Thrift Bulletin

Handbook: Compliance Activities **Section: 220**
Subject: Community Reinvestment Act **TB 42**

January 16, 1990

Interagency Questions and Answers About Community Investment

Summary: The staff of the Federal Reserve Board, Office of Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision have jointly issued an update to their interagency question and answer document addressing the Community Reinvestment Act.

For Further Information Contact: The OTS District Office in which you are located or the OTS Division of Compliance Programs, Washington D.C.

Thrift Bulletin 42

Attached for your information is a recently updated version of the "Interagency Questions and Answers About Community Investment." These questions and answers were prepared by the staff of the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision and, as such, should not be considered official interpretations of the Community Reinvestment Act or agency regulations which implement that Act. The document was originally prepared several years ago to provide financial institutions and examiners with answers to the most commonly asked questions about community reinvestment.

This updated version of the document adds questions and answers 26, 27, 28, and 29, which provide guidance on the issue of CRA obligations of specialized lending institutions. It also amends the answer to question 4 by adding a reference to the "Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act" which was issued March 21, 1989, and published in the *Federal Register* on April 5, 1989. The answer to question 24 was also amended to refer to the Office of Thrift Supervision rather than the Federal Home Loan Bank Board.

Attachment

— Jonathan L. Fiechter
Senior Deputy Director, Supervision Policy

Attachment to TB 42

INTERAGENCY QUESTIONS AND ANSWERS ABOUT COMMUNITY INVESTMENT

(as of November 16, 1989)

To help financial institutions meet their responsibilities under the Community Reinvestment Act and to increase public understanding of the regulations and examination procedures, the staffs of the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision have prepared answers to the following most commonly asked questions about community reinvestment. The answers to the questions should not be regarded as official interpretations. Their purpose is solely to be helpful to financial institutions and the public by providing useful background information.

The CRA regulations give regulated financial institutions considerable leeway in determining the means by which they will help to meet the credit needs of their communities. In carrying out their responsibilities under CRA, financial institutions should focus on the spirit of the legislation and try to avoid narrow, legalistic interpretations of the legislation or the regulations.

1. **What does the term "office" mean as used in the regulation?**

   Office refers generally to a facility of an institution that accepts deposits, including an electronic deposit facility. It does not include purely administrative offices, agencies, loan production offices or facilities used, for example, only for the check collection process. In delineating a local community, an institution need not consider shared electronic deposit facilities, unless otherwise directed by the appropriate agency.

2. **What is meant by "local community" and how detailed a map should be used to portray it?**

   The term "local community" refers to the contiguous area surrounding each office or group of offices of an institution. Although the geographic areas served by an institution may vary with the type of service, only one local community is to be delineated for a particular office or group of offices. Any map which depicts an institution's local community or communities with reasonable clarity may be used. The map need not show each street in the community, nor be prepared professionally by a cartographer. Low- and moderate-income neighborhoods should not be specifically indicated on the map. The community delineation, however, must not unreasonably exclude such neighborhoods. An institution may delineate several local communities on one map. However, each local community, comprising the entire community, must be delineated with sufficient clarity so that the areas included in those local communities are obvious. If the entire community is made up of more than a few local communities, or the local communities are separated by significant distances, it may be easier and clearer to use a separate map for each local community. Furthermore, the locations of the institution's offices need not be shown on the maps.

3. **How should an institution deal with low- and moderate-income neighborhoods in its local community delineation?**

The CRA regulation requires that low- and moderate-income neighborhoods not be unreasonably excluded from a delineation of the local community. As the regulation states, "Institutions are expected to be generally aware of low- and moderate-income neighborhoods within their community, without undertaking extensive research." No attempt need be made to distinguish between low-income neighborhoods and moderate-income neighborhoods. If institutions desire further information about low- and moderate-income neighborhoods, they should consult such sources as: the agencies' joint CRA examination procedures and state and local community development and planning agencies.

4. **What should be included in a CRA statement?**

For guidance, refer to the "Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act" (Federal Register, Vol. 54, No. 64, April 5, 1989). However, at a minimum, an institution's CRA statement must include for each local community:

- A map delineating that local community.
- A list of the types of credit it is prepared to extend in that community.
- A copy of the Community Reinvestment Act Notice provided for in the regulation. Also, an institution's board of directors must, at least annually, review each CRA Statement, and act on any material changes in a statement at the board's first regular meeting after the change. In addition, each institution is encouraged, but not required, in its statement to:
  - — Describe how its current efforts help meet community credit needs.
  - — Report on its record of helping to meet community credit needs.
  - — Describe its efforts to ascertain community credit needs, including communication with community members.

5. **How specific a list of credit offered in a local community is needed for the CRA Statement?**

Each type of credit the institution is prepared to extend in its local community should be listed. The regulation indicates that greater specificity is desired for residential mortgage and housing rehabilitation loans and loans to small businesses and farms. In those general categories, sub-categories, such as "residential loans for 1-to-4 dwelling units," "residential loans for 5 dwelling units and over," should be used.

6. **If an institution is prepared to offer particular types of credit only at some of its offices in a local community, should those types of credit be listed on the CRA Statements of all of its offices in that community?**

Yes. Because the institution is willing to extend that type of credit to any creditworthy borrower in the community, the institution should list the types of credit on the CRA Statement of each office even though a prospective borrower at one office may be referred to another when seeking to make application. The institution should recognize, however, that public complaints may arise because of such practices; and the agencies will have to decide whether the practice significantly discourages applications for such credit or otherwise adversely affects the institution's CRA performance.

7. **What is a "small" business or farm?**

For CRA purposes, the term "small" refers to the absolute size of the business and farm rather than the relative size in their industries. Because a major concern of CRA is that all creditworthy borrowers have reasonable access to loans from banks and savings and loans, small businesses and farms generally are viewed as those which do not have access to regional and national credit markets and must rely on their local lending institutions for credit.

8. **How should past and current CRA Statements and public comment files be made available to the public in each office of an institution, particularly an institution that has offices in more than one local community?**

An institution that has offices in more than one local community should maintain current CRA Statements for all its local communities at its head office and current CRA Statements for each local community in each office of the institution in that local community, except off-premises electronic deposit facilities. Any CRA Statements that were in effect during the past two years should be retained with the public comment letters in the public comment file. A comment file for the entire institution must be maintained at the head office, and a comments file pertaining to a particular local community must be retained at a designated office in that community.

9. **Are all signed, written CRA comment letters to be placed in the public comment file?**

The regulations state that the institution must put into a public file, all signed, written comments relating to the CRA Statement or to the institution's performance in helping to meet community credit needs. The only exception to this is comments which reflect adversely on the reputation of any person, or which would violate a law. The institution must use its own judgment in deciding which comments should be placed in the public file. Signed, written comments which might harm a person's reputation should be retained in a confidential file for inspection by the examiner.

10. **If a letter is addressed in part to an institution's overall CRA performance, but contains information which is harmful to an individual or violates a law, should the institution withhold the entire letter from the public file?**

The institution may do so. Alternatively, the statements which reflect adversely on an individual or violate a law may be deleted from the letter and the balance included in the public file. In any event, the entire original letter should be retained for inspection by the examiner.

11. **When should comments about an institution's CRA Statement(s) or performance and/or the institution's response(s) be made public?**

Any such signed, written comment that is placed in the public comment file will be available for inspection by any interested person and the CRA examiner. Comments received by a supervisory agency will be on file at the agency.

Those comments are available to the public and the financial institution unless exempted from disclosure under the Freedom of Information Act.

12. **Must the institution respond to any or all comments received from the public?**

There is no requirement that the institution respond. However, the institution may find it helpful to respond to certain comments to foster a dialogue with members of the community or to present relevant information to a regulatory agency. If an institution responds to a letter in the public file, the response must also be placed in that file, unless it reflects adversely on any person or violates a law.

13. **Are there any requirements relating to the size and placement of the Community Reinvestment Act Notice?**

The notice must be placed in the public lobby of the financial institution but the size and placement may vary. For example, if the notice takes the form of a poster, the poster must be placed within the lobby where it will be seen by customers and be of sufficient size to be easily read from a normal distance. If the notice is provided in the form of a flyer, a supply of such flyers printed in easily-read type and placed where they will be noticed will suffice. The notice requirement may also be satisfied by making the CRA Statement, which includes the notice, available as a brochure in the lobby, where it will be noticed.

14. **What information and avenue of communication are available to members of a community who are concerned about the performance of financial institutions in their community?**

Financial institutions are being encouraged to communicate with members of their community. The CRA regulation requires financial institutions to make available to the public their CRA Statement. The statement contains a map showing the boundaries of the local community delineated by the institution and lists the types of credit that the institution is prepared to extend to members of the community. The statement also contains a copy of the "Public Notice" which must be placed in the offices of all financial institutions. The Public Notice states that

the public may write to the financial institution or the appropriate regulatory authority concerning the institution's performance in helping to meet community credit needs. Members of the community may also review letters from the public received by a financial institution regarding such performance.

Announcements of CRA-covered applications may be obtained by writing to an institution's supervisory agency. Anyone may comment on the filing of an application covered by the CRA by writing to the appropriate supervisory agency listed either in the applicant's newspaper notice or its CRA notice. The agencies have varying comment periods for applications. Therefore, any questions about the comment period should be directed to the regional office of the appropriate agency. Comments received within the appropriate period will be considered by the agency in the application process.

15. **Must an institution document that it is actually extending the types of credit listed in its CRA Statement as being offered in the local community?**

The CRA regulations do not require any documentation beyond the public comment files. However, examiners will review:

- Information required to be maintained under any applicable fair housing regulations.
- Loan registers if required by the agency.
- Application files required to be kept under the Federal Reserve Equal Credit Opportunity regulation.
- Housing loan statements prepared under the Home Mortgage Disclosure regulation.

Examiners will also use other available materials (such as advertising copy) to determine if the institution is offering in good faith to extend the types of credit that it has listed on its CRA Statement.

16. **Will activities in addition to lending be considered in the CRA assessment?**

Yes. Although the principal focus is on loans, the agencies recognize that other activities and efforts contribute toward the CRA's goals. The agencies will consider the extent to which an institution's activities foster local community revitalization, for example, the purchase of state or municipal bonds or involvement through investment or other contributions in a local community development project. The agencies also will consider activities such as:

- Efforts to establish a dialogue with community members concerning credit needs of the community.
- The institution's record of opening and closing branches and offering services (including non-credit services).

- Marketing and special credit-related programs to make community members aware of credit services offered at its offices.

- The extent of participation by the institution's board of directors in formulating policies and reviewing its CRA performance.

17. **Will an institution's performance in helping to meet community credit needs be assessed even if an institution does not make an application covered by the CRA or is legally precluded from doing so?**

    Yes. Although the Congress directed that the approval or rejection of applications be used to encourage community investment by banks and S&Ls on a safe and sound basis, it also sought to have each supervisory agency use its examination "to encourage" institutions to be sensitive to their responsibilities to help meet local credit needs. As envisioned by the Congress, this effort by the agencies is to be ongoing and not limited to the formal applications process.

18. **How will the agencies "encourage" institutions to help meet the credit needs of their local communities?**

    Encouragement will be provided in three ways. First, within the limits of the agencies' resources, their staffs will provide information and technical assistance and will meet with representatives of industry and the management of individual institutions to explain the CRA, regulations, and examination procedures. This exchange of information will help institutions to understand the purposes of the CRA and how the agencies plan to implement the act. Second, as part of each CRA examination, agency examiners and field staff will discuss with management their findings on the institution's CRA performance. Where appropriate, the agency staff may suggest ways in which the institution can improve its performance. Third, in decisions on applications, where CRA is a material factor, the agencies will publicly comment on an institution's record of performance.

19. **Will an institution be given a poor CRA assessment for making loans outside its local community?**

    The agencies' assessment of an institution's performance will focus on its record in helping to meet credit needs within its community. The act, implementing regulations, and examination procedures set no numerical criteria for the amount of loans that an institution should make within its local community or communities. If an institution is effectively helping to meet local credit needs, activities conducted outside its local community will not affect its CRA performance record.

20. **May an institution use a policy of making certain loans only to existing customers, without adversely affecting its CRA assessment?**

    In examining an institution, the agencies will pay special attention to any restrictions placed on the availability of those types of credit that an institution has indicated on its CRA Statement that it would extend in its local community. Examiners will focus on whether any such institution has or would have a significantly greater impact on low- and moderate-income neighborhoods and/or classes of

borrowers protected under the Fair Housing and Equal Credit Opportunity Acts than it does on the remainder of the community. In every case, examiners will consider:

- The business rationale for adopting a particular policy.
- Whether other policies would serve the same business purpose with less adverse impact.
- The relative ease of becoming a customer eligible for credit under the restriction.
- Whether the institution has adopted a policy of limiting certain loans to customers as a temporary response to tight money conditions or as a permanent policy.

Loans available on any restrictive basis should be listed on the CRA Statement with the restrictions noted. However, the agencies recognize that institutions occasionally make certain specialized loans to good customers - loans which they do not offer on a regular basis. This type of spot lending activity need not be listed on the CRA Statement.

21. In assessing an institution's CRA performance, will an examiner seek information outside of the institution being examined?

The examiner will seek such information if he or she believes that it is necessary to complete a fair and accurate picture of the institution's performance. For example, if the examiner believes that the institution's description of its community is unreasonable, the examiner may review the delineations of other, similar institutions in the community. In addition, contacts may be made with persons who have commented on an institution's performance, local officials, local business owners, community residents, real estate brokers, and others.

22. What sanctions are available to the agencies under the CRA?

A poor CRA performance record may result in denial of an application. The agencies may also use the full range of their enforcement powers to ensure compliance with the requirements of the CRA regulations, such as preparing a CRA Statement, maintaining public comment files, and providing the public notice. In addition, prohibited discriminatory or other illegal credit practices which are adverse factors under the CRA, will also result in sanctions under the Equal Credit Opportunity Act, federal fair housing laws, or other consumer credit protection laws.

23. Are applications for electronic deposit facilities covered by the CRA?

Generally, such applications are covered. The agencies have different rules regarding processing of applications for electronic deposit facilities, and institutions should, therefore, consult their supervisory agency before filing.

24. **How are bank and savings and loan holding companies affected by the CRA?**

The CRA applies to applications filed by holding companies to merge or to acquire commercial banks and savings and loan associations. When decisions on such applications are made, the Federal Reserve Board and the Office of Thrift Supervision will consider the CRA records of all the bank or S&L affiliates of the applicant holding company. The parent holding company need not prepare a CRA Statement or public notice, or maintain public comment files. The holding company must conform to the requirements of the regulation for media notices of applications filed to acquire a bank or S&L.

25. **How does the CRA affect applications by banks and S&Ls that are subsidiaries of holding companies?**

Applications by a bank or S&L that is a subsidiary of a holding company will be treated by the agencies in the same way as those filed by any bank or S&L. Only the CRA record of the applying bank or S&L will be taken into account. The bank or S&L may request, however, that the agency consider the contribution of any of the bank's or S&L's nondepository affiliates in helping to meet the credit needs of the community or communities of the applicant bank or S&L. For example, if the applicant bank or S&L has an affiliate community development corporation operating in the same community as the applicant, the applicant may ask that the contributions of that corporation in helping to meet the credit needs of the particular community be considered by the agency in assessing the overall CRA record of the applicant.

26. **Banking agency CRA "Interpretation 101" (12 CFR 25.101, 12 CFR 228.100, and 12 CFR 345.101) excludes from CRA requirements certain institutions that serve solely as correspondent banks, trust companies, or clearing agents. Are there other Federally-regulated financial institutions that are excluded from the scope of CRA?**

No. The CRA defines a "regulated financial institution" as one that meets the definition of an "insured bank" or an "insured institution," pursuant to section 3 of the FDIC Act or section 401 of the National Housing Act, respectively. All such institutions are subject to CRA.

27. **To what extent will a "regulated financial institution" which is subject to statutory and/or regulatory constraints that prevent it from operating as a "full service" financial institution be expected to meet CRA performance requirements?**

The institution has an affirmative obligation to seek out ways consistent with its permitted activities to assist, directly or indirectly, in meeting the credit needs identified in its local community, with appropriate attention to low- and moderate-income neighborhoods. As indicated in the answer to Question 16 of this series, many services other than direct credit services can be developed to benefit the local community in a manner consistent with the intent of the CRA.

The CRA implementing regulations of the federal financial supervisory agencies include twelve factors to be considered in assessing CRA performance. Every institution's overall CRA performance record should compare favorably, consistent with its resources and capabilities. A financial institution's inability to pro-

vide specific credit products or services because of statutory or regulatory limitations does not preclude a positive CRA performance evaluation.

An institution's board of directors should assure that CRA performance is an integral part of the institution's business strategy. Expected compliance will include, at a minimum, meeting the basic obligations to define a local community, to ascertain the credit needs within that community, and to demonstrate responsiveness, directly or indirectly, to the needs identified.

28. **What do the regulatory agencies expect from institutions that have voluntarily limited or specialized their services to target particular markets?**

Such an institution has the same continuing and affirmative obligation as a "full service" institution to help meet the credit needs of its entire local community, consistent with safe and sound operations. An institution's self-imposed service or market limitations may not be used as justification for a failure to define its local community or to help, directly or indirectly, in meeting the credit needs within that community, including low- and moderate-income neighborhoods.

Whether or not an institution operates as a "full service" entity is not a determining factor in evaluating its CRA performance. Every institution should be able to demonstrate that it is fulfilling its CRA responsibilities, either within the context of its chosen service specialties or in other ways. The final measure of CRA performance is in the credit benefits accruing to the institution's local community as a result of that institution's activities, irrespective of the vehicle by which those credit benefits are provided.

29. **In addition to traditional direct lending activities, what activities can financial institutions consider in meeting obligations and responsibilities under the Community Reinvestment Act?**

The answer to this question is primarily designed to provide guidance to regulated financial institutions that are not "full service" providers. The guidance herein can also be utilized by full service institutions as a means of augmenting their traditional lending activities as part of a comprehensive CRA program. Some of these activities may require prior regulatory agency approval.

The following are some non-traditional activities that financial institutions may consider to help meet their responsibilities under the Community Reinvestment Act.

- Purchase of mortgage-backed securities or collateral trust notes from lenders or other community development finance intermediaries serving primarily low- and moderate-income areas or persons.

- Purchase of housing, community and economic development loans, or participations in loans or loan pools from other financial institutions, state and local government agencies, nonprofit community-based development corporations, community loan funds, or other community development intermediaries originating loans to help meet the needs of low-and moderate-income persons or small businesses.

- Purchase of government guaranteed loans (or participations in pools representing such loans) made to low- and moderate-income persons, or to small farm and small business owners, such as:

  SBA guaranteed loans or loan pools;
  FMHA guaranteed farm, business or housing loans;
  FHA guaranteed loans;
  EDA (U.S. Economic Development Administration) guaranteed loans;
  State housing or economic development agency guaranteed loans.

- Purchase of state and local government agency housing mortgage revenue bonds or industrial revenue bonds.

Equity Investments

Some activities to serve community credit needs may be carried out through certain federal and state supervisory agencies' programs to promote community development investments. Such investments are required to serve predominantly a public or community purpose. Activities that might be carried out directly by an institution under these programs include:

- Purchase of limited partnership shares to provide the equity financing for public-purpose projects such as construction of low- and moderate-income housing or provision of small business seed capital. General partners could be quasi-public or private, for-profit or nonprofit organizations.

- Investment in the stock of a public purpose corporation, either for profit or nonprofit, chartered to carry out activities to benefit low- and moderate-income areas and residents or small businesses.

For certain institutions and holding companies, the formation of, or investment in, a community development corporation may, in accordance with applicable laws and restrictions, be a viable way to address certain credit needs in the communities of institutions or holding company subsidiary institutions.

Limited service or specialized institutions in a holding company that owns a community development corporation operating in the institution's community could take advantage of the CDC's activities in planning and executing its own CRA responsibilities.

Activities that could be carried out through a community development corporation subsidiary include, for example:

- Acting as a general partner, joint venture partner and/or equity investor in projects that have a clear public purpose, particularly projects focused on assisting low- and moderate-income housing or small business and on the redevelopment of deteriorating or blighted areas where private developers are not interested in the opportunities.

- Carrying out a program to provide needed technical assistance on financial matters to small businesses or public-purpose organizations.

- Financing and managing a public-purpose revolving loan fund to provide financing that cannot normally be provided through the private market. An example is a fund to lend monies for pre-development costs involved in evaluating and packaging projects for financing by financial institutions and/or public sector investors.

An activity that could be carried out by the institution, directly or through establishment of a separate corporation, is an investment in a wholly-owned or multi-bank/multi-investor Small Business Investment Company (SBIC) or Minority Enterprise Small Business Investment Company (MESBIC) licensed by the U.S. Small Business Administration.

Other Services and Activities

- Letters/lines of credit to community-based organizations, private developers, nonprofit development corporations or other community finance intermediaries to support financing of low- and moderate-income housing or small business development.

- Highly targeted corporate contributions (monetary and in-kind) to support the personnel, facilities, marketing and finance activities of community-based nonprofit organizations or other financial intermediaries that explicitly focus on helping meet credit needs of low- and moderate-income persons or small businesses. Such organizations might include:

  — nonprofit, neighborhood development corporations;
  — housing and other credit counseling organizations;
  — community foundations and loan funds;
  — Neighborhood Housing Services organizations;
  — SBA 504 Certified Development Companies.

- Technical assistance to community-based nonprofit groups, state and local government agencies and community development finance intermediaries which focus on helping meet the credit needs of low- and moderate-income persons or areas, or small businesses. Examples of such technical assistance activities might include:

  — serving on the board of directors or loan review committee;
  — development of loan application and underwriting standards;
  — development of loan processing systems;
  — marketing assistance, including development of advertising and promotions, publications, workshops and conferences;
  — training for staff and management;
  — accounting/bookkeeping services;
  — fund-raising;
  — consumer education to broaden knowledge and use of credit and deposit services.

- Assistance to community development credit unions in the institution's local community through, for example, provision of technical assistance or stable deposits to fund the credit union's lending.