

Federal Reserve Bank of Dallas

Interagency Questions and Answers (Q&As) Regarding Community Reinvestment

Effective January 6, 2009



This publication is a summary to give a quick overview of the Q&A updates. It is designed for bank CEOs, presidents, CRA and compliance officers, and others who have an interest in the CRA. Refer to Regulation BB and the Federal Register for complete information.

Summary of New Guidance and Revisions

The Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency and Office of Thrift Supervision have adopted these Q&As that were proposed on July 11, 2007. Published in the Federal Register, they consolidate and supersede all previously published interagency Q&As on community reinvestment.

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Summary of New Guidance and Revisions

Adoption of New and Revised Q&As

§ ____ .12(g)(3)–1

Description: Activities that promote economic development

Question: Community development (CD) includes activities that promote economic development by financing businesses or farms that meet certain size eligibility standards. Are all activities that finance businesses and farms that meet these size eligibility standards considered to be community development?

Summary: No. The following activities are new to the list of activities presumed to promote economic development:

- Loans to or investments in Rural Business Investment Companies (RBICs)
- Loans to or investments in New Markets Tax Credit-eligible CD Entities (CDEs)

Notes and Points of Clarification: The activity must meet the “size” and “purpose” tests, as well as examiner’s qualitative assessments.

For examples of qualified investments, loans or services, see .12(t)–4, .12(h)–1 and .12(i)–3, respectively.

§ ____ .12(g)–4

Description: Investments and other ventures in minority- or women-owned financial institutions and low-income credit unions (MWLIs)

Question: The CRA provides that, in assessing the CRA performance of non-minority- and non-women-owned (majority-owned) financial institutions, examiners may consider as a factor capital investments, loan participations, and other ventures undertaken by the institutions in cooperation with MWLIs, provided that these activities help meet the credit needs of local communities in which the MWLIs are chartered. Must such activities also benefit the majority-owned financial institution’s assessment area?

Summary: No. Such activities will be favorably considered in the CRA performance evaluation of the institution even if the MWLIs are not located in, or such activities do not benefit, the assessment area(s) of the majority-owned institution or the broader statewide or regional area that includes its assessment area(s). The activities must, however, help meet the credit needs of the local communities in which the MWLIs are chartered.

Notes and Points of Clarification: The treatment of MWLIs contrasts with the treatment of Community Development Financial Institutions (CDFIs) and community development activities because the statute provides a broader allowance for activities in cooperation with MWLIs. Investments in a CDFI must benefit the majority-owned institution’s assessment area(s) or the broader statewide or regional area.

Prior to engaging in an activity in cooperation with a MWLI, the majority-owned financial institution should have a general understanding about how the activity will help to meet the credit needs of the MWLI’s community.

Summary of New Guidance and Revisions

§ ____ .12(h)–1

Description: Examples of community development (CD) loans

Question: What are examples of CD loans?

Summary: Some new examples have been added, including:

- A loan to a New Markets Tax Credit-eligible Community Development Entity (CDE)
 - A loan in an amount greater than \$1 million to a business, when the loan is made as part of the Small Business Administration's 504 Certified Development Company program
-

§ ____ .12(h)–3

Description: Intermediate small institutions' (ISBs') CD loans

Question: May an ISB that is not subject to Home Mortgage Disclosure Act (HMDA) reporting have home mortgage loans considered as CD loans? Similarly, may an ISB have small business and small farm loans and consumer loans considered as CD loans?

Summary: Yes. ISBs may select home mortgage, small business and small farm loans that are not required to be reported under the CRA or HMDA regulations to be considered as CD loans as long as they meet the regulatory definition of community development.

Notes and Points of Clarification: Does not apply to institutions examined under Small Institutions' CRA Examination Procedures or ISBs that elect to be examined under Large Institutions' CRA Examination Procedures.

§ ____ .12(i)–3

Description: Examples of CD services

Question: What are examples of CD services?

Summary: Some new examples have been added, including:

- Increasing access to financial services by opening or maintaining branches or other facilities that help to revitalize or stabilize low- or moderate-income (LMI) geographies, unless already considered as retail banking services
- Low-cost savings or checking bank accounts for LMI individuals
- Individual development accounts (IDAs) and free or low-cost check cashing services that increase access to financial services for LMI individuals
- Foreclosure prevention programs to LMI homeowners who are facing foreclosure on their *primary residence* with the objective of providing affordable, sustainable, long-term loan modifications and restructurings
- Financial literacy for LMI individuals

Notes and Points of Clarification: Under .22(a)–1, loan programs that provide foreclosure assistance to homeowners of all income levels who are facing foreclosure on their primary residences would be an example of lending that is responsive to the assessment area(s) needs.

Summary of New Guidance and Revisions

§ ____ .12(t)–3

Description: Federal Home Loan Bank (FHLB) stocks, unpaid dividends and reserves

Question: Are FHLB stocks or unpaid dividends and membership reserves with the Federal Reserve Banks “qualified investments”?

Summary: No, they do not have a sufficient connection to CD.

Notes and Points of Clarification: FHLB member institutions may receive CRA consideration for technical assistance they provide on behalf of applicants and recipients of funding from the FHLB’s Affordable Housing Program. See .12(i)–3 for details.

§ ____ .12(t)–4

Description: Examples of qualified investments

Question: What are examples of qualified investments?

Summary: Some new examples have been added, including:

- Investment in a New Markets Tax Credit-eligible CD Entity (CDE)
 - Investment in a community development venture capital company that promotes economic development by financing small businesses
-

§ ____ .12(u)(2)–1

Description: Small institution adjustment

Question: How often will the asset size thresholds for small institutions and intermediate small institutions be changed, and how will these adjustments be communicated?

Summary: Thresholds will be adjusted annually based on changes to the Consumer Price Index. Any threshold changes will be published in the Federal Register.

Notes and Points of Clarification: Historical and current asset-size threshold information may be found on the FFIEC’s website at www.ffiec.gov/cra.

Summary of New Guidance and Revisions

§ ____ .22(a)–1

Description: Responsive lending activities

Question: Are there any types of lending activities that help meet the credit needs of an institution’s assessment area(s) and that may warrant favorable consideration as activities that are responsive to the needs of the institution’s assessment area(s)?

Summary: There is a new example regarding foreclosure assistance programs:

- Establishing loan programs with the objective of providing affordable, sustainable, long-term relief, for example, through loan refinancings, restructures, or modifications, to homeowners who are facing foreclosure on their primary residences.

Notes and Points of Clarification: Refer to .12(i)–3 for some examples of foreclosure prevention programs that count as CD services.

§ ____ .22(a)(2)–4

Description: Examples of “other loan data”

Question: In addition to home mortgage loan modification, extension, and consolidation agreements (MECAs), what are other examples of “other loan data”?

Summary: Other loan data include:

- Loans funded for sale to the secondary markets that an institution has not reported under HMDA
- Unfunded loan commitments and letters of credit
- Commercial and consumer leases
- Loans secured by nonfarm residential real estate, not taken as an abundance of caution, that are used to finance small businesses/small farms and not reported as small business/small farm loans or reported under HMDA
- Real estate loans without a primary purpose of CD but where some of the units are set aside for affordable housing
- An increase to a small business/small farm line of credit if the increase would cause the total line to exceed \$1 million for a small business or \$500,000 for a small farm

Notes and Points of Clarification: If the proposed revision to .12(h)–8 is adopted as final, then .22(a)(2)–4, which provides examples of “other loan data,” would be revised to delete “loans that do not have a primary purpose of CD, but where a certain amount or percentage of units is set aside for affordable housing.”

§ ____ .22(a)(2)–6

Description: Purchasing loan participations

Question: Do institutions receive consideration for purchasing loan participations?

Summary: Yes. As with other loan purchases, examiners will evaluate whether participations in loan(s) purchased have been sold and purchased a number of times and if they artificially inflate CRA performance.

Summary of New Guidance and Revisions

§ ____ .22(a)(2)–7

Description: Small business loans secured by a one-to-four family residence

Question: How are refinancings of small business loans, which are secured by a one-to-four family residence and that have been reported under HMDA as a refinancing, evaluated under CRA?

Summary: Per Call Report instructions, a loan of \$1 million or less with a business purpose that is secured by a one-to-four family residence is considered a small business loan for CRA purposes only if the security interest in the residential property was taken as an *abundance of caution* and where the terms have not been made more favorable than they would have been in the absence of the lien. If this same loan is refinanced and the new loan is also secured by a one-to-four family residence, but only through an *abundance of caution*, this loan is reported as both a refinancing under HMDA and a small business loan under CRA.

Notes and Points of Clarification: Small farm loans are similarly treated.

§ ____ .22(c)(2)(i)–1

Description: Constraints on affiliate lending

Question: Regardless of examination type, how is this constraint on affiliate lending applied?

Note: This constraint applies to double-counting of loans.

Summary: This constraint prohibits one affiliate from claiming a loan origination or purchase claimed by another affiliate. However, an institution can count as a purchase a loan originated by an affiliate that the institution subsequently purchases, or count as an origination a loan later sold to an affiliate, provided the same loans are not sold several times to inflate their value for CRA purposes.

Notes and Points of Clarification: There also is a constraint that prohibits “cherry picking” affiliate loans within any one category of loans. For details, see .22(c)(2)(ii)–1 and –2.

Summary of New Guidance and Revisions

§ ____ .23(a)–2

Description: Investment(s) in a national or regional fund

Question: In order to receive CRA consideration, what information may an institution provide that would demonstrate that an investment in a nationwide fund with a primary purpose of CD will directly or indirectly benefit one or more of the institution’s assessment area(s) or a broader statewide or regional area that includes the institution’s assessment area(s)?

Summary: Information on the purpose, mandate, or function of the fund would be considered.

- Typically, information about where a fund’s investments are expected to be made or targeted will be found in the fund’s prospectus, or other documents provided by the fund prior to or at the time of the institution’s investment.
- Information that a fund has explicitly earmarked its projects or investments to its investors and their specific assessment area(s) or broader statewide or regional areas that include the assessment area(s) may be used.

Notes and Points of Clarification: An institution may use an allocation method to permit it to claim a pro-rata share of each project of the fund.

An institution will receive full credit for a qualified investment but the greater the responsiveness to its assessment area, the more weight the investment will be given. For details, see .23(e)–1 and –2.

Refer to .12(h)–6 for information on activities with immediate or direct benefit to an institution’s assessment area(s) and .12(h)–7 for the definition of “regional area.”

§ ____ .24(d)–1

Description: Retail banking services delivery systems

Question: How do examiners evaluate the availability and effectiveness of an institution’s systems for delivering retail banking services?

Summary: The principal focus is on an institution’s current distribution of branches and its record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals. However, an institution is not required to expand its branch network or operate unprofitable branches.

Notes and Points of Clarification: Examiners will place primary emphasis on full service branches while still considering alternative systems such as automated teller machines (ATMs).

Summary of New Guidance and Revisions

§ ____ .26(a)(2)–1

Description: Examination as an intermediate small institution

Question: When is an institution examined as an ISB?

Summary: When a small institution has met the intermediate small institution asset threshold delineated in .12(u)(1) for two consecutive calendar year-ends. There is no lag period between becoming an intermediate small institution and being examined as an intermediate small institution.

The agencies currently provide technical assistance to small institutions in transition to becoming “intermediate small” institutions.

Notes and Points of Clarification: For example, if the bank’s assets meet or exceed the threshold for the second consecutive year on 12/31/08, the bank would be examined as an ISB starting 01/01/09.

§ ____ .41(e)(4)–1 and .41(e)(4)–2

Description: Assessment areas may not extend substantially beyond metropolitan statistical area (MSA) boundaries

Question: .41(e)(4)–1. What are the maximum limits on the size of an assessment area?

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

Summary: Materially, these limits remain unchanged but there are technical changes to conform with revised terminology in the Standards for Defining Metropolitan and Micropolitan Statistical Areas adopted by the Office of Management and Budget, and guidance the agencies provided in connection with the technical corrections made to the CRA regulations in 2005.

§ ____ .42–1

Description: Collecting and reporting data under the CRA regulations

Question: When must an institution collect and report data under the CRA regulations?

Summary: All institutions except small institutions are subject to annual data collection and reporting requirements and must report the data for a calendar year by March 1 of the subsequent year.

Notes and Points of Clarification: Small institutions, including ISBs, may collect and report data if they wish to be examined using Large Institutions’ CRA Procedures.

The Federal Reserve Board of Governors processes the reports for all of the primary regulatory agencies. The mailing address has been revised. Check the Federal Register for details.

Summary of New Guidance and Revisions

§ ____ .42(a)–7

Description: Reporting home equity lines of credit (HELOCs) for both home improvement and small business purposes

Question: How should an institution report a HELOC, part of which is for home improvement purposes and part of which is for small business purposes?

Summary: The institution has the option of reporting the portion of the HELOC that is for home improvement purposes as a home improvement loan under HMDA. If the institution opts to report the refinanced line, the entire amount of the line would be reported as a refinancing and examiners will consider the entire refinanced line when they evaluate the institution’s home mortgage lending.

Notes and Points of Clarification: This answer was revised to be consistent with changes that were made to the Board’s Regulation C requirements in 2004.

§ ____ .42(a)(2)–1

Description: Purchasing small business or small farm loans

Question: When an institution purchases a small business or small farm loan, in whole or in part, which amount should the institution collect and report—the original amount of the loan or the amount at purchase?

Summary: An institution collects and reports the amount of the loan at origination, not at the time of purchase. However, when assessing the volume of small business/small farm loans for the lending test performance, examiners will evaluate the activity based on the amounts at purchase.

§ ____ .42(b)(2)–4

Description: Reporting of a participation in a CD loan

Question: When an institution purchases a participation in a CD loan, which amount should the institution report—the entire amount of the credit originated by the lead lender or the amount of the participation purchased?

Summary: The institution reports only the amount of the participation purchased as a CD loan. However, the institution uses the entire amount of the credit originated by the lead lender to determine whether the original credit meets the definition of a “loan to a small business,” “loan to a small farm,” or “community development loan.”

§ ____ .42(b)(2)–5

Description: Refinanced or renewed CD loans

Question: Should institutions collect and report data about CD loans that are refinanced or renewed?

Summary: Yes. Institutions should collect information about CD loans that they refinance or renew as loan originations. CD loan refinancings and renewals are subject to the reporting limitations that apply to refinancings and renewals of small business and small farm loans.

Summary of New Guidance and Revisions

Clarifying Revisions to Existing Q&As

§ ____ .12(g)–3

Description: Flexibility in considering performance in high-cost areas

Question: Does the regulation provide flexibility in considering performance in high-cost areas?

Summary: Yes. The flexibility of the performance standards allows examiners to account for conditions in high-cost areas.

Notes and Points of Clarification: .12(h)–8 has been added as a cross-reference to this Q&A. It provides information on “primary purpose” of CD.

§ ____ .12(g)(4)(i)–1

Description: Activities that revitalize or stabilize LMI geographies

Question: What activities are considered to “revitalize or stabilize” an LMI geography, and how are those activities considered?

Summary: The following example has been added to the answer: “For example, providing foreclosure prevention programs with the objective of providing affordable, sustainable, long-term loan restructurings or modifications to homeowners in LMI geographies, consistent with safe and sound banking practices, may help to revitalize or stabilize these geographies.”

Withdrawal of Proposed Revisions to Existing Q&As

§ ____ .23(e)–2

Description: Evaluation of qualified investments

Question: How do examiners evaluate an institution’s qualified investment in a fund, the primary purpose of which is CD, as defined in the CRA regulations?

Notes and Points of Clarification: There has been no change. When evaluating a financial institution, examiners will continue to include in the dollar amount of qualified investments any legally binding commitments recorded by the institution according to Generally Accepted Accounting Principles (GAAP).

Proposed New and Revised Q&As

§ ____ .12(g)(2)–1

Description: Community services targeted to LMI individuals

Question: CD includes community services targeted to LMI individuals. What are examples of ways that an institution could determine that community services are offered to LMI individuals?

Summary of New Guidance and Revisions

§ ____ .12(h)–8

Description: Primary purpose of CD

Question: What is meant by the term “primary purpose” as that term is used to define what constitutes a CD loan, a qualified investment, or a CD service?

§ ____ .42(b)(2)–3

Description: Primary purpose of CD loan

Question: When the primary purpose of a loan is to finance an affordable housing project for LMI individuals, but, for example, only 40 percent of the units in question will actually be occupied by individuals or families with low or moderate incomes, should the entire loan amount be reported as a CD loan?

Notes and Points of Clarification: Would be revised only if proposed revision to .12(h)–8 is adopted.
