

2006 National Community Reinvestment Conference
Interagency Panel- Questions and Answers
March 22, 2006

(1) Can we count activities in designated distressed / underserved or disaster areas that took place prior to September 1, 2005?

No. The new provisions of the CRA Regulations were effective on September 1, 2005, so the regulators will consider community development activities that meet the expanded definition in these areas from that date forward.

(2) Do Intermediate Small Banks have to have the same level of documentation for investments and services as required for large banks?

Yes. In order to count something as a qualified investment or community development service, examiners are going to look for clear documentation showing how the activity meets one of the four definitions of community development:

- Affordable Housing for LMI individuals
- Services to LMI individuals
- Economic development by financing small farms or small businesses
- Revitalization or stabilization of LMI area, designated disaster areas, distressed or underserved nonmetropolitan middle-income areas

ISBs are expected to have the same level / type of information as large banks in order to show community development purpose.

(3) Can an institution select a specific assessment area in which affiliate lending would be considered?

Yes. Q&A .22(c)(2)(ii)-1 would apply to this case. The Q&A explains that if a bank elects to have a particular category of affiliate loans in a particular assessment area evaluated, you must include all loans of that type made by all affiliates in that **particular assessment area**.

(4) Can a bank get CRA credit for teaching financial education to non-LMI individuals?

No. Under the four-prong definition of community development, the example of teaching financial education would fall under the community services criteria. The Regulation and Qs &As are quite explicit that community services must be targeted to LMI individuals.

(5) Are banks required to have a branch closing policy? What should be included in the policy? Are there any CRA implications?

Branch closing policies are not addressed under the CRA, but are covered in another statute (12 USC 1831 r-1). Basically, the rule is that all insured depository institutions with one or more branch must have a branch closing policy. The policy has to be in writing, and meet the size and needs of the particular institution. The policy should include the factors for determining which branches to close, and which customers to notify, and must include procedures for providing the notices required by the statute. CRA implications- banks obviously have to follow the requirements of the statute, and have to consider how any branch closings will affect its LMI customers and their ability to access banking services. A bank's record of opening and closing branches is considered as part of the large bank test only, as part of the retail services test.

(6) What balance do you report on purchased participations for CRA data reporting purposes? For example, take a \$1,200,000 dollar loan, in which the reporting institution has purchased \$600,000.

For data reporting purposes, the entire amount of the loan would be reported, although it is noted that this differs from the *Call Report* instructions. Regardless of the amount reported, banks only receive CRA consideration for the amount that was purchased. So for the example provided, the bank would report \$1,200,000, but would receive consideration for only \$600,000, the amount that was purchased. It is important to know the original amount of the lead loan, in order to help determine if it met the definition of a "small loan to business" or a community development loan. The agencies will review this answer as part of their review/update of the interagency questions and answers.

(7) There was some confusion about the document that was handed out in one of the sessions, concerning proxies to identify affordable housing loans. What agencies, if any, use that document?

The document is not approved by ANY of the agencies. It is merely a document that was used by some examiners in the San Francisco region. There is a Q&A that specifically explains that proxies alone are not appropriate [Q&A .12(h)(1)]. Examiners will review factors such as demographic, economic, and market data to determine the likelihood that the housing will primarily accommodate LMI individuals.

(8) Can a "land loan" be a community development loan?

There may be cases when a loan to purchase land may be integral to a project that meets one of the four primary purposes of community development. To the extent that the land

loan is part of a plan to meet one of the community development purposes, it may receive CRA consideration.

(9) Can a HMDA-reportable loan or a small business loan also be considered as a community development loan, even if the bank is not a HMDA reporter or CRA loan data reporter?

No. Q&A .12(i) specifically addresses this question. Although small and intermediate small banks are not required to collect and report small business / small farm loans, and some are not HMDA reporters, these loans would not be counted as community development loans. An exception to this rule is multi-family loans, as they are allowed to be double counted. The agencies have committed to review this Q&A, especially due to the changes associated with the intermediate small bank exam method.

However, if there are small business or home mortgage loans that also meet the purpose of community development, the banker may bring these to the attention of the examiners. The examiners have the option of mentioning these loans in the narrative section of the public performance evaluation if they warrant such mention, but they would not be identified as community development loans, per se.

(10) Please clarify the address to use for the geocoding of a loan- should the address of the collateral be used, or the address to which the loan proceeds will be applied be used?

Q&A .42(a)(3)-1 applies to this situation. The Q&A explains that you may use either the location of the business headquarters or the location where the greatest portion of the proceeds are applied. The main key is that banks should choose either location, and then apply it consistently across all loans.

(11) At what asset size / threshold should a bank consider hiring a full-time CRA compliance officer?

There is no specific asset size that the regulators can recommend. The decision to hire a full-time CRA officer will differ widely among banks. Some factors to consider in making the decision are: Size of the bank, product offerings, complexity, previous CRA ratings, etc.

(12) What is the agencies' position on evaluating an acquired institution's CRA performance as part of the acquiring institution's CRA Exam?

The agencies will generally consider small business/farm loans and home mortgage loans made by an unaffiliated acquired institution beginning with the year of acquisition. This

is reasonable since these loan data are reported on an annual basis. In addition, the agencies would consider any community development activities back to the last CRA examination that remain on the books of the surviving bank after the merger/acquisition. Affiliated institutions that merge may have slightly different treatment for the lending test, which should be discussed on a case-by-case basis with the local examiner.

(13) Banks have invested billions of dollars in low-income housing and community revitalization. What can we do to shift the focus from enabling poverty to preventing it? For example, why not count investments in education and job-training? High risk children and their parents need to have the same educational opportunities as middle-income families.

There are numerous possibilities for community development credit, other than affordable housing, that would encourage proactive measures. In addition to the provision of affordable housing for low- or moderate-income individuals, the community development definition includes the following:

- Community services targeted to LMI individuals
- Economic development by financing small farms or small businesses
- Revitalization or stabilization of LMI areas, designated disaster areas, and distressed or underserved nonmetropolitan middle-income areas

In particular, community services include activities such as community- or tribal-based childcare, as well as educational, health or social services targeted to LMI individuals. Specific examples of activities that would count include donations to the Head Start program, or financial literacy programs targeted to LMI individuals. Banks can fund these types of activities and receive CRA consideration.

(14) What is the difference between Part 24 approval and CRA approval? If we make an investment under part 24, don't we get CRA credit?

The OCC's public welfare investment regulation is 12 CFR 24, commonly referred to as "part 24." This regulation is simply an investment authority regulation. It allows an institution to purchase/make investments that meet the public welfare purpose within part 24. In addition, it allows a national bank to purchase/make any investment that meets the definition of community development in the CRA regulation. However, not all investments purchased under part 24 would be qualified investments under CRA. First, part 24 does not restrict investments to any geographic areas, whereas the CRA regulation includes specific geographic requirements for qualified investments. And, while uncommon, there may be some instances where part 24 investments do not meet the particular income requirements for CRA qualified investments.

(15) Do workforce housing investments qualify under the CRA Investment test even though they are targeted to families with median family income higher than 80%?

Some workforce housing may count for CRA credit. There is a Q&A that pertains to housing in high-cost areas [.12(h)-3], explaining that in high-cost areas, examiners may take into account activities for affordable housing to middle-income people or areas that also benefit low- or moderate-income people or areas, if the primary purpose of the activity is community development. Examiners will consider workforce housing on a case-by-case basis, as there is no interagency consensus on specific workforce housing projects.

(16) The Federal Agencies have recently come together to publish an examination manual applicable to all agencies for BSA. Is there a plan to do this for CRA as well? There appear to be numerous differences between how each agency evaluates certain areas of CRA.

The CRA examination procedures are, for the most part, an interagency product. In addition, there is an interagency consumer compliance task force, under the auspices of the FFIEC, in Washington, D.C. that discusses CRA issues, as well as other compliance-related issues on a monthly basis. However, we have noticed some differences in interpretation of the CRA regulations and guidance. Therefore, the members of the CRA subcommittee will take this issue back to the FFIEC task force members for further discussion.

(17) Are mortgage-backed securities that are secured by LMI geographies considered qualified investments, the same as mortgage-backed securities secured by LMI individuals?

No. Q&A .12 (s)-2 specifically addresses this question, and states that securities must have as their primary purpose community development. For example, a mortgage-backed security that is primarily secured by affordable housing loans to low- or moderate-income people and therefore addresses affordable housing, would qualify for CRA consideration. However, loans secured by properties located in low- or moderate-income geographies do not necessarily meet the primary purpose of community development – in fact, they could be the result of gentrification of those areas and would therefore not be associated with affordable housing or community development.

(18) Does the OTS intend to align with the banking agencies on the CRA rule?

As you know, the OTS issued two revisions to its CRA rule under the former Director, James Gilleran. Director Gilleran made these revisions in an effort to reduce burden and recognize thrift association differences. However, the OTS' current Director John Reich

has decided that he will review the OTS CRA rule, and use this time to learn from the banking agencies' rule and implementation process.

(19) When considering community services to agencies such as Habitat for Humanity and Rebuilding Together, why can't a bank get CRA consideration for time provided by the employees?

Community development services must be related to the provision of financial services. Financial services must be related to the types of services provided by the financial institutions. Therefore, serving on the Board of such organizations, or providing credit services to recipients of those organizations would count. However, time committed by employees for rebuilding efforts are not financial services, and would therefore not count for CRA credit. We commend financial institutions for these activities, and we hope that some of these activities will continue to be done even though they don't receive CRA consideration, because they are the right thing to do.

(20) For years, acquisition, rehab, and resale loans of under one year have been considered community development when the homes were sold at discounted prices to low- and moderate-income families. Now they are first mortgage transactions- what gives?

This issue has resulted from the change in definition of temporary financing under HMDA. In the past, acquisition, rehab and resale loans were not HMDA-reportable loans, and therefore could be considered community development. But now that they are HMDA-reportable loans, they cannot be classified as community development loans. Apparently, this impact was not a consideration at the time the definition was changed. We suggest that institutions bring these types of loans to the examiner's attention at the time of the examination, as "other loan data" under CRA.