



Comptroller of the Currency
Administrator of National Banks

A Telephone Seminar

The New CRA Perspective for You and Your Bank

Tuesday, January 24, 2006
and again on
Wednesday, January 25, 2006

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John C. Dugan
Comptroller of the Currency

John C. Dugan was sworn in as the 29th Comptroller of the Currency on August 4, 2005.

The Comptroller of the Currency is the administrator of national banks and chief officer of the Office of the Comptroller of the Currency (OCC). The OCC supervises 1,900 federally chartered commercial banks and about 50 federal branches and agencies of foreign banks in the United States, comprising more than half the assets of the commercial banking system. The Comptroller also serves as a director of the Federal Deposit Insurance Corporation, the Federal Financial Institutions Examination Council, and the Neighborhood Reinvestment Corporation.

Prior to his appointment as Comptroller, Mr. Dugan was a partner at the law firm of Covington & Burling, where he chaired the firm's Financial Institutions Group. He specialized in banking and financial institution regulation. He also served as outside counsel to the ABA Securities Association.

He served at the Department of Treasury from 1989 to 1993 and was appointed assistant secretary for domestic finance in 1992. While at Treasury, Mr. Dugan had extensive responsibility for policy initiatives involving banks and financial institutions, including the savings and loan cleanup, Glass-Steagall and banking reform, and regulation of government-sponsored enterprises. In 1991, he oversaw a comprehensive study of the banking industry that formed the basis for the financial modernization legislation proposed by the administration of the first President Bush.

From 1985 to 1989, Mr. Dugan was minority counsel and minority general counsel for the U.S. Senate Committee on Banking, Housing, and Urban Affairs. There he advised the committee as it debated the Competitive Equality Banking Act of 1987, the Proxmire Financial Modernization Act of 1988, and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Among his professional and volunteer activities before becoming Comptroller, he served as a director of Minbanc, a charitable organization whose mission is to enhance professional and educational opportunities for minorities in the banking industry. He was also a member of the American Bar Association's committee on

banking law, the Federal Bar Association's section of financial institutions and the economy, and the District of Columbia Bar Association's section of corporations, finance, and securities laws.

A graduate of the University of Michigan in 1977 with an A.B. in English literature, Mr. Dugan also earned his J.D. from Harvard Law School in 1981. Born in Washington, DC in 1955, Mr. Dugan lives in Chevy Chase, MD, with his wife, Beth, and his two children, Claire and Jack..

Ann F. Jaedicke

Deputy Comptroller for Compliance

Office of the Comptroller of the Currency



Ann F. Jaedicke has served as deputy comptroller of Compliance since December 2003. She is responsible for policy and examination procedures relating to consumer issues, money laundering, and bank secrecy. She also sits on FFIEC's (Federal Financial Institution Examination Council) task force on consumer compliance and FFIEC's Bank Secrecy Act task force. These task forces of U.S. regulators promote policy coordination and the uniform enforcement of laws and regulations.

Ms. Jaedicke has been employed by the Office of the Comptroller of the Currency (OCC) as a bank examiner for 28 years. She began her career in 1977 as a bank examiner in Texas. From 1984-1986, Ms. Jaedicke worked in OCC's London office where she examined branches of U.S. banks. Later she served as the director for OCC's Large Bank Division. At the time, OCC's Large Bank Division supervised 12 of the largest national banks in the U.S. In 1997, Ms. Jaedicke was promoted to deputy comptroller for Supervision Operations where she managed, among other things, OCC's Problem Bank Division and sat on OCC's Enforcement Committee. In 2001 and 2002, Ms. Jaedicke led projects to restructure OCC's six districts and OCC's Washington D.C. headquarters.

Ms. Jaedicke is a native Texan and a graduate of Texas A&M University.

Michael S. Bylsma

Director

Community and Consumer Law Division



Michael S. Bylsma is director of the Community and Consumer Law Division at the Office of the Comptroller of the Currency (OCC), Washington, DC. The Division of Community and Consumer Law provides guidance to national banks and OCC examiners on a variety of consumer compliance laws such as the Truth in Lending, Electronic Fund Transfer, Federal Trade Commission (FTC) Act, and Fair Credit Reporting Acts, and on community development and fair lending laws, such as the Community Reinvestment and Equal Credit Opportunity Acts.

Prior to joining the OCC in 1994, Mike was a Senior Attorney with the Board of Governors of the Federal Reserve System, where he worked for ten years on consumer and community law issues. Recently, he has been a key participant in the OCC's review of, and response to, predatory lending and payday lending issues. He was a principal author of the OCC's supervisory standards addressing predatory lending practices in loan originations, loan purchases, and brokered loan transactions. He has been the primary OCC staff participant in the interagency review of the Community Reinvestment Act regulations.

Mr. Bylsma has been actively involved in the OCC's efforts to prevent unfair, deceptive, and abusive lending acts or practices through enforcement of the FTC Act. He developed the OCC's supervisory guidance on unfair and deceptive practices under the FTC Act, including several advisory letters on various aspects of this issue. He is coauthor, with OCC Chief Counsel Julie L. Williams, of "On the Same Page: Federal Banking Agency Enforcement of the FTC Act to Address Unfair and Deceptive Practices by Banks," 58 *Business Lawyer* 1243 (May 2003), and a Spring 2004 *Business Lawyer* article, also coauthored with Julie L. Williams, entitled "Federal Preemption and Federal Banking Agency Responses to Predatory Lending."

Karen Tucker

National Bank Examiner/Senior Compliance Specialist

Office of the Comptroller of the Currency



Karen Tucker is senior compliance specialist in the Compliance Division in the Office of the Comptroller of the Currency. She has worked in that division since 1995. Ms. Tucker works on policy and procedural issues surrounding the CRA, HMDA, CRA Sunshine, and Section 109 (DPO) rules. She provides guidance to field examiners, bankers, and other interested parties. In addition, she represents the OCC on interagency committees and working groups. Ms. Tucker was a field examiner in the Southeastern and Western districts for 14 years. She joined the OCC in 1981 in Miami, Florida. Ms. Tucker is a former member of the ABA Compliance Advisory Board for the national and graduate compliance schools. She holds a Bachelor of Science degree from the University at Albany and a Master of Business Administration degree from the University of Miami.

Calvin R. Hagins

Senior Advisor

OCC Compliance Division



Calvin R. Hagins became Senior Advisor to the Deputy Comptroller in March 2003. In that position, he serves as an expert on the formulation and implementation of a broad range of policies and procedures relating to the efficient and effective supervision of compliance risk. He also advises OCC executive management and examiners throughout the country on complex compliance supervision issues and provides recommendations on a broad range of compliance supervision, operational and planning matters, and reviews of proposed and final policies, advisory letters, and other issuances. In addition, he represents the deputy comptroller at conferences and in meetings with other federal government agencies and banking organizations.

From March 1999 through March 2003, he served as the assistant deputy comptroller (ADC) – Compliance. In that capacity he provided technical expertise and guidance to the Southeast District’s mid-size and community banks on all aspects of consumer compliance, CRA, fair lending and Bank Secrecy Act/ AntiMoney Laundering activities.

Prior to serving as the ADC - Compliance, he served as an examiner in the Compliance Cadre from 1994 to 1999. During that period, Mr. Hagins was active in developing and instructing in the National Basic Consumer Compliance School, the National Fair Lending School, and the National CRA School.

Mr. Hagins joined the OCC in 1987 and was commissioned a national bank examiner in 1993. He holds a BS in finance from the University of South Florida in Tampa.



Comptroller of the Currency
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The New CRA Perspective for You and Your Bank

A Web and Telephone Seminar

Tuesday, January 24, 2006 at 2:00 p.m. EST

and again on

Wednesday, January 25, 2006 at 12:00 p.m. EST



Today We'll Discuss

- **Changes in the regulation**
- **Changes in exam procedures**
- **Preparing for your exam**
- **Your questions and answers**

The New CRA Rules: 3 Key Changes



- The new small bank definition and the new community development test for “intermediate small banks”
- CRA credit for investments in rural areas for all banks
- CRA credit for investments in designated disaster areas for all banks



Small Bank Definition



- *New definition:* “Small bank” has assets of less than \$1 billion as of December 31 of either of the prior two calendar years. Assets of bank holding company no longer considered
- *New term:* “Intermediate small bank” has assets that were at least \$250 million as of December 31 of *both* of the two prior calendar years, and less than \$1 billion as of December 31 of *at least one* of those two years
- Thresholds to be raised annually based on CPI changes



Illustration of New Small Bank Definitions



First National Bank

Year 1: \$200 million in assets

Year 2: \$250 million in assets

Year 3: \$1 billion in assets

- When did it become an “intermediate small bank”?
- When did it become a large bank?



Community Development Test for Intermediate Small Banks



- *Streamlined lending test* for all small banks
- *Community development test* for intermediate small banks
 - ◆ Number and amount of CD loans
 - ◆ Number and amount of CD investments
 - ◆ Extent of CD services
 - ◆ Responsiveness to local CD needs through CD loans, investments, and services
- How CD test differs from large bank tests



Ratings for Intermediate Small Banks



- Intermediate small banks:
 - ◆ Separate rating for lending test and for community development test
 - ◆ Cannot be rated overall “satisfactory” unless “satisfactory” on both lending and CD tests
 - ◆ “Outstanding” overall rating possible with “outstanding” on one test and “satisfactory” on the other test
- New CRA rules provide more flexible examination and rating standards for small banks



Community Development Definition

– Rural Areas

- Limitations in prior rule acted as disincentive to investments in rural areas
- Expanded definition should lead to more CRA investment opportunities for *banks of all sizes*
- “Distressed” rural area – how defined; standards that apply to “revitalize or stabilize”
 - ◆ Attract or retain residents and businesses?
 - ◆ Part of *bona fide* plan?
 - ◆ Provide long-term benefit to entire community, including LMI?



Community Development Definition

– Rural Areas, cont'd



- “Underserved” rural area – how defined; standards that apply to “revitalize or stabilize”
 - ◆ Finance essential infrastructure needs?
 - ◆ Finance facilities for essential services, such as health care, education, affordable housing?



Community Development Definition – Designated Disaster Areas



- Prior rule did not specifically recognize CD activities in areas affected by disasters
- Expanded definition should help *banks of all sizes* respond to CD needs in these areas
- Standards that apply to “revitalize or stabilize” designated disaster areas
 - ◆ Attract/retain businesses & residents; create jobs; benefit entire community, including LMI
 - ◆ Credit for benefits to people in/evacuees from disaster areas



Revised “Community Development” Definition



- Affordable housing for LMI individuals
- Community services targeted to LMI individuals
- Activities that promote economic development
- Activities that revitalize or stabilize –
 - ◆ LMI areas;
 - ◆ *Designated disaster areas; or*
 - ◆ *Distressed or underserved non-metropolitan middle-income areas designated by the OCC, FDIC, and FRB*



Final Comments on New CRA Rules



- Fourth change to rules clarifies impact on a bank's CRA rating from evidence of lending discrimination or other illegal credit practices by bank or by an affiliate whose loans have been considered
- Status of Q/A guidance on new rules



CRA Examination Types



- Small bank
- Intermediate small bank - *new*
- Large bank
- Limited purpose/wholesale
- Strategic plan



Intermediate Small Bank (ISB)



■ Examination method:

- ◆ Small bank lending test
- ◆ *PLUS* new **community development** test
- ◆ Procedures included with OCC Bulletin
2005-29



Lending Test – What We Review

- Loan-to-deposit ratio since last exam
 - ✓ Are you lending?
- In/out ratio
 - ✓ Are you lending in your assessment area?
- Geographic distribution of loans
 - ✓ Where are you lending?
- Borrower distribution of loans
 - ✓ To whom are you lending?
- Response to complaints
 - ✓ How have you responded to CRA complaints?



Lending Test – How We Review



- Primary loan products
- Sampling
- Access to loan data
- Performance context



Lending Test – Data Changes



- No collection of small business, small farm, or community development loan data
 - ◆ Data collected prior to 9/1/05 NOT reported to agencies
 - ◆ Banks may retain the data collected in 2005 for their own internal purposes
 - ◆ Stop collecting as of 9/1/05



CD Test – What We Review



- Number and amount of community development loans and qualified investments
- The extent to which the bank provides CD services
- The bank's *responsiveness* to CD lending, investments, and services needs through such community development activities



CD Test – How We Review



- Examiners evaluate the bank’s responsiveness to the opportunities for CD lending, qualified investments, and CD services, considering:
 - ◆ The results of any assessment of CD needs and opportunities provided by the bank
 - ◆ Performance context
 - ◆ Whether the amount and combination of CD loans, qualified investments, and CD services, along with their qualitative aspects, are responsive to needs and opportunities in the bank’s assessment area



CD Test – Services



- Provision and availability of services to low- and moderate-income people, including through branches and other facilities in low- and moderate-income areas



CD Test – How We Apply the Criteria



- Flexibility – the “buckets”
- Performance context – bank capacity, business strategy, community development needs and opportunities
- Responsiveness vs. innovativeness and complexity



Evaluating CRA Performance



■ Overall Ratings

◆ Satisfactory

◆ Must be at least satisfactory for BOTH the lending test and the community development test

◆ Outstanding

◆ Must receive an outstanding rating on one test and at least a satisfactory rating on the other test



ISB vs. Large Bank



- Should you opt for evaluation under the lending, investment, and services tests (large bank)?
 - ◆ Collect and submit the required CRA data
 - ◆ Training and comfort level
 - ◆ Internal systems
 - ◆ Size, including growth and acquisition plans
 - ◆ Use of CD lending to improve loan test rating
 - ◆ Adequate investment and services performance



Strategic Plan Option



- Niche banks
- Need OCC approval
- OCC Bulletin 96-11



How To Get Ready



- Consider your institution type
- Consider your exam options
- Determine your data requirements
- Evaluate your data and “the why’s”
- Tell your institution’s story



Hurricane Implications



- Areas affected by hurricanes Katrina and Rita
- People affected by hurricanes Katrina and Rita
- Investment authority under Part 24: Public Welfare Investments



Resources



- FFIEC Web site – www.ffiec.gov
- OCC Web site – www.occ.treas.gov
- CRA regulation and preamble
- Interagency questions and answers
- Examination procedures
- Your primary regulator



Intermediate Small Bank Examination Procedures

Examination Scope

For banks (interstate and intrastate) with more than one assessment area, identify assessment areas for a full scope review. A full scope review is accomplished when examiners complete all of the procedures for an assessment area. For interstate banks, a minimum of one assessment area from each state, and a minimum of one assessment area from each multistate MSA/MD, must be reviewed using the full scope examination procedures.

1. To identify assessment areas for full scope review, review prior CRA performance evaluations, available community contact materials, and reported lending data and demographic data on each assessment area. Consider factors such as:
 - a. The retail lending and community development opportunities in the different assessment areas, particularly areas where the need for credit and community development activities is significant;
 - b. The level of the bank's activity in the different assessment areas, including in low- and moderate-income areas, designated disaster areas, or distressed or underserved non-metropolitan middle-income geographies designated by the Agencies¹ based on (a) rates of poverty, unemployment, and population loss or (b) population size, density, and dispersion;²
 - c. The number of other financial institutions in the different assessment areas and the importance of the bank under examination in serving the different areas, particularly any areas with relatively few other providers of financial services;
 - d. The existence of apparent anomalies in the reported data for any particular assessment area(s);
 - e. The length of time since the assessment area(s) was last examined using a full scope review;
 - f. The bank's prior CRA performance in different assessment areas;
 - g. Examiners' knowledge of the same or similar assessment areas; and

¹ The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

² A list of distressed or underserved non-metropolitan middle-income geographies will be made available on the FFIEC web site at www.ffiec.gov.

- h. Comments from the public regarding the bank's CRA performance.
2. Select one or more assessment areas in each state, and one or more assessment areas in any multi-state MSA, for examination using these procedures. This is required because for interstate banks, a rating must be assigned for each state where the bank has a branch and for each multi-state MSA/MD where the bank has branches in two or more states that comprise that MSA/MD.

Performance Context

1. Review standardized worksheets and other agency information sources to obtain relevant demographic, economic, and loan data, to the extent available, for each assessment area under review.
2. Obtain for review the Consolidated Reports of Condition (Call Reports), Uniform Bank Performance Reports (UBPRs), annual reports, supervisory reports, and prior CRA evaluations of the bank under examination to help understand the bank's ability and capacity, including any limitations imposed by size, financial condition, or statutory, regulatory, economic or other constraints, to respond to safe and sound opportunities in the assessment area(s) for retail loans, and community development loans, qualified investments and community development services.
3. Discuss with the bank, and consider, any information the bank may provide about its local community and economy, including community development needs and opportunities, its business strategy, its lending capacity, or information that otherwise assists in the evaluation of the bank.
4. Review community contact forms prepared by the regulatory agencies to obtain information that assists in the evaluation of the bank. Contact local community, governmental or economic development representatives to update or supplement this information. Refer to the Community Contact Procedures for more detail.
5. Review any comments received by the bank or the agency since the last CRA examination.
6. By reviewing the public evaluations and other financial data, determine whether any similarly situated financial institutions (in terms of size, financial condition, product offerings, and business strategy) serve the same or similar assessment area(s) and would provide relevant and accurate information for evaluating the bank's CRA performance. Consider, for example, whether the information could help identify:

- a. Lending and community development opportunities available in the bank's assessment area(s) that are compatible with the bank's business strategy and consistent with safe and sound banking practices;
 - b. Constraints affecting the opportunities to make safe and sound retail loans, community development loans, qualified investments, and community development services compatible with the bank's business strategy in the assessment area(s); and
 - c. Successful CRA-related product offerings or activities utilized by other lenders serving the same or similar assessment area(s).
7. Document the performance context information, particularly community development needs and opportunities, gathered for use in evaluating the bank's performance.

Assessment Area

1. Review the bank's stated assessment area(s) to ensure that it:
 - a. Consists of one or more MSAs/MDs or contiguous political subdivisions (e.g., counties, cities, or towns);
 - b. Includes the geographies where the bank has its main office, branches, and deposit-taking ATMs, as well as the surrounding geographies in which the bank originated or purchased a substantial portion of its loans;
 - c. Consists only of whole census tracts;
 - d. Consists of separate delineations for areas that extend substantially across MSA/MD or state boundaries unless the assessment area is located in a multistate MSA/MD;
 - e. Does not reflect illegal discrimination; and
 - f. Does not arbitrarily exclude any low- or moderate-income area(s), taking into account the bank's size, branching structure, and financial condition.
2. If a bank's assessment area(s) does not coincide with the boundaries of an MSA/MD or political subdivision(s), assess whether the adjustments to the boundaries were made because the assessment area would otherwise be too large for the bank to reasonably serve, have an unusual configuration, or include significant geographic barriers.

3. If the assessment area(s) fails to comply with the applicable criteria described above, develop, based on discussions with management, a revised assessment area(s) that complies with the criteria. Use this assessment area(s) to evaluate the bank's performance, but do not otherwise consider the revision in determining the bank's rating.

Intermediate Small Bank Lending Test Performance Criteria

Loan-to-Deposit Analysis

1. From data contained in Call Reports or UBPRs, calculate the average loan-to-deposit ratio since the last examination by adding the quarterly loan-to-deposit ratios and dividing by the number of quarters.
2. Evaluate whether the bank's average loan-to-deposit ratio is reasonable in light of information from the performance context including, as applicable, the bank's capacity to lend, the capacity of other similarly situated financial institutions to lend in the assessment area(s), demographic and economic factors present in the assessment area(s), and the lending opportunities available in the bank's assessment area(s).
3. If the loan-to-deposit ratio does not appear reasonable in light of the performance context, consider whether the number and the dollar amount of loans sold to the secondary market compensate for a low loan-to-deposit ratio or supplement the bank's lending performance.
4. Summarize in work papers conclusions regarding the bank's loan-to-deposit ratio.

Comparison of Credit Extended Inside and Outside of the Assessment Area(s)

1. If available, review HMDA data, automated loan reports, and any other reports that may have been generated by the bank to analyze the extent of lending inside and outside of the assessment area(s). If a report generated by the bank is used, test the accuracy of the output.
2. If loan reports or data analyzing lending inside and outside of the assessment area(s) are not available or comprehensive, or if their accuracy cannot be verified, use sampling guidelines to select a sample of loans originated, purchased or committed to calculate the percentage (by number and dollar volume) located within the assessment area(s).
3. If the percentage of loans or other lending related activities in the assessment area is less than a majority, then the bank does not meet the standards for "Satisfactory"

under this performance criterion. In this case, consider information from the performance context, such as information about economic conditions, loan demand, the bank's size, financial condition, branching network, and business strategies when determining the effect of not meeting the standards for satisfactory for this criterion on the overall rating for the bank.

4. Summarize in work papers conclusions regarding the bank's level of lending or other lending related activities inside and outside of its assessment area(s).

Distribution of Credit within the Assessment Area(s)

1. Determine whether the number and income distribution of geographies in the assessment area(s) are sufficient for a meaningful analysis of the geographic distribution of the bank's loans in its assessment area(s).
2. If a geographic distribution analysis of the bank's loans would be meaningful and the necessary geographic information (street address or census tract number) is collected by the bank in the ordinary course of its business, determine the distribution of the bank's loans in its assessment area(s) among low-, moderate-, middle-, and upper-income geographies. Where possible, use the same loan reports, loan data, or sample used to compare credit extended inside and outside the assessment area(s).
3. If a geographic analysis of loans in the assessment area(s) is performed, identify groups of geographies, by income categories, in which there is little or no loan penetration. Note that banks are not expected to lend in every geography.
4. To the extent that information about borrower income (individuals) or revenues (businesses) is collected by the bank in the ordinary course of its business, determine the distribution of loans in the assessment area(s) by borrower income and by business revenues. Where possible, use the same loan reports, loan data, or sample used to compare credit extended inside and outside the assessment area(s).
5. Identify categories of borrowers by income or business revenue for which there is little or no loan penetration.
6. If an analysis of the distribution of loans among geographies of different income levels would not be meaningful (e.g., very few geographies in the assessment area(s)) or an analysis of lending to borrowers of different income or revenues could not be performed (e.g., income data are not collected for certain loans), consider possible proxies to use for analysis of the bank's distribution of credit. Possibilities include analyzing geographic distribution by street address rather than geography (if data are available and the analysis would be meaningful) or analyzing the distribution by loan size as a proxy for income or revenue of the borrower.

7. If there are categories of low penetration, form conclusions about the reasons for that low penetration. Consider available information from the performance context, including:
 - a. Information about the bank's size, branch network, financial condition, supervisory restrictions (if any) and prior CRA record;
 - b. Information from discussions with management, loan officers, and members of the community;
 - c. Information about economic conditions, particularly in the assessment area(s);
 - d. Information about demographic or other characteristics of particular geographies that could affect loan demand, such as the existence of a prison or college; and
 - e. Information about other lenders serving the same or similar assessment area(s).
8. Summarize in work papers conclusions concerning the geographic distribution of loans and the distribution of loans by borrower characteristics in the bank's assessment area(s).

Review of Complaints

1. Review all complaints relating to the bank's CRA performance received by the bank (these should all be contained in the bank's public file) and those that were received by its supervisory agency.
2. If there were any complaints, evaluate the bank's record of taking action, if warranted, in response to written complaints about its CRA performance.
3. If there were any complaints, discuss the preliminary findings in this section with management.
4. If there were any complaints, summarize in work papers conclusions regarding the bank's record of taking action, if warranted, in response to written complaints about its CRA performance. Include the total number of complaints and resolutions with examples that illustrate the nature, responsiveness to, and resolution of, the complaints.
5. Discuss the preliminary findings in the lending test section with management.

INTERMEDIATE SMALL BANK LENDING TEST RATINGS MATRIX

CHARACTERISTIC	OUTSTANDING	SATISFACTORY	NEEDS TO IMPROVE	SUBSTANTIAL NONCOMPLIANCE
Loan-to-deposit ratio	The loan-to-deposit ratio is more than reasonable (considering seasonal variations and taking into account lending-related activities) given the bank's size, financial condition, and assessment area credit needs.	The loan-to-deposit ratio is reasonable (considering seasonal variations and taking into account lending-related activities) given the bank's size, financial condition, and assessment area credit needs.	The loan-to-deposit ratio is less than reasonable (considering seasonal variations and taking into account lending-related activities) given the bank's size, financial condition, and assessment area credit needs.	The loan-to-deposit ratio is unreasonable (considering seasonal variations and taking into account lending-related activities) given the bank's size, financial condition, and assessment area credit needs.
Assessment area(s) concentration	A substantial majority of loans and other lending related activities are in the bank's assessment area(s).	A majority of loans and other lending related activities are in the bank's assessment area(s).	A majority of loans and other lending related activities are outside the bank's assessment area(s).	A substantial majority of loans and other lending related activities are outside the bank's assessment area(s).
Geographic distribution of loans	The geographic distribution of loans reflects excellent dispersion throughout the assessment area(s).	The geographic distribution of loans reflects reasonable dispersion throughout the assessment area(s).	The geographic distribution of loans reflects poor dispersion throughout the assessment area(s).	The geographic distribution of loans reflects very poor dispersion throughout the assessment area(s).
Borrower's profile	The distribution of borrowers reflects, given the demographics of the assessment area(s), excellent penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.	The distribution of borrowers reflects, given the demographics of the assessment area(s), reasonable penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.	The distribution of borrowers reflects, given the demographics of the assessment area(s), poor penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.	The distribution of borrowers reflects, given the demographics of the assessment area(s), very poor penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.
Response to substantiated complaints	The bank has taken noteworthy, creative action in response to substantiated complaints about its performance in meeting assessment area credit needs.	The bank has taken appropriate action in response to substantiated complaints about its performance in meeting assessment area credit needs.	The bank has taken inadequate action in response to substantiated complaints about its performance in meeting assessment area credit needs.	The bank is unresponsive to substantiated complaints about its performance in meeting assessment area credit needs.

Intermediate Small Bank Community Development Test

An bank should appropriately assess the needs in its community, engage in different types of community development activities based on those needs and the bank's capacities, and take reasonable steps to apply its community development resources strategically to meet those needs. The flexibility inherent in the community development test allows intermediate small banks to focus on meeting the substance of community needs through these activities. Examiners will consider the results of any assessment by the bank of community needs along with information from community, government, civic, and other sources to gain a working knowledge of community needs.

1. Identify the number and amount of the bank's community development loans, qualified investments, and community development services. Obtain this information through discussions with management, HMDA data collected by the bank, as applicable; investment portfolios; any other relevant financial records; and materials available to the public. Include, at the bank's option:
 - a. Community development loans, qualified investments, and community development services provided by affiliates, if they are not claimed by any other bank; and
 - b. Community development lending by consortia or third parties.
2. Review community development loans, qualified investments, and community development services to verify that they qualify as community development.
3. If the bank participates in community development lending by consortia or third parties, or claims activities provided by affiliates, review records provided to the bank by the consortia or third parties or affiliates to ensure that the community development loans claimed by the bank do not account for more than the bank's share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.
4. Considering the bank's capacity and constraints and other information obtained through the performance context review, form conclusions about:
 - a. The number and amount of community development loans and qualified investments;
 - b. The extent to which the bank provides community development services, including the provision and availability of services to low- and moderate-income people, including through branches and other facilities in low- and moderate-income areas.
 - c. The responsiveness to the opportunities for community development lending, qualified investments, and community development services, considering:

- 1) The results of any assessment of community development needs and opportunities provided by the bank;
 - 2) The examiner’s review of performance context information from community, government, civic, and other sources; and
 - 3) Whether the amount and combination of community development loans, qualified investments, and community development services, along with their qualitative aspects, are responsive to community needs and opportunities.
5. Summarize conclusions regarding the bank’s community development performance and retain in the work papers.

INTERMEDIATE SMALL BANK COMMUNITY DEVELOPMENT TEST RATING MATRIX

OUTSTANDING	SATISFACTORY	NEEDS TO IMPROVE	SUBSTANTIAL NONCOMPLIANCE
<p>The bank’s community development performance demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank’s capacity and the need and availability of such opportunities for community development in the bank’s assessment area(s).</p>	<p>The bank’s community development performance demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank’s capacity and the need and availability of such opportunities for community development in the bank’s assessment area(s).</p>	<p>The bank’s community development performance demonstrates poor responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank’s capacity and the need and availability of such opportunities for community development in the bank’s assessment area(s).</p>	<p>The bank’s community development performance demonstrates very poor responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank’s capacity and the need and availability of such opportunities for community development in the bank’s assessment area(s).</p>

Overall Intermediate Small Bank CRA Rating

1. Group the analyses of the assessment areas examined by MSA³ and non-MSA areas within each state where the bank has branches. If a bank has branches in two or more states of a multi-state MSA, group the assessment areas that are in that MSA.
2. Summarize conclusions about the bank's performance in each MSA and the non-MSA portion of each state in which an assessment area received a full scope review. If two or more assessment areas in an MSA or in the non-MSA portion of a state received full scope reviews, weigh the different assessment areas considering such factors as:
 - a. The significance of the bank's activities in each compared to the bank's overall activities;
 - b. The retail lending and community development opportunities in each;
 - c. The importance of the bank in providing loans and community development activities to each, particularly in light of the number of other banks and the extent of their activities in each; and
 - d. Demographic and economic conditions in each.
3. For assessment areas in MSAs and non-MSA areas that were not examined using these procedures, consider facts and data related to the bank's lending and community development activities to ensure that performance in those assessment areas is not inconsistent with the conclusions based on the assessment areas which received full scope reviews.
4. For banks operating in only one multi-state MSA or one state, assign one of the four preliminary ratings – "Satisfactory," "Outstanding," "Needs to Improve," or "Substantial Noncompliance" – in accordance with step 6 below. To determine the relative significance of each MSA and non-MSA area to the bank's preliminary rating, consider:
 - a. The significance of the bank's activities in each compared to the bank's overall activities;
 - b. The retail lending and community development opportunities in each;
 - c. The importance of the bank to each, particularly in light of the number of other banks and the extent of their activities in each; and
 - d. Demographic and economic conditions in each.

³ MSA may include MD

5. For other banks, assign one of the four preliminary ratings -- "Satisfactory," "Outstanding," "Needs to Improve," or "Substantial Noncompliance" -- for each state in which the bank has at least one branch and for each multi-state MSA in which the bank has branches in two or more states in accordance with step #6 below. To determine the relative significance of each MSA and the non-MSA area on the bank's preliminary state rating, consider:
 - a. The significance of the bank's activities in each compared to the bank's overall activities;
 - b. The retail lending and community development opportunities in each;
 - c. The importance of the bank in each, particularly in light of the number of other banks and the extent of their activities in each; and
 - d. Demographic and economic conditions in each.
6. Consult the intermediate small bank ratings matrices (lending and community development) and information in work papers to assign a preliminary rating of:
 - a. "Satisfactory" if the bank's performance is rated as "Satisfactory" in each test.
 - b. "Needs to Improve" or "Substantial Noncompliance," depending upon the degree to which the bank's performance has failed to meet the standards for a "Satisfactory" rating on a test; or
 - c. "Outstanding" if the bank is rated an "Outstanding" on both tests; or "Outstanding" on one test and the extent to which the bank meets or exceeds the "Satisfactory" criteria on the other test.
7. For an bank with branches in more than one state or multi-state MSA, assign a preliminary rating to the bank as a whole taking into account the bank's record in different states or multi-state MSAs by considering:
 - a. The significance of the bank's activities in each compared to the bank's overall activities;
 - b. The retail lending and community development opportunities in each;
 - c. The importance of the bank in providing loans to each, particularly in light of the number of other financial institutions and the extent of their activities in each; and
 - d. Demographic and economic conditions in each.

8. Review the results of the most recent compliance examination and determine whether evidence of discriminatory or other illegal credit practices should lower the bank's overall CRA rating or, if applicable, its CRA rating in any state or multi-state MSA. If evidence of discrimination or other illegal credit practices in any geography by the bank, or in any assessment area by any affiliate whose loans were considered as part of the bank's lending performance, was found, consider:
 - a. The nature, extent, and strength of the evidence of the practices;
 - b. The policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices;
 - c. Any corrective action that the bank (or affiliate, as applicable) has taken, or has committed to take, including voluntary corrective action resulting from self-assessment; and
 - d. Any other relevant information.
9. Assign a final rating for the bank as a whole and, if applicable, each state in which the bank has at least one branch and each multi-state MSA in which it has branches in two or more states, considering:
 - a. The bank's preliminary rating; and
 - b. Any evidence of discriminatory or other illegal credit practices.
10. Discuss conclusions with management.
11. Write an evaluation of the bank's performance for the examination report and the public evaluation.
12. Prepare recommendations for a supervisory strategy and for matters that require attention or follow-up activities.

Public File Checklist

1. There is no need to review each branch or each complete public file during every examination. In determining the extent to which the bank's public files should be reviewed, consider the bank's record of compliance with the public file requirements in previous examinations, its branching structure and changes to it since its last examination, complaints about the bank's compliance with the public file requirements, and any other relevant information.

2. In any review of the public file undertaken, determine whether branches display an accurate public notice in their lobbies, a complete public file is available in the bank's main office and at least one branch in each state, and the public file(s) in the main office and in each state contain:
 - a. All written comments from the public relating to the bank's CRA performance and any responses to them for the current and preceding two calendar years (except those that reflect adversely on the good name or reputation of any persons other than the bank);
 - b. The bank's most recent CRA Performance Evaluation;
 - c. A map of each assessment area showing its boundaries and, on the map or in a separate list, the geographies contained within the assessment area;
 - d. A list of the bank's branches, branches opened and closed during the current and each of the prior two calendar years, their street addresses and geographies;
 - e. A list of services (loan and deposit products and transaction fees generally offered, and hours of operation at the bank's branches), including a description of any material differences in the availability or cost of services between those locations;
 - f. The bank's loan-to-deposit ratio for each quarter of the prior calendar year;
 - g. A quarterly report of the bank's efforts to improve its record if it received a less than satisfactory rating during its most recent CRA examination; and
 - h. HMDA Disclosure Statements for the prior two calendar years for the bank and for each non-depository affiliate the bank has elected to include in assessment of its CRA record, if applicable.
3. In any branch review undertaken, determine whether the branch provides the most recent public evaluation and a list of services generally available at its branches and a description of any material differences in the availability or cost of services at the branch (or a list of services available at the branch).

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

■ 1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 946.120, paragraph (a) is revised to read as follows:

§ 946.120 Application.

(a) Whenever shipments for special purposes pursuant to § 946.54 are relieved in whole or in part from regulations issued under § 946.52, each handler desiring to make shipments of potatoes for the following purposes shall submit an application to the committee, prior to initiating such shipments, for a special purpose certificate permitting such shipments:

(1) Charity: Provided, That handlers making shipments for charity of 1,000 pounds or less are exempt from these application requirements;

(2) Prepeeling;

(3) Canning, freezing, and “other processing”;

(4) Grading or storing at any specified location in Morrow or Umatilla Counties in the State of Oregon; and

(5) Experimentation.

* * * * *

■ 3. Section 946.336 is amended by:

- A. Revising paragraph (d)(1)(vi);
■ B. Removing paragraph (d)(1)(vii);
■ C. Redesignating paragraph (d)(1)(viii) as paragraph (d)(1)(vii);
■ D. Revising paragraph (d)(2);
■ E. Revising the introductory text of paragraph (e)(2);
■ F. Revising paragraph (e)(3)(iii);
■ G. Removing paragraph (e)(5);
■ H. Redesignating paragraph (e)(6) as paragraph (e)(5);
■ I. Adding a new paragraph (e)(6), (e)(7), and (e)(8); and
■ J. Revising paragraph (g)(1) to read as follows:

§ 946.336 Handling regulation.

* * * * *

(d) * * *

(1) * * *

(vi) Grading or storing at any specified location in Morrow or Umatilla Counties in the State of Oregon;

* * * * *

(2) Shipments of potatoes for the purposes specified in paragraphs

(d)(1)(i) through (vii) of this section shall be exempt from the inspection requirements specified in paragraph (g) of this section, except that shipments pursuant to paragraph (d)(1)(vi) of this section shall comply with the inspection requirements of paragraph (e)(2) of this section. Shipments specified in paragraphs (d)(1)(i), (ii), (iii), (v) and (vii) of this section shall be exempt from assessment requirements as specified in § 946.248 and established pursuant to § 946.41

(e) * * *

(2) Handlers desiring to ship potatoes for grading or storing to any specified location in Morrow or Umatilla Counties in the State of Oregon shall:

* * * * *

(3) * * *

(iii) Upon request by the committee, furnish reports, or cause reports to be furnished, for each shipment pursuant to the applicable Special Purpose Certificate;

* * * * *

(6) Handlers diverting potatoes to livestock feed are not required to apply for a Special Purpose Certificate nor report such shipments to the committee.

(7) Each handler desiring to make shipments of potatoes for charity shall:

(i) First apply to the committee for, and obtain, a Special Purpose Certificate for the purpose of making shipments for charity: Provided, That shipments for charity of 1,000 pounds or less are exempt from the application and reporting requirements: And provided further, That potatoes previously graded, assessed, and inspected in preparation for shipment to the fresh market are exempt from the application and reporting requirements.

(ii) Each handler shipping potatoes to charity must inform the recipient that the potatoes cannot be resold or otherwise placed in commercial market channels.

(8) Each handler making shipments of seed potatoes shall furnish, at the request of the committee, reports on the total volume of seed potatoes handled.

* * * * *

(g) * * *

(1) Except when relieved by paragraphs (d) or (f) of this section, no person may handle any potatoes unless a Federal-State Inspection Notesheet or certificate covering them has been issued by an authorized representative of the Federal-State Inspection Service and the document is valid at the time of shipment.

* * * * *

Dated: July 27, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–15170 Filed 8–1–05; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 05–11]

RIN 1557–AB98

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1225]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AC89

Community Reinvestment Act Regulations

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

ACTION: Joint final rule.

SUMMARY: The OCC, Board, and FDIC (collectively, “federal banking agencies” or “the agencies”) are issuing this joint final rule that revises certain provisions of our rules implementing the Community Reinvestment Act (CRA). The agencies are taking this action after carefully considering public comments received in response to the joint notice of proposed rulemaking published on March 11, 2005 (the “March proposal”). The joint final rule addresses regulatory burden imposed on small banks with an asset size between \$250 million and \$1 billion by exempting them from CRA loan data collection and reporting obligations. It also exempts such banks from the large bank lending, investment, and service tests, and makes them eligible for evaluation under the small bank lending test and a flexible new community development test. Holding company affiliation is no longer a factor in determining which CRA evaluation standards apply to a bank. In addition, the joint final rule revises the term “community development” to include activities to revitalize and stabilize distressed or underserved rural areas

and designated disaster areas. Finally, it adopts without change the amendments to the regulations to address the impact on a bank's CRA rating of evidence of discrimination or other credit practices that violate an applicable law, rule, or regulation.

EFFECTIVE DATE: This joint final rule is effective September 1, 2005.

FOR FURTHER INFORMATION CONTACT:

OCC: Michael Bylsma, Director, or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874-5750; Karen Tucker, National Bank Examiner, Compliance Division, (202) 874-4428; or Patrick T. Tierney, Senior Attorney, Legislative and Regulatory Activities (202) 874-5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Anjanette M. Kichline, Oversight Senior Review Examiner, (202) 785-6054; Catherine M.J. Gates, Oversight Team Leader, (202) 452-3946; Kathleen C. Ryan, Counsel, (202) 452-3667; or Dan S. Sokolov, Senior Attorney, (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: Richard M. Schwartz, Counsel, Legal Division, (202) 898-7424; Susan van den Toorn, Counsel, Legal Division, (202) 898-8707; or Robert W. Mooney, Chief, CRA and Fair Lending Policy Section, Division of Supervision and Consumer Protection, (202) 898-3911; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

The CRA requires the federal banking and thrift agencies to assess the record of each insured depository institution of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution, and to take that record into account when the agency evaluates an application by the institution for a deposit facility.¹

Rulemaking History

In 1995, when the OCC, the Board, the FDIC, and the Office of Thrift Supervision (OTS) (collectively, "federal banking and thrift agencies" or "the four agencies") adopted major amendments to regulations implementing the Community

Reinvestment Act, they committed to reviewing the amended regulations in 2002 for their effectiveness in placing performance over process, promoting consistency in evaluations, and eliminating unnecessary burden. (60 FR 22156, 22177 (May 4, 1995)). The federal banking and thrift agencies indicated that they would determine whether and, if so, how the regulations should be amended to better evaluate financial institutions' performance under the CRA, consistent with the Act's authority, mandate, and intent.

The four agencies' review was initiated in July 2001 with publication in the **Federal Register** of an advance notice of proposed rulemaking requesting comment on whether the regulations were effective in meeting the stated goals of the 1995 rulemaking and whether any changes should be made to the rules (66 FR 37602 (July 19, 2001)). The approximately 400 comments reflected a consensus that certain fundamental elements of the regulations are sound, but demonstrated a disagreement over the need and reasons for change.

In February 2004, the four agencies published a notice of proposed rulemaking (69 FR 5729 (Feb. 6, 2004)). Among other things, the proposal would have increased the small bank asset size threshold to \$500 million, without regard to holding company affiliation. Commenters were deeply split on this proposal, with financial institutions and their trade associations urging additional burden relief for more institutions and community organizations opposed to allowing any additional financial institutions to be evaluated as "small" institutions. On July 16, 2004, the OCC and the Board announced that they would not proceed with their respective February 2004 proposals. The OCC did not formally withdraw the proposal, but did not adopt it. The Board formally withdrew its proposal.

On August 18, 2004, the OTS published a final rule that expanded the category of "small savings associations" under the OTS' CRA regulations to those with under \$1 billion in assets, regardless of holding company affiliation (69 FR 51155 (Aug. 18, 2004)). Following its publication of a notice of proposed rulemaking in November 2004, the OTS also adopted a final rule that allows a thrift that is evaluated as a large retail institution to determine the weight that will be assigned to lending, investments, and services in its CRA evaluation. (70 FR 10023 (Mar. 2, 2005)).

On August 20, 2004, the FDIC issued a proposal on the CRA evaluation of

banks defined as "small" (69 FR 51611 (Aug. 20, 2004)). The FDIC proposal would have expanded the category of "small banks" to those under \$1 billion, regardless of any holding-company size or affiliation. For small banks with assets between \$250 million and \$1 billion, the FDIC proposal would have added to the five performance criteria of the current streamlined small bank test a new sixth criterion taking into account a bank's record of community development lending, investments, or services, but also asked for comment on whether those community development activities should be evaluated in a separate test. The FDIC received over 11,000 comments in response to its proposal. Banks and their trade associations supported a change in the small bank dollar threshold, primarily as a way to reduce administrative burden, but expressed mixed views on whether community development activities should be evaluated as a sixth criterion in the small bank evaluation or as a separate test. Community organizations almost universally opposed any increase in the small bank threshold. However, these commenters generally supported the proposal to require such banks to be evaluated under a separately rated community development test in addition to the small bank lending test, if the small bank threshold were to be increased.²

The Proposed Rule

The OCC, the Board, and the FDIC jointly issued the proposed amendments to their CRA regulations, which were published in the **Federal Register** on March 11, 2005. The proposal was developed after thorough consideration of all the comments that the agencies had received in response to their previous proposals. The March proposal responded to community banks concerned about regulatory burden by extending eligibility for streamlined lending evaluations and the exemption from data reporting to banks under \$1 billion, without regard to holding company assets. The new proposal also provided an adjustment of this threshold for inflation, based on changes to the Consumer Price Index.

The proposal addressed the concerns of community organizations that had urged the federal banking and thrift agencies to continue to evaluate community development participation by providing that the community

² For a more detailed history of CRA rulemaking activities by the banking agencies since 2001, please refer to the supplementary information published in the **Federal Register** with the joint notice of proposed rulemaking (70 FR 12148, 12149 (Mar. 11, 2005)).

¹ 12 U.S.C. 2903.

development records of banks between \$250 million and \$1 billion, termed "intermediate small banks," would be separately evaluated and rated, but provided a new, more streamlined basis than the current rule for doing so. Under the proposal, an intermediate small bank would not be eligible for an overall rating of "satisfactory" unless it received ratings of "satisfactory" on both the lending and community development tests.

The proposal also responded to suggestions from both community banks and community organizations that the current definition of "community development" was too narrow by proposing to expand the definition of community development activities to include certain activities in underserved rural areas and designated disaster areas. Finally, the proposal provided that evidence of discrimination, or evidence of credit practices that violate an applicable law, rule, or regulation, could adversely affect an agency's evaluation of a bank's CRA performance and included an illustrative list of such practices.

Together, the agencies received over 10,000 public comments, including identical comments sent to each agency, from consumer and community organizations, banks and bank trade associations, academics, Federal and State Government representatives, and individuals. In general, commenters recognized that the proposal had the potential to strike an appropriate balance between the need to provide meaningful regulatory relief to small banks and the need to preserve and encourage meaningful community development activities by those banks.

The Final Rule

Increase in Size Threshold for Small Banks From \$250 Million to \$1 Billion *Comments on Proposed Rule*

The agencies proposed to reduce undue regulatory burden by extending eligibility for streamlined lending evaluations and the exemption from data reporting to banks under \$1 billion without regard to holding company affiliation. In addition, the agencies proposed to define small banks with assets between \$250 million and \$1 billion as "intermediate small banks." The proposal also would annually adjust the asset size for small and intermediate small banks based on changes to the Consumer Price Index.

Most community organizations opposed the proposal to raise the small bank threshold to \$1 billion while most banks supported the increase. Community organizations expressed a

concern that an increase in the threshold would cause banks to reduce their investments and services in low- and moderate-income areas. Although they preferred that the agencies not increase the threshold, a number of community organization commenters noted that the proposed evaluation of intermediate small banks under a community development test and the streamlined lending test was a notable improvement over the previous proposals to raise the small bank threshold.

Community organizations also expressed concern that an increase in the small bank threshold would reduce public data on small business, small farm, and community development loans. Community organizations objected to this result on the basis that communities would lack the means to evaluate the small business and small farm lending of intermediate small banks. A few community organizations offered specific examples of how they or others have used information about such lending, including, for example, a series of studies examining impediments to capital formation by business owners in low- and moderate-income areas. Some community organizations asserted that intermediate small banks make more small business, small farm and community development loans, as a percentage of bank assets, than larger banks. Thus, they believe that the loss of the intermediate small bank lending data will significantly affect the relevance of the remaining data, particularly in markets that include numbers of intermediate small banks. Some commenters also noted that the proposal would affect the Home Mortgage Disclosure Act (HMDA) requirements to report certain loans outside of a Metropolitan Statistical Area (MSA) for intermediate small banks.

The vast majority of bank and bank trade association commenters noted that increasing the small bank threshold would provide substantial and needed regulatory burden reduction because intermediate small banks would be relieved of the obligation to collect and report information about small business, small farm, and community development loans. They also noted that, given the inclusion of the community development test for intermediate small banks, elimination of the data collection and reporting requirements was the principal regulatory relief component of the proposed amendments. However, a few banks stated that this relief would not be realized fully if banks continue to collect information about community

development loans, investments, and services, and provide it to examiners for use in evaluating the bank's performance under the proposed community development test.

A number of banks and their trade associations commented that the small bank size threshold should be raised to \$1 billion without creating a tier of intermediate small banks that would be subject to the proposed community development test. A few bank commenters suggested defining an intermediate small bank subject to the new community development test as a bank with assets between \$500 million and \$1 billion, and to permit institutions with less than \$500 million in assets to be evaluated solely under the streamlined small bank lending test.

Some community organization commenters criticized the proposal to adjust the asset threshold annually for small and intermediate small banks based on changes to the Consumer Price Index (CPI) because it could increase the number of banks that are exempt from the large bank evaluation standards and further decrease the availability of small business, small farm, and community development loan data. Most banks that commented on the issue supported tying the small and intermediate small bank thresholds to changes in the CPI.

Provisions of Final Rule

The joint final rule retains the proposed asset size threshold for small banks of less than \$1 billion and the annual adjustment to the threshold based on changes to the Consumer Price Index. The text of the "small bank" definition describing the "intermediate small bank" category has been revised for clarity. The federal banking agencies believe that raising the asset size threshold provides important regulatory relief for community banks. As discussed below, the final rule also will preserve and encourage meaningful CRA activities by intermediate small banks by means of a new community development test.

As a result of the rule change, data on the distribution of small business loans and small farm loans extended by intermediate small banks will no longer be publicly available. In revising the rule, the agencies have considered the adequacy of substitute sources of information. Call Report data, although lacking the loan-location and business-size information in the CRA data, provide the public with annual outstanding amounts of small business and small farm loans. Moreover, an intermediate small bank's CRA performance evaluation includes, as appropriate, a description of its small

business and small farm lending performance, as well as a description of any community development loans the bank has made. These sources will give the public information on intermediate small banks' records of extending small business, small farm, and community development loans. On balance, the agencies believe the costs of the mandatory data collection and reporting by intermediate small banks, including the fixed costs that weigh more heavily on smaller banks, outweigh the benefits.

Further, under the CRA and HMDA regulations, large banks generally must collect and report information about the location of property securing home loans located outside of MSAs and metropolitan divisions in which the institution has a home or branch office, or outside any MSA (12 CFR 203.4(e)). But for small banks, collecting and reporting this location information is optional. Thus, under this joint final rule, intermediate small banks will no longer be required to collect and report information on the location of mortgage loans outside MSAs and metropolitan divisions in which the banks have home or branch offices.

Summary information about where such mortgage loans were made, and detailed information about the applicants or borrowers, will nevertheless continue to be available. Mortgage loan location information is summarized in the CRA performance evaluation as part of the evaluation of the geographic distribution of a bank's loans, as appropriate. Moreover, some newly designated intermediate small banks may opt to report loan location information as some small banks have done in the past. Furthermore, intermediate small banks covered by HMDA will continue to report borrower or applicant race, ethnicity, gender, and income even when property location need not be reported. The agencies believe that the additional value of requiring intermediate small banks to report loan location information on all of their mortgage loans does not justify the cost of reporting such information.³ Although an intermediate small bank will no longer be required to collect and report data on small business or small farm loans or on the location of certain nonmetropolitan mortgage loans, the agencies will continue to evaluate such lending under the streamlined lending test if it constitutes a major product line of the bank.

³ Even were the proposal not adopted, intermediate small banks would continue to be exempt from reporting loan location information on mortgage loans made in counties with populations of less than 30,000.

Community Development Test for Intermediate Small Banks

Comments on Proposed Rule

The March proposal would have added a new community development test that would be separately rated in CRA examinations for intermediate small banks. The new community development test would evaluate an intermediate small bank's community development loans, qualified investments, and community development services, resulting in a single rating for community development performance. Overall CRA ratings for intermediate small banks would be based on ratings for this community development test and the streamlined small bank lending test.

Most community organization commenters generally favored the retention of the large bank lending, investment, and service tests for evaluation of all banks with assets of \$250 million or more. On the other hand, many of these commenters noted that the proposed intermediate small bank examination standards—the streamlined small bank lending test plus the proposed community development test—were significantly preferable to permitting additional banks to be evaluated under only the streamlined small bank lending test. In this regard, community organizations strongly supported the provision in the proposed rule to require an intermediate small bank to receive a “satisfactory” rating on both the community development and the small bank lending tests in order to receive an overall “satisfactory” rating.

Many bank commenters opposed the creation of separate new standards for intermediate small banks. For example, many community bankers commented that all banks under \$1 billion should be examined solely under the streamlined lending test. Some bank and bank trade associations urged the agencies to adopt final rules that assign greater weight to retail lending than to community development in the overall evaluation of an intermediate small bank's CRA performance. A few commenters stated that, under the proposal, community development would receive greater weight in an intermediate small bank's overall rating than it does under the large bank lending, investment, and service tests that currently apply to such banks. They urged the agencies to clarify that intermediate small banks, at their option, could continue to choose to be evaluated under the large bank lending, investment, and service tests.

Regarding the activities evaluated under the proposed community

development test, most community organizations stated that an institution should be required to engage in all three activities—community development loans, qualified investments, and community development services—in order to earn a “satisfactory” rating on the community development test. Although community organizations believed that an institution's rating on the community development test should take account of bank capacity and community opportunities for community development, they asserted that the primary consideration should be the institution's responsiveness to community needs. Moreover, many community organizations requested that the community development test also evaluate an intermediate small bank's provision of community development services through branches located in low- and moderate-income areas.

Many banks and bank trade associations commented favorably on the flexibility that the community development test offered. Some large banks requested that the proposed community development test be made available to banks with assets of \$1 billion or more as a substitute for the existing investment and service tests.

Provisions of Final Rule

The final rule adopts the proposed community development test for intermediate small banks without change. The number and amount of community development loans, the number and amount of qualified investments, and the provision of community development services, by an intermediate small bank, and the bank's responsiveness through such activities to community development lending, investment, and services needs, will be evaluated in the context of the bank's capacities, business strategy, the needs of the relevant community, and the number and types of opportunities for community development activities. The agencies believe that, given these performance context factors, the community development test will provide a better framework for assessing community development performance by intermediate small banks than the separate lending, investment, and service tests. As noted in the preamble to the proposed rule, the community development test will be applied flexibly to permit a bank to apply its resources strategically to the types of community development activities (loans, investments, and services) that are most responsive to helping to meet community needs, even when those activities are not necessarily innovative, complex, or new. (“Innovativeness” and

“complexity,” factors examiners consider when evaluating a large bank under the lending, investment, and service tests, are not factors in the intermediate small banks’ community development test.) The agencies will incorporate these considerations as appropriate into examination guidance and procedures to ensure flexible application of the standards.

In providing this flexibility for intermediate small banks, the federal banking agencies do not intend to suggest that a bank may simply ignore one or more categories of community development or arbitrarily decrease the level of such activities. Nor does the joint final rule prescribe any required threshold level or allocation of community development loans, qualified investments, and community development services for these banks. Instead, the OCC, the FDIC, and the Board expect that a bank will appropriately assess the needs in its community, engage in different types of community development activities based on those needs and the bank’s capacities, and that it will take reasonable steps to apply its community development resources strategically to meet those needs.⁴ As the agencies indicated on adoption of the 1995 regulation, the agencies will expect a bank to make an assessment using information normally used to develop a business plan or identify potential markets and customers.⁵ Examiners will consider the bank’s assessment of community needs along with information from community, government, civic, and other sources to gain a working knowledge of community needs.⁶ The flexibility inherent in the community development test will allow intermediate small banks to focus on meeting the substance of community needs through these means, without undue regulatory consequences from the form of the response.

Under the joint final rule, retail banking services provided by intermediate small banks will no longer be evaluated in a separate service test. Instead, the extent to which such banks provide community development services to low- and moderate-income people will be taken into account in the

community development test. Thus, the federal banking agencies will consider not only the types of services provided to benefit low- and moderate-income people, 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 people, including through branches and other facilities located in low- and moderate-income areas.

The federal banking agencies believe that providing flexibility to intermediate small banks in how they apply their community development resources to respond to community needs through the strategic use of loans, investments, and services will reduce burden on these banks while making the evaluation of their community development records more effective.⁷

The agencies are making a non-substantive change to the proposed criteria for a “satisfactory” rating on the community development test (in Appendix A, Ratings, paragraph (d)(2)(i)) to conform those criteria to the other ratings criteria. Under the proposal, a “satisfactory” rating would have required an intermediate small bank to demonstrate “adequate responsiveness to the community development needs of its assessment area(s) or a broader statewide or regional area that includes the bank’s assessment area(s) through community development loans, qualified investments, and community development services.” In the final rule, the agencies deleted the phrase “or a broader statewide or regional area that includes the bank’s assessment area(s)” from the criteria for a “satisfactory” rating on the community development test in order to conform the manner in which the term “assessment area” is used in other parts of Appendix A. Examiners will, however, continue to evaluate a bank’s community development activities in the broader statewide or regional area that includes its assessment area(s) according to existing interagency guidance.⁸

The agencies are not revising the provision in the existing regulations that permits any small bank, including an intermediate small bank, to choose to be

evaluated under the large bank lending, investment, and service tests at its option. Any small bank that opts to be evaluated under the lending, investment, and service tests will be required to collect and report small business, small farm, and community development loan data.⁹

Community Development Definition

Comments on Proposed Rule

The regulations’ present definition of “community development” covers four categories of activity. Three categories (affordable housing, community services, and economic development) are defined in terms of the activity’s targeting of specific persons (low- or moderate-income people in the first two categories, small farms or businesses in the third). A fourth category (revitalization or stabilization activities) is defined in terms of the activity’s targeting of specific areas, namely, low- or moderate-income census tracts.

The OCC, the FDIC, and the Board proposed to amend two of the categories—activities that revitalize or stabilize an area, and affordable housing. Under one proposed amendment, a bank’s support for activities that revitalize or stabilize an area would receive consideration not only in low- or moderate-income census tracts (referred to as “geographies” in the regulations), but also in “underserved rural areas.”¹⁰ The proposal would thus expand the number and kinds of rural areas in which bank activities that revitalize or stabilize communities are eligible for community development consideration (referred to herein as “eligible rural tracts”). The proposal responded to the scarcity of eligible rural tracts, which appeared to limit the effectiveness of the regulations in encouraging rural community development.¹¹ The proposed amendment would also give consideration to bank activities that

⁴ As discussed in the supplementary information published with the proposed rule, the agencies anticipate that examiners will exercise their discretion, using performance context, to assign appropriate weight in a bank’s current period rating to prior-period outstanding investments that reflect a substantial financial commitment or outlay by the bank designed to have a multi-year impact, in addition to investments made during the current examination cycle.

⁵ 60 FR 22156, 22163 (May 4, 1995).

⁶ *Id.*

⁷ A few commenters requested that the community development test be available to banks with assets of more than \$1 billion, for the sake of increasing flexibility for those banks, too. The agencies have not made this change. However, a large bank seeking more flexibility than it finds in the present three-part test can consider a strategic plan. See 12 CFR 25.27, 228.27, & 345.27.

⁸ See Interagency Questions and Answers Regarding Community Reinvestment (“Q&A”), 66 FR 36620 *et seq.* (July 12, 2001) (Q&A __.12(i)-5 and -6).

⁹ See 12 CFR 25.21(a)(3), 228.21(a)(3), & 345.21(a)(3).

¹⁰ Staff interpretations of activities that “revitalize or stabilize” an area can be found in Q&A __.12(h)(4)-1 and .12(i)-4.

¹¹ The scarcity is both absolute and relative. Only 15 percent of nonmetropolitan tracts are now classified as “low- or moderate-income,” and 59 percent of nonmetropolitan counties lack a single low- or moderate-income tract. In comparison, 31 percent of metropolitan tracts are classified as “low- or moderate-income” and only 18 percent of metropolitan counties lack a single low- or moderate-income tract. See Robert B. Avery, Glenn B. Canner, *et al.*, “Community Banks and Rural Development: Research Relating to Proposals to Revise the Regulations That Implement the Community Reinvestment Act,” Federal Reserve Bulletin, Spring 2005, Table 14, pp. 224–225.

revitalize or stabilize designated disaster areas.

The agencies sought comment on three general alternatives for increasing the number and kinds of rural tracts in which bank activities are eligible for community development consideration. The first alternative was to expand the definition of “low- or moderate-income” tracts in rural areas. Two specific options were raised: increasing the threshold for a low- or moderate-income tract from a median income of 80 percent of the state nonmetropolitan median income to 90 percent, or changing the baseline against which a nonmetropolitan tract’s median income is compared to the median income of the entire state (not just its nonmetropolitan parts). The second alternative was to retain the present definition of a tract’s income status, but identify a set of rural tracts that, while not low- or moderate-income, were nonetheless shown by other relevant indicators to be “underserved” or otherwise in need of bank support to revitalize or stabilize. Specific indicators on which the agencies sought comment were rates of poverty, unemployment, and population loss used as “distress” indicators by the Community Development Financial Institutions (CDFI) Fund, United States Department of the Treasury. The third alternative was to consider as eligible any rural area that had been designated by a Federal, State, tribal, or local government as in need of revitalization or stabilization.

Under another proposed amendment, bank support for affordable housing would receive consideration in “underserved rural areas” or designated disaster areas even if the housing benefited individuals not defined as “low- or moderate-income.”¹² The agencies indicated that the proposal’s premise was that *affordable* housing—in addition to other activities that revitalize and stabilize underserved rural areas—may meet a critical need of individuals in certain underserved rural areas, even if those individuals may not meet the technical requirements of the definition of “low- or moderate-income” in the regulation.

Banks and community organizations alike generally supported expanding the definition of “community development” to make bank activities eligible for community development consideration in a larger number of rural areas. Banks argued that having few or no eligible tracts in their assessment areas meant they felt pressure to make community

development investments outside of their assessment areas merely for the sake of their CRA evaluations.

Bank commenters suggested that “rural” be defined using existing government definitions. Some commenters suggested using the Office of Management and Budget’s concept of nonmetropolitan areas (areas outside Metropolitan Statistical Areas, or MSAs), though a few requested flexibility to treat certain parts of MSAs as rural, too. Others suggested the Census Bureau’s definition of “rural.” Some suggested using several criteria, including population density.

Banks asked that any rule distinguishing “underserved” rural areas be simple. Some expressed concern that using the CDFI Fund distress criteria would be complicated and cause uncertainty, but some indicated the criteria were appropriate. Many banks suggested that an area be eligible regardless of its income if targeted by a government agency for redevelopment. Community banks expressed a strong preference that a bank’s support for meeting community needs such as education, infrastructure, and healthcare be considered as “community development” in rural communities of all kinds, not just “underserved” or low- or moderate-income communities.

Community organizations disagreed that all rural areas should be eligible, but agreed that more rural areas should be eligible than are now. Many requested that the agencies consider both expanding the standard for classifying rural tracts as “low- or moderate-income” and adopting criteria such as the distress criteria of the CDFI Fund to identify additional eligible tracts.¹³ At the same time, community organizations generally sought to keep the proportion of eligible rural tracts in rough parity with the proportion of eligible urban tracts.

Like bank commenters, community organizations offered a variety of suggestions for defining “rural.” For example, some suggested including any area with a population of less than 10,000, while others suggested using several criteria, including population, household income, the area’s economic base, and distance from a metropolitan

area. Some cautioned against treating exurbs of large MSAs as “rural.”

As noted above, banks and community organizations alike generally supported expanding the “community development” definition to include activities that benefit underserved rural areas. Few comments distinguished between the proposal to amend the “revitalize or stabilize” category and the proposal to amend the “affordable housing” category but, among those that did comment specifically on a category, more commented specifically in favor of expanding the “revitalize or stabilize” category.

Banks favored revising the definition of “community development” to include activities in a designated disaster area. They noted that such areas are easily identified and have special redevelopment needs. Some, but not all, community organizations opposed the revision. Organizations that opposed, and those that did not oppose, the revision shared the view that the regulation should not give consideration to bank responses to disasters that do not meet the needs of affected low- or moderate-income people.

Provisions of Final Rule

The agencies are revising the definition of “community development” to increase the number and kinds of rural tracts in which bank activities are eligible for community development consideration. In doing so, the agencies are revising the “revitalize or stabilize” category of the definition of “community development” to provide that activities that revitalize or stabilize areas designated by the agencies as “distressed or underserved nonmetropolitan middle-income geographies” will qualify as community development activities.

The final rule uses the term “nonmetropolitan,” which means an area outside of an MSA, to refer to rural areas. The final rule also describes qualifying rural geographies as “distressed or underserved,” while the proposal used only the term “underserved.” The agencies believe that the phrase “distressed or underserved” better describes the eligible geographies that will be designated using the factors discussed more fully below.

Eligible rural tracts will continue to include tracts currently defined as “low-income” or as “moderate-income,” and the agencies have not revised the definitions of those terms. Eligible rural tracts will also include middle-income, nonmetropolitan tracts designated by the agencies as distressed or

¹² Staff interpretations of “affordable housing” can be found in Q&A __.12(h)(1)–1.

¹³ On the whole, community organizations did not express a strong preference between raising the threshold income for a moderate-income tract to 90% of nonmetropolitan state median income and changing the baseline against which a tract’s income is measured to the state median income. They generally opposed, however, a threshold of 100% of nonmetropolitan state median income. Some organizations that favored using the CDFI Fund distress criteria suggested that additional criteria also be considered.

underserved based on either or both of two sets of criteria: criteria indicating a community is in distress (rates of poverty, unemployment, and population loss), and criteria indicating a community may have difficulty meeting essential community needs (population size, density, and dispersion).

The agencies believe that using these criteria to identify eligible areas has advantages over simply expanding the definition of “low- or moderate-income” tracts for rural areas. The distress criteria permit a more careful targeting of the middle-income tracts that are most in need of revitalization or stabilization. Simply changing the definition of “moderate-income” to include some presently middle-income tracts would (a) fail to cover many rural middle-income tracts in distress and (b) cover many tracts not necessarily in distress, or in less distress than other rural tracts that would not be covered. In addition, some rural communities, albeit middle-income and not necessarily in distress, have such small and thinly distributed populations that they have difficulty financing the fixed costs of essential community needs such as essential infrastructure and community facilities; moreover, residents may have to travel long distances to reach certain facilities, such as hospitals. The challenges facing such communities are reflected in several comments suggesting the agencies use factors such as population size, density, and distance from a population center to identify eligible areas. Simply changing the definition of “moderate-income” to include some presently middle-income tracts would not effectively identify those communities either. Finally, changing the definition of “low- or moderate-income tract” for one purpose (evaluating community development activities) but not for other purposes (evaluating retail lending and service activities) could create confusion and the appearance of inconsistency.

To facilitate planning, the agencies will publish a list of eligible rural tracts that are distressed or underserved on the Web site of the Federal Financial Institutions Examination Council.¹⁴ Year-to-year changes in the tracts designated based on the distress criteria are expected to be minimal; to account for such changes the agencies will specify a uniform lag period—of at least one year—for removal from the list of any tract designated based on those criteria. The lag will help promote investments that take an extended period to arrange. A qualifying loan, investment, or service in the area will

count so long as the bank made, or entered into a binding commitment to make, the loan or investment or provided, or entered into a binding commitment to provide, the service while the area was designated or during the lag period.

The “distressed or underserved” designations will be based on objective criteria. A middle-income, nonmetropolitan tract will be designated if it is in a county that meets one or more of the following triggers that the CDFI Fund employs as “distress criteria”: (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 5 percent or more over the five-year period preceding the most recent census.¹⁵ Activities qualify for “revitalize or stabilize” community development consideration in these tracts, like in low- or moderate-income tracts, based on the regulation and applicable interagency guidance.

A middle-income, nonmetropolitan tract will also be designated 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 the designations the “urban influence codes” maintained by the Economic Research Service of the United States Department of Agriculture.¹⁶ In areas so designated, bank financing for construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, or

¹⁵ 12 CFR 1805.201(b)(3). The CDFI Fund uses other criteria, as well, including an income trigger different from the definition of “low- or moderate-income” under the CRA regulations. The other criteria, however, will not be used in the CRA regulation’s definition of “community development.”

¹⁶ The codes can be found at <http://www.ers.usda.gov/Briefing/Rurality/urbaninf/>. The agencies are considering designating middle-income tracts in the counties coded “7,” “10,” “11,” or “12.” The counties coded “11” or “12” have population densities under five people per square mile, are not adjacent to either a metropolitan or micropolitan area, and do not have a town with a population greater than 10,000. The counties coded “7” or “10” have population densities between five and seven people per square mile and do not have a town with a population greater than 2,500, though they border a micropolitan or small metropolitan area. These counties are concentrated in the Great Plains, but appear elsewhere, too. A map at the Web site shows where these counties are located.

affordable housing generally will be considered to meet essential community needs, so long as the infrastructure or facility serves low- and moderate-income individuals. Other bank activities in such areas generally will not qualify for revitalization or stabilization consideration, unless the area meets the distress criteria. In these cases, the agencies will continue to decide on a case-by-case basis whether a particular activity qualifies for such consideration based on the regulation and applicable interagency guidance.

The agencies are also revising the definition of “community development” to make bank activities to revitalize or stabilize designated disaster areas eligible for CRA consideration. Disaster areas may be designated by Federal or State Governments. Such designations include, for example, Major Disaster Declarations administered by the Federal Emergency Management Agency. A designation will expire for purposes of CRA when it expires according to the applicable law under which it was declared. As the agencies indicated with the proposal, examiners will give significant weight to the extent to which a bank’s revitalization activities in a disaster area benefit low- or moderate-income individuals.

The final rule does not incorporate the specific proposal to amend the “affordable housing” category of the community development definition. The proposal would have included affordable housing that benefits individuals who reside in underserved rural areas or designated disaster areas, even if the individuals are not technically “low- or moderate-income.” The agencies believe it is appropriate to maintain the focus of the separate “affordable housing” category on characteristics of the residents of the housing, and not to expand this category to consider characteristics of the residents’ communities without regard to the residents’ income-level characteristics.¹⁷ Thus, under the regulation, a bank activity that has a primary purpose of providing housing affordable to low- or moderate-income individuals continues to qualify as “community development” regardless of the location of the housing.¹⁸ In

¹⁷ In contrast to the lack of census tracts in rural areas that meet the regulation’s definition of “low- or moderate-income” geography, there is not a comparable lack of individuals residing in rural areas who meet the regulation’s definition of “low- or moderate-income” individuals. Under the regulation’s definition of a “low- or moderate-income” individuals, the average nonmetropolitan middle-income tract has a low- and moderate-income population of 38 percent.

¹⁸ For guidance on application of the “primary purpose” standard, see Q&A __12(i)-7.

¹⁴ The Web site address is: <http://www.ffiec.gov>.

addition, such an activity may receive additional weight in the evaluation if the examiner determines that the activity helps to revitalize or stabilize a low- or moderate-income census tract, a distressed or underserved rural area, or a designated disaster area. However, as described previously, a bank activity that provides affordable housing, but not necessarily for low- or moderate-income individuals, may qualify as an activity that revitalizes or stabilizes an eligible nonmetropolitan area. For example, a bank activity that provides housing for middle- or upper-income individuals in an eligible rural area qualifies as "community development" when part of a *bona fide* plan to revitalize or stabilize the community by attracting a major new employer that will offer significant long-term employment opportunities to low- and moderate-income members of the community.

Effect of Certain Credit Practices on CRA Evaluations

Comments on Proposed Rule

The OCC, the FDIC, and the Board proposed to revise the regulations to address the impact on a bank's CRA rating of evidence of discrimination or other illegal credit practices. The agencies proposed that evidence of discrimination, or evidence of credit practices that violate an applicable law, rule, or regulation, would adversely affect an agency's evaluation of a bank's CRA performance. The agencies also proposed to revise the regulations to include an illustrative list of such practices. This list includes evidence of discrimination against applicants on a prohibited basis in violation of, for example, the Equal Credit Opportunity (15 U.S.C. 1691 *et seq.*) or Fair Housing Acts (42 U.S.C. 3601 *et seq.*); evidence of illegal referral practices in violation of section 8 of the Real Estate Settlement Procedures Act (12 U.S.C. 2607); evidence of violations of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) concerning a consumer's right to rescind a credit transaction secured by a principal residence; evidence of violations of the Home Ownership and Equity Protection Act (15 U.S.C. 1639); and evidence of unfair or deceptive credit practices in violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)).¹⁹

Further, the March proposal clarified that a bank's evaluation could be

¹⁹ Evidence of credit practices that violate other laws, rules or regulations, including a federal banking agency regulation or a State law, if applicable, also may adversely affect a bank's CRA evaluation.

adversely affected by such practices regardless of whether the practices involve loans in the bank's assessment area(s) or in any other location or geography. In addition, as proposed, a bank's CRA evaluation also could be adversely affected by evidence of such practices by any affiliate in connection with loans in the bank's assessment area(s), if any loans of that affiliate have been considered in the bank's CRA evaluation.

Most community organizations strongly supported the proposal. Many of these commenters recommended that the provision should be expanded to include evidence of discriminatory or other illegal credit practices by any affiliate of a bank, whether or not such affiliate's loans were included in the bank's CRA evaluation. Some bank and bank trade association commenters opposed the standard as unnecessary because other legal remedies are available to address discriminatory or other illegal credit practices. Many of these commenters also opposed extending the "illegal credit practices" standard to loans by an affiliate that are considered in a bank's lending performance. Furthermore, a few large banks were concerned that their CRA performance will be adversely affected by "technical" violations of law.

Provisions of Final Rule

The joint final rule adopts without change the proposed amendments to the agencies' regulations that address the impact on a bank's CRA rating of evidence of discrimination or other illegal credit practices. The final rule states that evidence of discrimination, or evidence of credit practices that violate an applicable law, rule, or regulation, adversely affects an agency's evaluation of a bank's CRA performance. The rule includes an illustrative, but not comprehensive, list of such practices. It also provides that a bank's evaluation is adversely affected by such practices by the bank regardless of whether the practices involve loans in the bank's assessment area(s) or in any other location or geography. The rule also provides that a bank's CRA evaluation is also adversely affected by evidence of discrimination or other illegal credit practices by any affiliate in connection with loans inside the bank's assessment area(s), if any loans of that affiliate have been considered in the bank's CRA evaluation. The adverse effect on the bank's CRA rating of illegal credit practices by an affiliate is limited to affiliate loans within the bank's assessment area(s) because, under the regulations, a bank may not elect to include as part of its CRA evaluation

affiliate loans outside the bank's assessment area(s).

The agencies believe that providing in the CRA regulations examples of violations that give rise to adverse CRA consequences, rather than having such examples solely in interagency guidance on the regulations,²⁰ will improve the usefulness of the regulations and provide critical information in primary compliance source material. Further, because affiliate loans may be included by a bank in its lending evaluation for favorable consideration, evidence of discrimination or other illegal credit practices in an affiliate's loans in an assessment area of the bank can adversely affect the bank's CRA rating, if loans by that affiliate have been considered in the bank's CRA evaluation. The agencies believe that the same CRA standards generally should apply to loans included in the bank's CRA lending record that are made by an affiliate in the bank's assessment area and those that are made by the bank in any geography.

Interagency Guidance

The agencies intend to issue interagency CRA guidance for comment in the near future. The guidance will address new provisions adopted in this joint final rule and related issues (for example, the appropriate lag period for removal of a census tract from the list of designated distressed or underserved nonmetropolitan middle-income geographies). The guidance will also conform existing interagency questions and answers to the regulatory revisions, where needed.

Effective Date

The joint final rule becomes effective September 1, 2005. The agencies will issue interim interagency examination procedures for the community development test applicable to intermediate small banks in advance of the effective date of the regulation.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), Pub. L. 103-325, authorizes a banking agency to issue a rule that contains additional reporting, disclosure, or other requirements to be effective before the first day of the calendar quarter that begins on or after the date on which the regulations are published in final form if the agency finds good cause for an earlier effective date. 12 U.S.C. 4802(b)(1). This joint final rule takes effect September 1, 2005. As discussed earlier in this "Supplementary Information," the changes adopted by

²⁰ See Q&A_28(c)-1.

this joint final rule reduce regulatory burden by extending eligibility for streamlined lending evaluations and the exemption from data reporting to banks under \$1 billion without regard to holding company affiliation. Because this joint final rule eliminates data collection and reporting burden for banks with assets between \$250 million and \$1 billion, and banks with assets below \$250 million that are affiliated with a holding company with bank and thrift assets of \$1 billion or above, and will provide greater flexibility in the CRA evaluations of such institutions, the agencies find good cause for the September 1, 2005, effective date.

Regulatory Flexibility Act

OCC and FDIC: Under section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. The OCC and the FDIC have reviewed the impact of this joint final rule on small banks and certify that the joint final rule will not have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) has defined "small entities" for banking purposes as a bank or savings institution with less than \$150 million in assets. See 13 CFR 121.201. This joint final rule primarily affects banks with assets of at least \$250 million and under \$1 billion. The amendments decrease the regulatory burden for banks within that asset range by relieving them of certain reporting and recordkeeping requirements applicable to larger institutions.

The elimination of the \$1 billion holding company threshold as a factor in determining whether banks will be subject to the streamlined CRA examination or the more in-depth CRA examination applicable to larger institutions will affect a limited number of small banks, which are affiliated with holding companies with assets over \$1 billion. The FDIC estimates that only 110 of approximately 5,300 FDIC-regulated banks had assets of under \$150 million and were affiliated with a holding company with over \$1 billion in assets. The OCC estimates that only 36 of approximately 2,000 OCC-regulated banks met these criteria. Because so few small banks will be affected by the revisions to Parts 25 and 345, a regulatory flexibility analysis is not required. Furthermore, the OCC and the

FDIC did not receive any comments regarding the March proposal's economic impact on small banks with assets of under \$150 million.

Board: The Board has prepared a final regulatory flexibility analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

1. *Statement of the need for and objectives of the final rule.* As described in the **SUPPLEMENTARY INFORMATION** section, the Board, together with the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, seeks to improve the effectiveness of the CRA regulations in placing performance over process, promoting consistency in evaluations, and eliminating unnecessary burden. The final rule is intended to reduce unnecessary burden while maintaining or improving CRA's effectiveness in evaluating performance.

2. *Summary of issues raised by comments in response to the initial regulatory flexibility analysis.* The Board received several comments on matters raised in its initial regulatory flexibility analysis. As described more fully in the **SUPPLEMENTARY INFORMATION** section, a number of commenters supported expansion of the number and kinds of rural census tracts eligible for community development consideration. Several banks expressed concern that definitions of eligible rural census tracts would impose burden on them to document an activity's qualification, and urged the use of simple, objective definitions, including if possible the use of definitions from existing federal programs. In response, the final rule defines "distressed or underserved" rural areas with reference to objective criteria set forth by the Department of the Treasury (CDFI Fund) and the Department of Agriculture, and it defines "rural" with reference to objective criteria set forth by the Office of Management and Budget. The agencies also have agreed that the Federal Financial Institutions Examination Council will publish and update an annual list of eligible rural census tracts, and will allow for a lag time before a tract loses its designation.

As is also described in the **SUPPLEMENTARY INFORMATION** section, the agencies received a number of comments on provisions regarding the effect of evidence of illegal credit practices on CRA evaluations. Several commenters asserted that the proposal amounted to superimposing consumer credit laws onto CRA examinations and ratings. The Board notes that these provisions of the final rule would not subject any banks of any size to consumer credit laws to which they are

not already subject; and hence, would not place new compliance, reporting, or recordkeeping requirements on small institutions.

3. *Description of small entities affected by the final rule.* The final rule applies to all state-chartered banks that are members of the Federal Reserve System; there are approximately 922 such banks. The RFA requires the Board to consider the effect of the final rule on small entities, which are defined for RFA purposes as all banks with assets of less than \$150 million. There are 419 state member banks with assets of less than \$150 million. All but about 12 state member banks with assets of less than \$150 million are already subject to a streamlined CRA evaluation that is not affected by this final rule. The rule eliminates data reporting requirements for these 12 state member banks by eliminating holding-company affiliation as a disqualification for treatment as a "small bank" under the CRA regulations.

4. *Reporting, recordkeeping, and other compliance requirements.* The final rule does not impose any new reporting or recordkeeping requirements, as defined in section 603 of the RFA. As noted, the rule eliminates holding-company affiliation as a disqualification for treatment as a "small bank" under the CRA regulations. Accordingly, the rule eliminates data reporting requirements for about 12 state member banks with assets of less than \$150 million. As noted above, all other state member banks with assets of less than \$150 million are already exempt from this reporting requirement.

As is described in section 2 of this regulatory flexibility analysis, the Board believes that the revisions to the definition of "community development" do not place additional compliance costs or burdens on small institutions. The Board believes the same of the provisions regarding the effect of evidence of illegal credit practices on CRA evaluations.

5. *Steps taken to minimize the economic impact on small entities.* The final rule maintains the approach of the existing CRA regulations in exempting small entities from reporting requirements and providing for streamlined lending evaluations for small entities. A complete exemption of small entities from all of the CRA's requirements would be impermissible under the CRA statute. As noted, of 419 state member banks with assets of less than \$150 million, all but 12 already were subject to a streamlined CRA process. The final rule minimizes the economic impact on small entities by

making these 12 state member banks eligible for the streamlined CRA process.

Executive Order 12866

The OCC has determined that this joint final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the joint final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, the joint final rule is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number (OCC, 1557-0160; Board, 7100-0197; and FDIC, 3064-0092).

The OCC and the FDIC submitted their documentation to OMB for review and approval and the information collections have been approved. The Board has approved this revised information collection under its delegated authority from OMB.

Title of Information Collection:

OCC: Community Reinvestment Act Regulation—12 CFR 25.

Board: Recordkeeping, Reporting, and Disclosure Requirements in Connection with Regulation BB (Community Reinvestment Act).

FDIC: Community Reinvestment—12 CFR 345.

Frequency of Response: Annual.

Affected Public:

OCC: National banks.

Board: State member banks.

FDIC: State nonmember banks.

Abstract: This Paperwork Reduction Act section estimates the burden that will be associated with the regulations due to the changes to the definition of “small bank” to increase the asset threshold from \$250 million to \$1 billion and eliminate any consideration of holding-company size. Under the two changes, approximately 1,200 additional banks would be evaluated as small or intermediate small banks. That estimate is based on data for all FDIC-insured institutions that filed Call Reports for year-end 2004. The change to adopt a separate community development test in the performance standards for intermediate small banks will have no impact on paperwork burden because the evaluation is based on information prepared by examiners.

Estimated Paperwork Burden under the Proposal:

OCC:

Number of Respondents: 1,853.

Estimated Time per Response: Small business and small farm loan register, 219 hours; consumer loan data, 326 hours; other loan data, 25 hours; assessment area delineation, 2 hours; small business and small farm loan data, 8 hours; community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; data on lending by a consortium or third party, 17 hours; affiliated lending data, 38 hours; request for designation as a wholesale or limited purpose bank, 4 hours; strategic plan, 275 hours; and public file, 10 hours.

Total Estimated Annual Burden: 160,542 hours.

Board:

Number of Respondents: 914.

Estimated Time per Response: Small business and small farm loan register, 219 hours; consumer loan data, 326 hours; other loan data, 25 hours; assessment area delineation, 2 hours; small business and small farm loan data, 8 hours; community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; data on lending by a consortium or third party, 17 hours; affiliated lending data, 38 hours; request for designation as a wholesale or limited purpose bank, 4 hours; and public file, 10 hours.

Total Estimated Annual Burden: 97,017 hours.

FDIC:

Number of Respondents: 5,264.

Estimated Time per Response: Small business and small farm loan register, 219 hours; consumer loan data, 326 hours; other loan data, 25 hours; assessment area delineation, 2 hours; small business and small farm loan data, 8 hours; community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; data on lending by a

consortium or third party, 17 hours; affiliated lending data, 38 hours; request for designation as a wholesale or limited purpose bank, 4 hours; and public file, 10 hours.

Total Estimated Annual Burden: 203,589 hours.

Comment Request:

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments should be addressed to:

OCC: Mary H. Gottlieb or Camille Dixon, Office of the Comptroller of the Currency, Legislative and Regulatory Activities Division, Attention: Docket No. 05-11, 250 E Street, SW., Mailstop 8-4, Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit their comments by fax to (202) 874-4889 or by e-mail to camille.dixon@occ.treas.gov.

Board: Comments should refer to Docket No. R-1225 and may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Please consider submitting your comments through the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>, by e-mail to regs.comments@federalreserve.gov, or by fax to the Office of the Secretary at (202) 452-3819 or (202) 452-3102. Rules proposed by the Board and other Federal agencies may also be viewed and commented on at <http://www.regulations.gov>. All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (C and 20th Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Leneta G. Gregorie, Legal Division, Room MB-3082, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to the title of the proposed collection. In the alternative, comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.; submitted via the Agency Web site: <http://www.FDIC.gov/regulations/laws/federal/propose.html>; or submitted by e-mail: comments@FDIC.gov. Comments received will be posted without change to <http://www.FDIC.gov/regulations/laws/federal/propose.html>, including any personal information provided. Comments may also be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

Comments should also be sent to Mark D. Menchik, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503. Comments may also be sent by e-mail to Mark_D._Menchik@omb.eop.gov.

Executive Order 13132

The OCC has determined that this joint final rule does not have any Federalism implications as required by Executive Order 13132.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For the reasons discussed in the joint preamble, part 25 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

■ 2. In § 25.12, revise paragraphs (g)(4) and (u) to read as follows:

§ 25.12 Definitions.

* * * * *

(g) *Community development* means:

* * * * *

(4) Activities that revitalize or stabilize—

- (i) Low- or moderate-income geographies;
- (ii) Designated disaster areas; or
- (iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and OCC, based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1 billion. Intermediate small bank means a small bank with assets of at least \$250 million as of December 31 of both of the prior two calendar years and less than \$1 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the OCC, 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.

* * * * *

■ 3. Revise § 25.26 to read as follows:

§ 25.26 Small bank performance standards.

(a) *Performance criteria*—(1) *Small banks with assets of less than \$250 million.* The OCC evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks.* The OCC evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

■ 4. Revise § 25.28, paragraph (c) to read as follows:

§ 25.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory or other illegal credit practices.*

(1) The OCC's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance. In connection with any type of lending activity described in § 25.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the OCC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

■ 5. In Appendix A to part 25, revise paragraph (d) to read as follows:

Appendix A to Part 25—Ratings

* * * * *

(d) *Banks evaluated under the small bank performance standards.* (1) *Lending test ratings.* (i) *Eligibility for a satisfactory lending test rating.* The OCC rates a small bank's lending performance "satisfactory" if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an "outstanding" lending test rating.* A small bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of "outstanding."

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standard for a "satisfactory" rating.

(2) *Community development test ratings for intermediate small banks—*(i) *Eligibility for a satisfactory community development test rating.* The OCC rates an intermediate small bank's community development performance "satisfactory" if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The OCC rates an intermediate small bank's community development performance "outstanding" if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(3) *Overall rating—*(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of "satisfactory" unless it receives a rating of at least "satisfactory" on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank that

receives an "outstanding" rating on one test and at least "satisfactory" on the other test may receive an assigned overall rating of "outstanding."

(B) A small bank that is not an intermediate small bank that meets each of the standards for a "satisfactory" rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding." In assessing whether a bank's performance is "outstanding," the OCC considers the extent to which the bank exceeds each of the performance standards for a "satisfactory" rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

* * * * *

Federal Reserve System**12 CFR Chapter II***Authority and Issuance*

■ For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 2. In § 228.12, revise paragraphs (g)(4) and (u) to read as follows:

§ 228.12 Definitions.

* * * * *

(g) *Community development* means:

* * * * *

(4) Activities that revitalize or stabilize—

(i) Low-or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential

community needs, including needs of low- and moderate-income individuals.

(u) *Small bank*—(1) *Definition*. Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1 billion. Intermediate small bank means a small bank with assets of at least \$250 million as of December 31 of both of the prior two calendar years and less than \$1 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment*. The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the Board, 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.

■ 3. Revise § 228.26 to read as follows:

§ 228.26 Small bank performance standards.

(a) *Performance criteria*—(1) *Small banks with assets of less than \$250 million*. The Board evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks*. The Board evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test*. A small bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written

complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test*. An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

■ 4. Revise § 228.28(c) to read as follows:

§ 228.28 Assigned ratings.

(c) *Effect of evidence of discriminatory or other illegal credit practices*. (1) The Board's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance. In connection with any type of lending activity described in § 228.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the Board considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

■ 5. In Appendix A to part 228, revise paragraph (d) to read as follows:

Appendix A to Part 228—Ratings

(d) *Banks evaluated under the small bank performance standards*. (1) *Lending test ratings*. (i) *Eligibility for a satisfactory lending test rating*. The Board rates a small bank's lending performance "satisfactory" if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an "outstanding" lending test rating*. A small bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of "outstanding."

(iii) *Needs to improve or substantial noncompliance ratings*. A small bank may also receive a lending test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standard for a "satisfactory" rating.

(2) *Community development test ratings for intermediate small banks*—(i) *Eligibility for a satisfactory community development test rating*. The Board rates an intermediate small bank's community development performance "satisfactory" if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating*. The Board rates an intermediate small bank's community development performance "outstanding" if the bank demonstrates excellent responsiveness to community

development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(3) *Overall rating—(i) Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of "satisfactory" unless it receives a rating of at least "satisfactory" on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank that receives an "outstanding" rating on one test and at least "satisfactory" on the other test may receive an assigned overall rating of "outstanding."

(B) A small bank that is not an intermediate small bank that meets each of the standards for a "satisfactory" rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding." In assessing whether a bank's performance is "outstanding," the Board considers the extent to which the bank exceeds each of the performance standards for a "satisfactory" rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

* * * * *

**Federal Deposit Insurance Corporation
12 CFR Chapter III**

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 1. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

■ 2. In § 345.12, revise paragraphs (g)(4) and (u) to read as follows:

§ 345.12 Definitions.

* * * * *

(g) *Community development* means:

* * * * *

(4) Activities that revitalize or stabilize—

(i) Low- or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, FDIC, and Office of the Comptroller of the Currency, based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

* * * * *

(u) *Small bank—(1) Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1 billion. Intermediate small bank means a small bank with assets of at least \$250 million as of December 31 of both of the prior two calendar years and less than \$1 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the FDIC, 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.

* * * * *

■ 3. Revise § 345.26 to read as follows:

§ 345.26 Small bank performance standards.

(a) *Performance criteria—(1) Small banks with assets of less than \$250 million.* The FDIC evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks.* The FDIC evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant

to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

■ 4. Revise § 345.28(c) to read as follows:

§ 345.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The FDIC's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance. In connection with any type of lending activity described in § 345.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

- (ii) Violations of the Home Ownership and Equity Protection Act;
- (iii) Violations of section 5 of the Federal Trade Commission Act;
- (iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and
- (v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the FDIC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

■ 5. In Appendix A to part 345, revise paragraph (d) to read as follows:

Appendix A to Part 345—Ratings

* * * * *

(d) *Banks evaluated under the small bank performance standards—(1) Lending test ratings.*

(i) *Eligibility for a satisfactory lending test rating.* The FDIC rates a small bank's lending performance "satisfactory" if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an "outstanding" lending test rating.* A small bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of "outstanding."

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of "needs to improve" or "substantial noncompliance"

depending on the degree to which its performance has failed to meet the standard for a "satisfactory" rating.

(2) *Community development test ratings for intermediate small banks—(i) Eligibility for a satisfactory community development test rating.* The FDIC rates an intermediate small bank's community development performance "satisfactory" if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The FDIC rates an intermediate small bank's community development performance "outstanding" if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(3) *Overall rating—(i) Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of "satisfactory" unless it receives a rating of at least "satisfactory" on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank that receives an "outstanding" rating on one test and at least "satisfactory" on the other test may receive an assigned overall rating of "outstanding."

(B) A small bank that is not an intermediate small bank that meets each of the standards for a "satisfactory" rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding." In assessing whether a bank's performance is "outstanding," the FDIC considers the extent to which the bank exceeds each of the performance standards for a "satisfactory" rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of "needs to improve" or "substantial noncompliance"

depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

* * * * *

Dated: July 19, 2005.

Julie L. Williams,
Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 26, 2005.

Jennifer J. Johnson,
Secretary of the Board.

Dated at Washington, DC, this 19th day of July, 2005.

By order of the Board of Directors,
Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

[FR Doc. 05-15227 Filed 8-1-05; 8:45 am]

BILLING CODE 4810-33-P; 6210-01-P; 6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 335

RIN 3064-AC88

Securities of Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule amending part 335 of its regulations with one nonsubstantive change from the interim final rule published on March 31, 2005, in the **Federal Register** (see 70 FR 16398). The final rule adopts amendments to the FDIC's securities disclosure regulations applicable to state nonmember banks with securities required to be registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act). The final rule reflects amendments to the Securities Exchange Act of 1934 made by the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), and accommodates certain operational changes within the FDIC. The rule also incorporates through cross reference changes in regulations adopted by the Securities Exchange and Commission (SEC) into the provisions of the FDIC's securities regulations. Incorporation by reference will assure that the FDIC's regulations remain substantially similar to the SEC's regulations, as required by law.

DATES: These amendments are effective on August 2, 2005.

FOR FURTHER INFORMATION CONTACT: Dennis Chapman, Senior Staff Accountant, Division of Supervision and Consumer Protection, (202) 898-8922; Mary Frank, Senior Financial Analyst, Division of Supervision and

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency

[Docket No. 05–17]

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 and request for comment.

SUMMARY: This proposal would revise guidance of the staffs of the OCC, Board, and FDIC (collectively, “the agencies”) relating to the Community Reinvestment Act (“the Act” or “CRA”) to address topics related to the revisions the agencies made to their regulations that implement the CRA. After reviewing comments on this proposal, these questions and answers will be added to the Interagency Questions and Answers, an existing document that contains informal staff guidance for examiners and other agency personnel, financial institutions, and the public. Public comment is invited on the proposed guidance, as well as any other community reinvestment issues.

DATES: Comments on the proposed questions and answers are requested by January 9, 2006.

ADDRESSES: Comments should be directed to:

OCC: You should include OCC and Docket Number 05–17 in your comment. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *OCC Web Site:* <http://www.occ.treas.gov>. Click on “Contact the OCC,” scroll down and click on “Comments on Proposed Regulations.”

- *E-mail Address:* regs.comments@occ.treas.gov.
 - *Fax:* (202) 874–4448.
 - *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
 - *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.
- Instructions:* All submissions received must include the agency name (OCC) and docket number for this notice. In general, the OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review comments and other related materials by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC’s Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.

- *Viewing Comments Electronically:* You may request e-mail or CD–ROM copies of comments that the OCC has received by contacting the OCC’s Public Information Room at regs.comments@occ.treas.gov.

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

Board: You may submit comments, identified by Docket No. OP–1240, by any of the following methods:

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

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

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

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

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

All public comments are available from the Board’s Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper in Room MP–

500 of the Board’s Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

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

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

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

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

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

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

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, Senior Attorney, (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: Robert W. Mooney, Chief, (202) 898–3911, or Pamela Freeman, Policy Analyst, (202) 898–6568, CRA and Fair Lending Policy Section, Division of Supervision and Consumer Protection; Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424; 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 imposed on small banks with an asset size between \$250 million and \$1 billion by exempting them from CRA loan data collection and reporting obligations. It also exempted such banks from the large bank lending, investment, and service tests, and made them eligible for evaluation under the small bank lending test and a flexible new community development test. 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 activities to revitalize and stabilize distressed or underserved nonmetropolitan middle-income areas and designated disaster areas. Finally, the rule adopted amendments to the regulations to address 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 is intended to provide informal staff guidance for use by examiners and other agency personnel, financial institutions, and the public, and is supplemented periodically. The staffs of the OCC, Board, and FDIC are jointly issuing these 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.

Just as in the Interagency Questions and Answers currently in effect (65 FR 36620 (July 12, 2001)), the proposed questions and answers are grouped by the provision of the CRA regulations that they discuss and are presented in the same order as the regulatory provisions. The proposed questions and answers employ the same abbreviated method to cite to the regulations that the agencies used in the Interagency Questions and Answers. Because the regulations of the three agencies are substantially identical, corresponding sections of the different regulations usually bear the same suffix. Therefore, the proposed questions and answers cite

only to the suffix. 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 proposed 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 recent revisions mentioned above, some of the numbering in the existing 2001 Interagency Questions and Answers does not correspond to the appropriate sections of the revised regulation. However, in the proposed questions and answers, if a reference is made to an existing question and answer, the number of the existing question and answer, as published in the 2001 Interagency Questions and Answers, is given, even if the old reference does not accurately describe the current provision in the regulations. When the proposed questions and answers are adopted as final and the rest of the questions and answers are updated to reflect the revisions to the regulations made by the three agencies, as discussed above, the references in the questions and answers will be updated.

Proposed Questions and Answers

Because the agencies made several significant revisions to the regulations, new Interagency Questions and Answers addressing those revisions are necessary. Therefore, thirteen new questions and answers addressing the new revisions are being published for comment.

Revised "Community Development" Definition

Of the thirteen proposed new questions and answers, seven questions and answers address the revised definition of "community development," which includes activities that revitalize or stabilize a distressed or underserved nonmetropolitan middle-income geography or a designated disaster area. First, the proposed guidance clarifies that the revised definition of "community development" applies to all banks, and not only to intermediate small banks. It also discusses what is meant by a designated disaster area. Disaster areas are designated by Federal agencies or

States, and these designations are made public. Therefore, the agencies do not intend to maintain a separate list of all government-designated disaster areas.

The guidance also proposes a one-year "lag period" during which a bank may continue to receive consideration for activities in a disaster area for which the Federal or state designation has expired. The lag will help promote investments that may take an extended period of time to arrange and that have extended periods of duration that may continue to provide meaningful benefits to the community after the government designation has ended. During the proposed lag period, community development activities will continue to receive consideration just as they would have if the area were still designated as a disaster area. Comment is specifically requested on the appropriateness of a one-year lag period. Is one extra year generally long enough for a bank to finish the preparations for a community development project investment or loan, the development of which was commenced while the area was still a designated disaster area? Should a longer or shorter period be selected? If so, how long and why?

Comment is also requested on the appropriate description of a disaster designation's duration. The proposed guidance would recognize the revitalization and stabilization efforts in disaster areas during such time that Federal, State, or local governments have determined that the area continues to be affected by the disaster event, and provides a one-year period after the expiration of the disaster designation in which revitalization and stabilization activities targeted to those areas will receive favorable recognition. The agencies specifically seek comment on this aspect of the proposal. In particular, the agencies seek comment on whether the period starting with "designation" and ending with "expiration" of the designation is the most appropriate and meaningful way to describe the duration of the effect of the disaster for CRA purposes. Or, should the guidance be more broadly worded to reflect other relevant governmental measures of the duration of a disaster event? For example, should the guidance also refer to "periods of assistance," "registration periods," or other relevant timeframes?

The proposed guidance next explains that all revitalization activities in designated disaster areas are not considered equally—those that are most responsive to community needs, including the needs of low- or moderate-income individuals, may be given more weight than other revitalization and stabilization activities

in designated disaster areas. Bank activities to revitalize and stabilize a designated disaster area will be evaluated, as appropriate, based on the particular circumstances and needs of the area. The guidance also includes a statement regarding loans to individuals displaced by a disaster and refers to relevant existing guidance.

The proposed guidance also describes the criteria that the agencies use to identify distressed or underserved nonmetropolitan middle-income geographies and states that the list of such geographies will be reviewed and updated annually. Additional detail about the data sources used in developing the list of distressed and underserved geographies will be posted on the FFIEC Web site (<http://www.ffiec.gov>) with the list.

Similar to the "lag period" proposed in connection with activities in designated disaster areas, a one-year lag period also is proposed during which a bank may continue to receive consideration for activities in a distressed or underserved middle-income nonmetropolitan area that has been removed from the list. Because some community development projects take an extended amount of time to arrange and fund, the staffs of the agencies believe that it is important to lessen the impact on a bank's investment planning and implementation that will occur once a distressed or underserved geography has been removed from the designated list. During the proposed lag period, community development activities will continue to receive consideration just as they would have if the geography were still designated as a distressed or underserved area. Comment is specifically requested on the appropriateness of a one-year lag period. Is one extra year generally long enough for a bank to finish the preparations for a community development project investment or loan, the development of which was commenced while the geography was a designated distressed or underserved geography? Should a longer period be selected? If so, how long and why?

The proposed guidance also clarifies that revitalization and stabilization activities in middle-income nonmetropolitan *distressed* geographies are evaluated differently than those in middle-income nonmetropolitan *underserved* geographies. Generally, a revitalization or stabilization activity in a distressed middle-income nonmetropolitan geography that helps to attract and retain businesses and residents or is part of a bona fide revitalization or stabilization plan will

receive positive consideration. In contrast, in an underserved middle-income nonmetropolitan area, revitalization or stabilization activities are 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. These activities generally will 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.

Finally, the proposed guidance explains when housing for middle- and upper-income persons in distressed or underserved nonmetropolitan middle-income geographies or designated disaster areas may be considered as a community development activity.

Community development test applicable to intermediate small banks

Three questions and answers are proposed to address the community development test applicable to intermediate small banks and how these banks will be evaluated under it. First, the proposed guidance discusses what examiners will consider when they review the responsiveness of an intermediate small bank's community development activities to the community development needs of the area. Next, the proposed guidance addresses how the community development test for intermediate small banks will be applied flexibly so that banks can address community development needs in their assessment areas in the most responsive manner. Finally, the proposed guidance includes a question and answer that explains what examiners will consider when evaluating the provision of community development services by an intermediate small bank in the community development test.

Treatment of Small Banks' Affiliates' Activities

The proposed guidance clarifies that any small bank (including an intermediate small bank) may request that activities of an affiliate in the small bank's assessment area(s) be considered in its performance evaluation. Those activities will be considered in the small bank's performance evaluation subject to the same constraints that apply to large institutions' affiliate activities, including that the activities have not also been considered in the CRA evaluation of another institution.

Small Bank Asset Threshold Adjustments

One question and answer is proposed that explains that the asset size thresholds for "small bank" and "intermediate small bank" will be adjusted annually based on changes to the Consumer Price Index. Any changes in the asset size thresholds will be published in the **Federal Register**.

Consideration of Prior-Period Qualified Investments

A new question and answer is proposed that would apply to banks of all sizes. It explains how examiners evaluate qualified investments that were made during the prior evaluation period but that are still outstanding during the current evaluation period.

Revisions to Existing Guidance

Three revisions to existing questions and answers are also proposed. The first proposed revision adds a bullet to the existing question and answer that provides examples of community development services (existing §§ __.12(j) & 563e.12(i)-3). The new bullet clarifies that the provision of financial services to low- and moderate-income individuals through branches and other facilities located in low- and 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 the service test.

The second proposed revision is consistent with guidance the agencies provided in a letter responding to a question from a member of Congress. This revision would add another new bullet to the existing question and answer providing examples of community development services (existing §§ __.12(j) & 563e.12(i)-3) that states that a community development service may include "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)."

The last proposed revision would revise the existing question and answer that provides examples of qualified investments (existing §§ __.12(s) & 563e.12(r)-4) to also include banks' investments in Rural Business Investment Companies (RBICs). The Rural Business Investment Program (RBIP), which is a joint initiative between the U.S. Small Business Administration and the U.S. Department

of Agriculture, is intended to promote economic development by financing small businesses located primarily in rural areas.

General Comments

Public comment is invited on the new and revised questions and answers. Public comment is also invited on a continuing basis on any issues raised by the CRA and the Interagency Questions and Answers. If, after reading this proposed guidance and the existing Interagency Questions and Answers, banks, examiners, community organizations, or other interested parties have unanswered questions or comments about the agencies' community reinvestment regulations, they should submit them to the agencies. Staffs of the agencies will consider addressing such questions in future revisions to the Interagency Questions and Answers.

Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999, 12 U.S.C. 4809, requires the agencies to use "plain language" in all proposed and final rules published after January 1, 2000. Although this proposed guidance is not a proposed rule, comments are nevertheless invited on whether the proposed interagency questions and answers are stated clearly and effectively organized, and how the guidance might be revised to make it easier to read.

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 the 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 proposed Interagency Questions and Answers Regarding Community Reinvestment follows:

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

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

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

§ ___.12(g)(4)–2 (proposed): When do 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 designated distressed or underserved middle-income nonmetropolitan geographies or designated disaster areas?

A2 (proposed): A bank activity that provides housing, but not necessarily for low- or moderate-income individuals, may qualify as an activity that revitalizes or stabilizes a designated distressed nonmetropolitan middle-income geography or a designated disaster area if the housing helps to revitalize or stabilize the community by attracting and retaining businesses and residents, providing benefits to the entire community, including to low- and moderate-income individuals and neighborhoods. For example, a bank activity that provides housing for middle- or upper-income individuals in a designated distressed nonmetropolitan, middle-income geography or disaster area that is part of a bona fide plan to revitalize or stabilize the community by attracting a major new employer that will offer significant long-term employment opportunities, including to low- and moderate-income individuals, qualifies as community development. See existing Q&As §§ ___.12(h)(4) & 563e.12(g)(4)–1 and §§ ___.12(i) & 563e.12(h)–4.

In underserved middle-income nonmetropolitan geographies, activities that provide housing for middle- and upper-income individuals may also 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, middle-income, nonmetropolitan 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 (proposed): What is a "designated disaster area"?

A1 (proposed): A "designated disaster area" is a disaster area designated by federal or state government. Such designations include, for example, Major Disaster Declarations administered by the Federal Emergency Management Agency (<http://www.fema.gov>).

When a disaster area's designation expires pursuant to the applicable law under which it was declared, the agencies will adopt a one-year "lag period." This lag period will be in effect for the twelve months immediately following the expiration of the disaster area declaration. 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 area in which they were located were still designated as a disaster area.

§ ___.12(g)(4)(ii)–2 (proposed): How are revitalization activities in a designated disaster area considered?

A2 (proposed): A bank's revitalization or stabilization activities in a designated disaster area will be evaluated in the same way such activities are evaluated in a low- or moderate-income area or in a nonmetropolitan middle-income distressed geography. Examiners will 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 agencies will consider all activities that revitalize or stabilize a designated disaster area,

but will give greater weight to those activities that are most responsive to community needs, including those of low- or moderate-income individuals or neighborhoods. (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 (*see, e.g.*, existing 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 (proposed): What criteria are used to identify distressed or underserved nonmetropolitan, middle-income geographies?

A1 (proposed): 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.

A middle-income, nonmetropolitan 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 middle-income, nonmetropolitan 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 rural census tracts on the Federal Financial Institutions Examination Council Web site (<http://www.ffiec.gov>).

§ ___.12(g)(4)(iii)-2 (proposed): How often will the agencies update the list of designated distressed and underserved middle-income, nonmetropolitan geographies?

A2 (proposed): The agencies will review and update the list annually. 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 will 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 (proposed): How are "revitalization or stabilization" activities in middle-income, nonmetropolitan, distressed geographies and in middle-income, nonmetropolitan, underserved geographies evaluated?

A3 (proposed): A bank's revitalization or stabilization activities in a middle-income, nonmetropolitan, distressed geography will be evaluated in the same way such activities are evaluated in a low- or moderate-income area. For activities in a middle-income, nonmetropolitan, distressed geography, examiners will 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 a long-term direct benefit to the entire community, including low- and moderate-income individuals and neighborhoods. *See* existing Q&As §§ ___.12(h)(4) & 563e.12(g)(4)-1 and §§ ___.12(i) and 563e.12(h)-4.

In a middle-income, nonmetropolitan, underserved geography, however, 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 will 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. Examples of the types of projects that meet essential community needs and serve low- or moderate-income individuals could 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 bank activities in the area, such as financing a project to build a sewer line spur to connect services to a housing development affordable only to middle- and upper-income residents, generally would not qualify for revitalization or stabilization consideration in geographies designated as underserved. However, if an underserved geography is also designated as distressed, such activities are considered to revitalize and stabilize the geography if the activity helps to attract and retain residents and businesses, or are part of a bona fide revitalization or stabilization plan as further explained in existing Q&A §§ ___.12(h)(4) & 563e.12(g)(4)-1.

§ ___.12(i) Community Development Service

§ ___.12(i)-3 (existing Q&A § ___.12(j) & 563e.12(i)-3 proposed revision): What are examples of community development services?

A3 (proposed revision): Examples of community development services include, but are not limited to, the following:

- 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 (proposed): When evaluating a qualified investment, what consideration will be given for prior-period investments?

A1 (proposed): 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 (existing Q&A §§ ___.12(s) & 563e.12(r)-4 proposed revision): What are examples of qualified investments?

A4 (proposed revision): 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 (proposed): How often will the asset size thresholds for small banks and intermediate small banks be changed, and how will these adjustments be communicated?

A1 (proposed): The asset size thresholds for "small bank" and "intermediate small bank" 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 (proposed): When evaluating a small or intermediate small bank's performance, will examiners consider, at the institution's request, retail and community development loans, qualified investments, or community development services originated or purchased by affiliates?

A1 (proposed): 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 existing 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 (proposed): How will the community development test be applied flexibly for intermediate small banks?

A1 (proposed): 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 (proposed): What will examiners consider when evaluating the provision of community development services by an intermediate small bank?

A1 (proposed): 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.

§ ____.26(c)(4) *Responsiveness to Community Development Needs under Intermediate Small Bank Community Development Test*

§ ____.26(c)(4)-1 (proposed): 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 (proposed): 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 middle-income nonmetropolitan 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 proposed Interagency Questions and Answers Regarding Community Reinvestment.

Dated: October 31, 2005.

John C. Dugan,
Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 4, 2005.

Jennifer J. Johnson,
Secretary of the Board.

Dated at Washington, DC, this third day of November, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

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