examples of community development services, to add two new examples. The first new example stated that providing financial services to low- or moderate-income individuals through branches and other facilities in low- or moderate-income areas is a community development service (unless the provision of such services has been considered in the evaluation of a bank’s retail banking services under § ____ .24(d)).

Commenters were generally in favor of this revision and the Agencies are adopting this revision as proposed.

The second example of a community development service that was proposed was providing international remittances services that increase access to financial services by low- and moderate-income persons (for example, by offering reasonably priced international remittances services in connection with a low-cost account). Commenters were generally in favor of this proposed revision. Therefore, the revision to this guidance is adopted as proposed.

§ ____ .12(t)–1:

This proposed question and answer addressed consideration for prior-period investments when examiners evaluate qualified investments. It stated that examiners would consider investments that were made prior to the current examination, but are still outstanding. Qualitative factors would affect the weight given to both current period and

outstanding prior-period qualified investments.

Several community organizations and affiliates of community organizations commented on this proposed guidance. These commenters stressed that banks should not be able to compensate for low levels of current-period qualified investments with prior-period investments. Some of these commenters also believed that consideration of prior period investments should be limited to investments that are particularly innovative, complex, or responsive to community needs.

The guidance is adopted as proposed. Although prior-period investments may receive consideration in a bank's current evaluation, examiners typically distinguish between current-period and prior-period investments when listing the amounts of a bank's investments in the institution's performance evaluation. Further, examiners use qualitative factors to determine how much consideration a bank receives for any given qualified investment. Greater weight is given to investments that are responsive to community needs, innovative, or complex, as applicable.

One commenter stated that this guidance should apply to all sizes and types of banks because some investments not only have significant impact, they also continue to utilize bank assets and represent a continuing financial commitment by the bank to the community. This question and answer clarifies that the guidance applies to all banks.

§ ____ .12(t)-4:

The proposal would have added investments in Rural Business Investment Companies to the question and answer from the 2001 Interagency Questions and Answers that lists examples of qualified investments. The Agencies received only a few comments on this proposal. All of the comments favored the proposed addition. Therefore, the guidance is adopted as proposed.

§ ____ .12(u)(2)-1:

This proposed question and answer stated that adjustments to the asset-size thresholds for small banks and intermediate small banks will be made annually based on changes to the Consumer Price Index. It also stated that changes in the asset-size thresholds would be published in the **Federal Register**.

The Agencies received very few comments on this proposed guidance. One financial institution trade organization commented that publication of adjustments in the **Federal Register** is important.

The question and answer is adopted as proposed.

§ ____ .26-1:

This proposed question and answer stated that, when evaluating a small bank or intermediate small bank, examiners will consider, at the bank's request, retail and community development loans originated or purchased by an affiliate, qualified investments made by an affiliate, or community development services provided by an affiliate. The bank must maintain sufficient information so that examiners may evaluate these activities under the appropriate performance criteria and ensure that another institution does not claim the activities. The constraints applicable to affiliate activities claimed by large institutions would also apply to affiliate activities claimed by small banks and intermediate small banks. In addition, examiners would not include affiliate lending in calculating the percentage of loans and, as appropriate, other lending-related activities located in a bank's assessment area.

Very few comments addressing this proposed guidance were received. All comments were favorable. Although the question has been rephrased for purposes of clarity, the answer is adopted as proposed.

§ ____ .26(c)-1:

This proposed question and answer discussed how the community development test would be applied flexibly for intermediate small banks. It described how intermediate small banks engage in a combination of community development loans, qualified investments, and community development services that are evaluated under the community development test. It stated that a bank 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, or community development services. A bank would have the flexibility to allocate its resources among community development loans, qualified investments, and community development services in amounts it reasonably determines are most responsive to community development needs and opportunities.

The Agencies received several letters commenting on this proposed guidance. Most of the comments were from community organizations, although a few were from financial industry trade organizations.

Community organization commenters agreed that intermediate small banks should not ignore any category of

community development activities. Many of these commenters expressed concern that qualitative factors, such as those considered in a bank's performance context, would be used to excuse low levels of community development lending, qualified investments, or community development services. One bank trade organization, on the other hand, asserted that appropriate levels of each type of community development activity would depend on the bank, the community, and the local needs and opportunities.

A number of community organization commenters discussed the difference between community needs and opportunities for community development activities. Generally, these commenters stressed that community needs, rather than opportunities for engaging in community development activities, must be the main consideration.

The question and answer is adopted as proposed. The guidance provides appropriate balance between the flexibility of banks to allocate their resources in a manner that is most responsive to community needs with the expectation that banks will engage in community development activities (loans, investments, and services) consistent with those needs and opportunities.

One financial institution trade organization expressed concern that the proposed guidance imposed a "needs assessment" requirement on intermediate small banks. The Agencies do not intend that intermediate small banks prepare a particular "needs assessment" solely for purposes of its CRA evaluation under the community development test. If intermediate small banks prepare business plans and market analyses that reflect community needs and opportunities, they may rely on such information, as well as other currently available information, when assessing community development needs in their assessment areas.

§ ____ .26(c)(3)-1:

This proposed question and answer stated that examiners will consider not only the types of services provided to benefit low- and moderate-income individuals, but also the provision and availability of services to low- and moderate-income individuals, including through branches and other facilities located in low- and moderate-income areas.

A large number of letters from community organizations commented on this proposed guidance. Most of these commenters asserted that intermediate small banks should be

evaluated on the number and percent of branches located in low- and moderate-income geographies. The revised regulations do not include a retail banking service test for intermediate small banks that evaluates the number and percent of an intermediate small bank's branches located in low- and moderate-income geographies.

However, in response to the commenters, the guidance is being revised to clarify that the presence of branches located in low- and moderate-income geographies helps to demonstrate the availability of banking services to low- and moderate-income individuals.

§ _____.26(c)(4)-1:

This proposed question and answer discussed what examiners would consider when reviewing the responsiveness of community development lending, qualified investments, and community development services by an intermediate small bank to the community development needs of the area. It stated that, in addition to quantitative measures such as the number and amount of community development loans, qualified investments, and community development services, examiners would also consider qualitative aspects of performance. In particular, examiners would evaluate the responsiveness of the bank's community development activities in light of the bank's capacity, business strategy, the needs of the community, and the number and types of opportunities for each type of community development activity. The proposed guidance also stated that activities would be considered particularly responsive to community development needs if they benefit low- and moderate-income individuals in low- and moderate-income areas, designated disaster areas, or designated distressed or underserved nonmetropolitan middle-income geographies.

Only a few commenters addressed this proposed guidance. Most of these comments were generally in agreement with the proposed question and answer. One commenter was concerned, however, that qualitative factors might be used to explain a bank's low numbers and amounts of community development activities and that "lack of opportunity" may be used to excuse limited performance even when community needs exist.

The question and answer is adopted as proposed. Agency examiners will apply the qualitative factors in the context of intermediate small banks in a manner that appropriately considers

the needs of the community, as well as other relevant information, including the expertise of the bank, its business plan, the bank's capacity, and any constraints that would prevent the bank from engaging in community development activities.

Other Comments

The Agencies requested comments on any issues raised by the CRA and the 2001 Interagency Questions and Answers. Commenters provided comments on a number of topics that were unrelated to the proposed questions and answers. The Agencies' staffs will consider these comments in their general review of the 2001 Interagency Questions and Answers.

The Agencies received a number of comments suggesting specific types of investments and services that should be listed in the questions and answers as examples of qualified investments and community development services. The Agencies will consider these suggestions during their general update of the 2001 Interagency Questions and Answers.

One issue that the Agencies anticipate addressing in proposed revisions to the 2001 Interagency Questions and Answers concerns whether intermediate small banks' small business loans, small farm loans, or home mortgage loans may be considered as community development loans, if the loans have a primary purpose of "community development," as that term is defined in the regulations. Under the regulations' definition of "community development loan," a loan that has been reported as a small business loan or small farm loan as required by the CRA regulations, or as a mortgage loan under the Home Mortgage Disclosure Act (HMDA), is not a community development loan, even if the loan has a primary purpose of community development. Small banks, however, are not required by the CRA regulations to report small business loans or small farm loans; and some small banks, as well as some large banks, are not required by HMDA to report home mortgage loans. Thus, after the definition of "community development loan" was adopted, a question arose as to its application to banks that are not required to report home mortgage loans, small business loans, or small farm loans. In response to that question, the Agencies adopted Q&A §§ _____.12(i) & 563e.12(h)-2, which indicates that examiners will not consider a loan by a small bank that meets the definition of either a "small business loan" or a "small farm loan" as a community development loan regardless of the purpose of the loan,

even though the regulation does not require a small bank to report small business or small farm loans. Similarly, the question and answer also states that examiners will not treat any loan that meets the definition of a HMDA-reportable mortgage loan as a community development loan even if the bank that made the loan is not required by HMDA to report mortgage loans (with the exception of multifamily dwelling loans). The Agencies anticipate that they will seek comment on whether this guidance is appropriate for intermediate small banks, which, unlike large banks, are not required to report small business or small farm loans and, unless they opt to be evaluated as large banks, have their community development activities, including community development loans, evaluated in a separate community development test. Meanwhile, evaluations of small banks, including intermediate small banks, will continue to be governed by the guidance in Q&A §§ _____.12(i) & 563e.12(h)-2.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The SBREFA requires an agency, for each rule for which it prepares a final regulatory flexibility analysis, to publish one or more compliance guides to help small entities understand how to comply with the rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC and FDIC certified that their proposed CRA rule would not have a significant economic impact on a substantial number of small entities and invited comments on that determination. The Board did not so certify, and requested comments in several areas. See 70 FR 12148, 12154 (March 11, 2005). In connection with the joint final rule, the FDIC and OCC certified that the joint final rule would not have a significant impact on a substantial number of small entities. In response to public comments it received, the Board prepared a final regulatory flexibility analysis and described how the final rule minimizes the economic impact on small entities by making the twelve affected state member banks eligible for the streamlined CRA process. See 70 FR at 44264-65 (August 2, 2005).

In accordance with section 212 of the SBREFA and the Agencies' continuing efforts to provide clear, understandable regulations, staffs of the Agencies have compiled these interagency Questions and Answers. The interagency Questions and Answers serve the same purpose as the compliance guide described in the SBREFA by providing

guidance on a variety of issues of particular concern to small banks.

The text of the Interagency Questions and Answers Regarding Community Reinvestment follows:

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

§ ____ .12(g)(4)-1: Is the revised definition of community development, effective September 1, 2005, applicable to all banks or only to intermediate small banks?

A1: The revised definition of community development is applicable to all banks.

§ ____ .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. (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(i)(2)(i) and Q&A §§ ____ .12(i) & 563e.12(h)-2.) 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(h)(4) & 563e.12(g)(4)-1 and §§ ____ .12(i) & 563e.12(h)-4.

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)(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 bank 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 employs 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(j) & 563e.12(i)-3; § ____ .12(s) & 563e.12(r)-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(k), a geography is a census tract delineated by the United States 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

United States Department of Agriculture.

The Agencies will publish data source information along with the list of eligible nonmetropolitan census tracts on the Federal Financial Institutions Examination Council 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 as needed. The list will be published on the Federal Financial Institutions Examination Council 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 twelve 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(h)(4)

& 563e.12(g)(4)-1 and §§ ____ .12(i) and 563e.12(h)-4.

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

§ ____ .12(i) *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:

- Providing financial services to low- and moderate-income individuals

through branches and other facilities located in low- and moderate-income areas, unless the provision of such services has been considered in the evaluation of a bank's retail banking services under § ____ .24(d);

- Providing technical assistance on financial matters to nonprofit, tribal or government organizations serving low- and moderate-income housing or economic revitalization and development needs;

- Providing technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks' Affordable Housing Program;

- Lending employees to provide financial services for organizations facilitating affordable housing construction and rehabilitation or development of affordable housing;

- Providing credit counseling, home-buyer and home-maintenance counseling, financial planning or other financial services education to promote community development and affordable housing;

- Establishing school savings programs and developing or teaching financial education curricula for low- or moderate-income individuals;

- Providing electronic benefits transfer and point of sale terminal systems to improve access to financial services, such as by decreasing costs, for low- or moderate-income individuals;
- Providing international remittances services that increase access to financial services by low- and moderate-income persons (for example, by offering reasonably priced international remittances services in connection with a low-cost account); and

- Providing other financial services with the primary purpose of community development, such as low-cost bank accounts, including "Electronic Transfer Accounts" provided pursuant to the Debt Collection Improvement Act of 1996, or free government check cashing that increases access to financial services for low- or moderate-income individuals.

Examples of technical assistance activities that might be provided to community development organizations include:

- Serving on a loan review committee;

- Developing loan application and underwriting standards;

- Developing loan processing systems;

- Developing secondary market vehicles or programs;

- Assisting in marketing financial services, including development of advertising and promotions, publications, workshops and conferences;
- Furnishing financial services training for staff and management;
- Contributing accounting/bookkeeping services; and
- Assisting in fund raising, including soliciting or arranging investments.

§ _____.12(t) *Qualified Investment*
 § _____.12(t)-1: *When evaluating a qualified investment, what consideration will be given for prior-period investments?*

A1: When evaluating a bank'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 weighting 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)-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, Community Development Financial Institutions (CDFIs), Community Development Corporations (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- or 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, Small Business Investment Companies (SBICs), specialized SBICs, and Rural Business Investment Companies (RBICs), that promote economic development by financing small businesses;
- Facilities that promote community development in low- and moderate-income areas 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 services education; 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 that enable people to work.

§ _____.12(u)(2): *Small Bank Adjustment*

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

A1: The asset size thresholds for "small banks" and "intermediate small banks" 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 twelve-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**.

§ _____.26: *Small Bank Performance Standards*

§ _____.26-1: *When evaluating a small or intermediate small bank'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&A § _____.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 a bank's assessment area.

§ _____.26(c) *Intermediate Small Bank Community Development Test*

§ _____.26(c)-1: *How will the community development test be applied flexibly for intermediate small banks?*

A1: Generally, intermediate small banks engage in a combination of community development loans, qualified investments, and community development services. A bank 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 bank'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 bank's capacity.

An intermediate small bank 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 bank, community needs, and number and types of opportunities for community development.

§ _____.26(c)(3) *Community Development Services under Intermediate Small Bank Community Development Test*

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

A1: Examiners will consider not only the types of services provided to benefit low- and moderate-income individuals, such as low-cost bank checking accounts and low-cost remittance services, but also the provision and availability of services to low- and moderate-income individuals, including through branches and other facilities located in low- and moderate-income areas. 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 under*

Intermediate Small Bank Community Development Test

§ _____.26(c)(4)-1: *When evaluating an Intermediate Small Bank'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 Bank'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 bank's community development activities in light of the bank'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 bank'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 bank under the lending, investment, and service tests, are not criteria in the intermediate small banks' 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.

This concludes the text of the Interagency Questions and Answers Regarding Community Reinvestment.

Dated: March 1, 2006.

John C. Dugan,
Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 1, 2006.

Jennifer J. Johnson,
Secretary of the Board.

Dated at Washington, DC, this second day of March, 2006.

Federal Deposit Insurance Corporation.

Valerie J. Best,
Assistant Executive Secretary.

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