

August 2, 2016

Banking Agencies Finalize New and Revised CRA Q&As

The federal banking agencies¹ have finalized Community Reinvestment Act (CRA) Questions and Answers (Q&As) proposed in 2014² and published a single set of Q&As that consolidates these new Q&As with those previously issued.³ The agencies adopted all but one of their proposals, which address: economic development; examples of community development; innovative or flexible lending practices; the service test; and responsiveness and innovativeness generally. The Q&As also include a number of technical corrections.

- 1) **Economic development** §__.12(g)(3)-1 (revised): The regulations define community development to include activities that “promote economic development” by financing small businesses⁴ and small farms.⁵ This Q&A explains the meaning of “promote economic development”. The revision:
 - a) Adds a presumption that financing or serving a Community Development Financial Institution (CDFI) that in turn finances small businesses or small farms does promote economic development. The underlying Q&A had established similar presumptions for Small Business Development Companies, Small Business Investment Companies, Rural Business Investment Companies, New Markets Tax Credits (NMTC) community development entities, and New Markets Venture Capital Companies.
 - b) Clarifies that job creation/retention/improvement for low- or moderate-income (LMI) persons does not require the jobs to pay low wages. The activities should support jobs: for LMI persons; in LMI geographies; in areas targeted for redevelopment by federal, state, local, or tribal government; by financing intermediaries supporting start-ups or recently formed small businesses or small farms; or through technical assistance or supportive services. Examiners are to use “appropriate flexibility” in determining whether an activity promotes economic development, based on information that banks provide

¹ Federal Deposit Insurance Corporation, Federal Reserve Board, and the Office of the Comptroller of the Currency

² 75 Federal Register 53838 (September 10, 2014).

³ 81 Federal Register 48506 (July 25, 2016). <https://www.federalregister.gov/articles/2016/07/25/2016-16693/community-reinvestment-act-interagency-questions-and-answers-regarding-community-reinvestment>

⁴ Businesses must meet the size standards applicable to SBA’s Small Business Development Companies or Small Business Investment Companies programs or have gross annual revenues not exceeding \$1 million.

⁵ Loans to small businesses and farms that do not demonstrate an economic development purpose are not community development loans but will be considered as retail loans. However, investments in small businesses and farms must have a community development purpose, so they must demonstrate an economic development purpose to be considered.

regarding the activity's "purpose, mandate, or function." For example, the bank could provide wage data for a given industry or occupation to support its assertion.

- c) Specifically includes activities supporting Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by LMI persons to jobs or to job training or workforce development programs

2) **Community Development Examples**

- a) §__.12(g)–4 (new) : Explains that community development examples included throughout the Q&As are not exhaustive; rather, the Agencies provide examples to illustrate the types of activities that may qualify for consideration under a particular provision of the regulations. In addition, banks may receive consideration for a community development activity, such as a qualified investment, if it serves a similar community development purpose as an activity described in an example related to a different type of community development activity, such as a community development loan.
- b) §__.12(g)(4)(iii)–4 (revised): The examples of activities that revitalize or stabilize underserved nonmetropolitan middle-income communities are expanded to include those related to a: (1) new or rehabilitated communications infrastructure, such as a broadband service; and (2) new or rehabilitated flood control measure, such as a levee or storm drain, that serves the community, including LMI residents.
- c) §__.12(h)–1 (revised): The list of examples of community development loans is expanded to include loans to finance certain on-site or off-site renewable energy or energy-efficient technologies or water conservation improvements. Such loans may be considered as community development loans when the activity helps reduce operational costs and maintain the affordability of single-family or multifamily housing or community facilities that serve low- and moderate-income individuals.
- d) §__.12(g)-1 and §__.12(t)-4 (revised) : Adds workforce development or job training for LMI persons to the examples of community development activities, regardless of whether small businesses or small farms are involved.

3) **Lending Test—Innovative or Flexible Lending Practices** §__.22(b)(5)–1 (revised):

- a) The agencies emphasize that an innovative or flexible lending practice is not required to obtain a specific rating, but rather is a qualitative consideration that, when present, can enhance a financial institution's CRA performance.
- b) Examiners will consider whether, and to what extent, the innovative or flexible practices augment the success and effectiveness of the institution's lending program.
- c) New examples of innovative or flexible lending practices:

- i) Small dollar loan programs when such loans are made in a safe and sound manner with reasonable terms, and are offered in conjunction with outreach initiatives that include financial literacy or a savings component.
- ii) Mortgage or consumer lending programs that utilize alternative credit histories (such as rent and utility payments) in a manner that would benefit otherwise credit-worthy LMI individuals who would otherwise be denied credit.

4) Service Test

- a) §__.24(a)–1 (new): Services: retail and community development. Retail services and community development services are considered two important components of the service test for large retail banks and these services are more clearly differentiated. In particular, services targeted to LMI customers (e.g., low-cost transaction accounts) will now be considered as retail services and not community development services. §__.12(i)–3 (regarding community development services) is also revised accordingly.
- b) §__.24(d)–1 (existing): The agencies withdrew proposals intended to encourage alternative retail service delivery systems in light of rapid technological changes. Instead, the agencies retained the current (1) primary emphasis on full-service branches and (2) consideration of alternative delivery systems “only to the extent” that they are effective alternatives to branches. The agencies seek to avoid implying that branches are less important to delivering retail banking services.
- c) §__.24(d)(3)–1 (revised): The agencies added examples of technologically advanced retail systems and provided the following illustrative evaluation factors: (1) ease of access, whether physical or virtual; (2) cost to consumers, as compared to the bank’s other delivery systems; (3) range of services delivered; (4) ease of use; (5) rate of adoption and use; and (6) reliability of the system. Examiners will consider any information a bank maintains and provides to examiners to demonstrate that the institution’s alternative delivery systems are available to, and used by, low- and moderate-income individuals, such as data on customer usage or transactions.
- d) §__.24(d)(3)–1 (new): In addition to evaluating the services provided in LMI and other geographies, examiners will also review other information that a bank provides to demonstrate that its services are tailored to meet the needs of its customers in the various geographies of its assessment area(s), including data regarding the costs and features of loan and deposit products, account usage and retention, geographic location of accountholders, the availability of information in languages other than English, and any other relevant information maintained.
- e) §__.24(e)(2)–1 (new): Evaluation of community development services. Agencies will consider qualitative factors, such as innovativeness and responsiveness to community

needs, and any relevant documentation that a bank provides. Quantitative factors include (1) The number of LMI individuals participating in a community development activity; (2) the number of organizations served by a community development activity; and (iii) the number of sessions of a community development service activity.

5) **Responsiveness and Innovativeness.**

- a) §__.21(a)–3 (new): Responsiveness involves how effectively activities address community needs, considering quantitative and qualitative factors and the bank’s performance context. The agencies also provide a list of information sources in determining needs and opportunities.
- i) The agencies have added to the final Q&A a new paragraph discussing how examiners will determine whether an institution has been responsive to the credit and community development needs of its assessment area(s) – a threshold requirement for consideration of certain community development activities in the broader statewide or regional area that includes the institution’s assessment area(s) but will not immediately or directly benefit the assessment area(s). First, examiners will consider as responsive all of the bank’s community development activities in its assessment area(s). Examiners will also consider as responsive to assessment area needs any community development activities that support an organization or activity that covers an area that is larger than, but includes, the bank’s assessment area(s). If the purpose, mandate, or function of the organization or activity includes serving the bank’s assessment area(s), it will be considered responsive to assessment area needs even if the bank’s assessment area(s) does not receive an immediate or direct benefit from the institution’s participation in the organization or activity.
 - ii) The final Q&A explains that, when evaluated qualitatively, some activities are more responsive than others, and that activities are more responsive if they are successful in meeting identified credit and community development needs. The final Q&A also includes an example of two community development activities, one of which would be considered more responsive than the other, to describe this concept.
- b) §__.21(a)–4 (new): Innovativeness. An innovative practice or activity will be considered when an institution implements meaningful improvements to products, services, or delivery systems that respond more effectively to customer and community needs, and particularly to community development needs. For banks that are not market leaders in innovation, innovation includes the introduction of products, services, or delivery systems to their LMI customers or segments of consumers or markets not previously served. Banks should not innovate simply to meet this criterion of the applicable test, particularly if, for example, existing products, services, or delivery systems effectively address the needs of all segments of the community. Practices that cease to be innovative may still receive qualitative consideration for being flexible, complex, or responsive.