

CONSUMER COMPLIANCE OUTLOOK®

FIRST QUARTER 2014
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NEW AND REVISED *INTERAGENCY QUESTIONS AND ANSWERS REGARDING COMMUNITY REINVESTMENT: UPDATES TO COMMUNITY DEVELOPMENT GUIDANCE*

BY CATHY GATES, SENIOR PROJECT MANAGER, FEDERAL RESERVE BOARD

INTRODUCTION

The Community Reinvestment Act (CRA or act) requires the federal agencies that implement the act — the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of the Comptroller of the Currency (agencies) — to assess the record of financial institutions in meeting the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods, consistent with safe and sound operations.¹ The CRA's implementing regulations provide different methods of evaluating performance, corresponding to differences in institutions' asset sizes, structures, and operations.²

The agencies publish *Interagency Questions and Answers Regarding Community Reinvestment* (Interagency Q&As) to provide guidance on how the regulations are interpreted and applied. The agencies periodically update the Interagency Q&As based upon changes in the banking industry. This article describes the most recent update, which was published in the *Federal Register* on November 20, 2013.³

BACKGROUND

The agencies regularly receive comments and questions from financial institutions, their trade groups, and community organizations regarding how community development activities are considered in CRA examinations. Periodically, the agencies also hold public hearings to gather information about the effectiveness of the regulations. The most recent public hearings

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¹ 12 U.S.C. §§2901(b), 2906(a)(1)

² In addition to the small bank, intermediate small bank, and large bank CRA examination procedures (which are based on asset size), institutions may be examined pursuant to the wholesale and limited-purpose bank methodology or under a strategic plan. See 12 C.F.R. §§228.25, 228.27.

³ *Interagency Questions and Answers Regarding Community Reinvestment*, 78 Fed. Reg. 69671 (Nov. 20, 2013), available at www.gpo.gov/fdsys/pkg/FR-2013-11-20/pdf/2013-27738.pdf

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UNDERSTANDING THE COMMUNITY REINVESTMENT ACT'S ASSESSMENT AREA REQUIREMENTS

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INTRODUCTION

Congress passed the Community Reinvestment Act (CRA) in 1977 to encourage depository institutions to help meet the credit needs of the local communities in which they are located and to help combat redlining.¹ To accomplish these goals, the CRA requires the federal agencies with responsibility for assessing depository institutions' CRA performance — the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board (Board), and the Office of the Comptroller of the Currency (OCC) — to periodically conduct CRA examinations of the institutions they supervise. During the examination, examiners assess an insured depository institution's record of helping to meet the credit needs of the communities it serves, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution.² Based on an institution's performance, examiners assign a CRA rating and issue a public performance evaluation.

Regulation BB, 12 C.F.R. part 228, is the Board's implementing regulation for the CRA that applies to the institutions it supervises.³ To facilitate CRA examinations, the regulation requires that depository institutions delineate a geographic assessment area(s).⁴ The technical definition of an assessment area is discussed in detail in the next section, but it generally refers to the geographies in which the bank has its main office, its branches, and its deposit-taking automated teller machines (ATMs), as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans.

Assessment areas are a central concept of the CRA regulation. Although an institution's asset size and operations determine which CRA tests are considered, all of the tests measure an institution's performance in its assessment

¹ 12 U.S.C. §2901 ("It is the purpose of this chapter to require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.") See also S. Rep. 95-175 at p. 35 (May 16, 1977) ("[T]he Committee is aware of amply documented cases of redlining, in which local lenders export savings despite sound local lending opportunities.")

² 12 U.S.C. §2903(a)

³ The FDIC and the OCC have CRA implementing regulations that are substantially similar to the Board's Regulation BB for the institutions they supervise. See 12 C.F.R. part 25 (national banks), 12 C.F.R. part 195 (federally chartered savings and loan associations), 12 C.F.R. part 345 (state-chartered nonmember banks), and 12 C.F.R. part 195 (state-chartered savings and loan associations).

⁴ 12 C.F.R. §228.41(a)

area(s).⁵ It is therefore critically important that institutions subject to the CRA understand the requirements for delineating assessment areas. This article reviews those requirements, discusses the importance of monitoring changes in assessment areas, notes the benefits of using mapping software, and explains the effect of assessment areas that do not meet the technical requirements of the regulation.

REGULATORY REQUIREMENTS FOR DELINEATING AN ASSESSMENT AREA

Regulation BB sets forth several technical criteria for delineating assessment areas.⁶ First, the geographic location of assessment areas must consist generally of one or more metropolitan statistical areas (MSAs); metropolitan divisions; or one or more contiguous political subdivisions, such as counties, cities, or towns.⁷ A political subdivision includes townships and Indian reservations, but it does not include wards, school districts, voting districts, and water districts.⁸ Assessment areas must include the institution's main office, its branches, and its deposit-taking ATMs, as well as surrounding geographies in which the institution has originated or purchased a substantial portion of its loans.⁹ However, if an institution asks its regulator to consider affiliate lending in the CRA examination, the geographies within which the affiliate's loans have been made do not affect the institution's delineation of its assessment area(s).¹⁰

If an institution predominately serves an area smaller than a political subdivision, it may adjust the boundar-

ies of its assessment area to include only the portion of a political subdivision that it can reasonably be expected to serve.¹¹ Adjusting the boundaries of an assessment area may also be appropriate if the assessment area would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers such as a body of water or a mountain.¹²

Second, assessment areas must not reflect illegal discrimination.¹³ For purposes of defining CRA assessment areas, this refers to the practice of excluding geographies from assessment areas on a prohibited basis under the federal fair lending laws.

Third, assessment areas cannot arbitrarily exclude low- or moderate-income geographies. Examiners may consider the following factors to determine if this has occurred:

- income levels in the institution's assessment area(s) and surrounding geographies
- locations of branches and deposit-taking ATMs
- loan distribution in the institution's assessment area(s) and surrounding geographies
- the institution's size
- the institution's financial condition, and
- the business strategy, corporate structure, and product offerings of the institution.¹⁴

Finally, assessment areas must consist of whole geographies and may not extend substantially beyond an MSA boundary or beyond a state boundary unless

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⁵ 12 C.F.R. §228.41(a)

⁶ 12 C.F.R. §228.41

⁷ 12 C.F.R. §228.41(c)(1)

⁸ CRA Interagency Questions and Answers (Interagency Q&As) §__.41(c)(1)—1 and §__.41(c)(1)—2. See 75 Fed. Reg. 11642, 11666 (March 11, 2010)

⁹ 12 C.F.R. §228.41(c)(2)

¹⁰ Interagency Q&A §__.41(a)—2

¹¹ Interagency Q&A §__.41(c)(1)—2

¹² Interagency Q&A §__.41(d)(1)—1

¹³ 12 C.F.R. §228.41(e)(2)

¹⁴ Interagency Q&A §__.41(e)(3)—1

NEWS FROM WASHINGTON: REGULATORY UPDATES*

Consumer Financial Protection Bureau (CFPB) Proposes to Supervise Larger, Nonbank Participants in the Market for Foreign Remittance Transfers.

Section 1024 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) generally authorizes the CFPB to exercise supervisory authority over nonbank providers of consumer financial products and services. For certain enumerated types of consumer financial products and services, the CFPB has supervisory authority for nonbanks of all sizes; however, in other cases, the CFPB must first conduct a rulemaking defining a "larger participant" in the particular market. On January 23, 2014, the CFPB issued a rulemaking proposal to exercise examination authority over larger participants in the consumer foreign remittance transfer market. Under the proposal, a nonbank, foreign remittance transfer provider qualifies as a larger participant if it conducts at least 1 million aggregate annual international money transfers. The proposed definition would apply to approximately 25 international money transfer providers. The comment period closed on April 1, 2014.

CFPB Releases New Mortgage Rule Resources for Consumers.

On January 7, 2014, the CFPB released additional mortgage resources for consumers as part of its campaign to inform the public about new mortgage regulations. The resources include sample letters that consumers can use for problems with their mortgage servicer, mortgage tips, answers to common mortgage questions, and a fact sheet on the new mortgage regulations.

CFPB Announces Increase in Higher-Priced Mortgage Loans Escrow Account Asset-Size Threshold.

On December 30, 2013, the CFPB issued a final rule adjusting the asset-size threshold for certain creditors to qualify for an exemption from the escrow requirement under Regulation Z for higher-priced mortgage loans (HPMLs). Creditors originating first-lien HPMLs are generally required to establish an escrow of at least five years' duration; however, certain creditors that operate predominantly in rural and underserved areas and that meet the volume and asset-size thresholds are exempt from the escrow requirement. The CFPB established the initial asset-size threshold at \$2 billion in its 2013 final escrow rule. The threshold

is adjusted for inflation based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI) for each 12-month period ending in November. For 2014, the inflation adjustment increases the threshold for creditors with assets of \$2.028 billion or less as of December 31, 2013. Creditors at or below this threshold that also meet the certain other requirements of Regulation Z are exempt from the escrow requirement for HPMLs.

CFPB Announces Increase in Home Mortgage Disclosure Act Asset-Size Exemption Threshold.

On December 30, 2013, the CFPB issued a final rule adjusting the asset-size exemption threshold for banks, savings associations, and credit unions under Regulation C, which implements the Home Mortgage Disclosure Act (HMDA). The HMDA requires that the CFPB adjust this threshold yearly by the annual percentage increase in the CPI. The final rule increases the threshold for the asset-size exemption for banks, savings associations, and credit unions to \$43 million. Institutions with assets of \$43 million or less as of December 31, 2013, are exempt from collecting HMDA data in 2014. An institution's exemption from collecting data in 2014 does not affect its responsibility to report the data it was required to collect in 2013. The rule was effective January 1, 2014, and applies to data collection in 2014.

Financial Regulators Take Enforcement Action Against Three American Express Companies.

On December 23, 2013, the CFPB, in coordination with the Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC), announced consent orders with three American Express companies (American Express Centurion Bank; American Express Bank, FSB; and American Express Travel Related Services Company, Inc.) concerning unfair and deceptive marketing practices for credit cards. The agencies alleged that American Express engaged in illegal credit card practices, including unfair billing tactics and deceptive marketing with regard to credit card "add-on" products, such as payment protection and credit monitoring. The consent orders require the three companies to end the practices and pay combined restitution of \$59.5 million to more than 335,000 consumers. The three companies must also pay a total of \$16.2 million in civil money penalties to the CFPB, the OCC, and the FDIC.



Banking Agencies Release Annual Community Reinvestment Act (CRA) Asset-Size Threshold Adjustments for Institutions.

On December 19, 2013, the federal bank regulatory agencies announced the annual adjustment to the asset-size thresholds used to define small bank, small savings association, intermediate small bank, and intermediate small savings association under the CRA regulations as follows:

- “Small bank” or “small savings association” means an institution that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.202 billion.
- “Intermediate small bank” or “intermediate small savings association” means a small institution with assets of at least \$300 million as of December 31 of both of the prior two calendar years, and less than \$1.202 billion as of December 31 of either of the prior two calendar years.

The changes were effective January 1, 2014.

Financial Regulators Issue Final Guidance on Social Media.

On December 11, 2013, the Federal Financial Institutions Examination Council released final guidance discussing the application of consumer protection and compliance laws, regulations, and policies to activities conducted via social media by banks, savings associations, and credit unions, as well as nonbank entities supervised by the CFPB. The guidance notes that social media can affect an institution’s risk profile, including increased risks to consumers, compliance and legal risk, operational risk, and reputation risk. The guidance discusses considerations that may be helpful for financial institutions conducting risk assessments. The guidance, which was effective upon issuance, does not impose any new requirements on financial institutions but is intended to help financial institutions understand the potential risks associated with the use of social media and regulators’ expectations for managing those risks.

The Federal Housing Administration (FHA) Updates Lending Standards for Manually Processed Applications.

On December 11, 2013, the FHA published revised guidelines that identify when lenders are required to manually underwrite mortgage loan applications for FHA-insured mortgages. To underwrite an FHA loan electronically, a mortgagee must process

the loan request through an automated underwriting system that communicates with the FHA system that scores applications based on credit scores and other factors. The FHA scoring system provides two risk classifications: Accept or Refer. If the application is classified as Refer, the lender must manually underwrite the loan. The December 2013 update makes changes to the manual underwriting guidelines, which include creating reserve requirements for all manually underwritten borrowers, establishing maximum qualifying debt-to-income ratios based on credit score and compensating factors, and providing a revised list of acceptable compensating factors with objective documentation requirements for assessing these factors.

CFPB to Oversee Nonbank Student Loan Servicers.

On December 3, 2013, the CFPB issued a final rule to supervise certain nonbank student loan servicers for the first time. The final rule applies to “larger participants,” who are defined as nonbanks whose student loan servicing volume exceeds 1 million accounts. Larger participants are subject to the CFPB’s supervision and examination authority. The rule took effect March 1, 2014.

CFPB Issues Final Rule to Integrate Mortgage Disclosure Forms.

On November 20, 2013, the CFPB issued the final integrated mortgage rule. When consumers apply for a residential mortgage loan subject to the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA), they must receive within three business days of application an early TILA disclosure statement disclosing the cost of credit and a Good Faith Estimate (GFE) form under the RESPA disclosing estimated settlement costs. At consummation, consumers must receive the final TILA disclosure statement and the HUD-1 form. The Dodd-Frank Act directed the CFPB to consolidate these disclosures to help facilitate borrowers’ understanding of their mortgage loan and reduce information overload. Under the final rule, a new Loan Estimate form replaces the early TILA disclosure statement and the RESPA GFE, while the Closing Disclosure form replaces the TILA final disclosure statement and the HUD-1. The new rule is effective August 1, 2015.

* Links to the announcements are available in the online version of *Outlook* at www.consumercomplianceoutlook.org.

ON THE DOCKET: RECENT FEDERAL COURT OPINIONS*

REGULATION Z — TRUTH IN LENDING ACT (TILA), REGULATION X — REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA), AND FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

The Second Circuit holds that loan assignees are not creditors for purposes of the TILA's credit balance refund provision. *Vincent v. The Money Store*, 736 F.3d 88 (2d Cir. 2013). The plaintiffs in this class-action lawsuit obtained mortgages from creditors who later assigned them to The Money Store. The plaintiffs alleged that The Money Store violated Section 165 of the TILA, 15 U.S.C. §1666d, by failing to refund credit balances on their accounts. The trial court dismissed the TILA claim. On appeal, the Second Circuit affirmed, holding that the TILA provision at issue only applies to creditors, which Section 103(g) of the TILA defines in part as "the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement," 15 U.S.C. §1602(g). Because The Money Store was not the person to whom the obligations were initially payable, the court held that The Money Store was not a "creditor" under the TILA. The plaintiffs also tried to argue that The Money Store was the creditor for borrowers whose notes were assigned to The Money Store shortly after consummation because they sent their first payment to The Money Store. But the court held that the TILA defines a creditor solely by reference to the person to whom the loan is initially payable on the face of the note and not by reference to whom the first payment is actually made. The court acknowledged that its interpretation leads to the anomalous result that creditors purchasing notes are not subject to the TILA's requirement to refund credit balances. But the court determined this was an unintended result from a 1980 amendment to the TILA to limit lawsuits against assignees, who did not prepare the initial TILA disclosure statements but were often sued for disclosure violations. The amendment limits assignee liability to TILA violations apparent on the face of the disclosure statement, but it did not address an assignee's obligations under the TILA's billing provisions. The court held that only Congress could address this issue.

The court also addressed whether The Money Store could be liable as a debt collector under the FDCPA. The FDCPA generally only applies to debt collectors, not creditors. However, creditors can be liable under the FDCPA when they collect their own debts using someone else's name to suggest that a third person is collecting the debt. See 15 U.S.C. §1692a(6)(F). The Money Store retained a law firm, Moss Codilis, to prepare and mail breach notices to borrowers. The law firm sent the borrowers default notices, for which the firm was paid a fee, but performed no other services. The lawsuit alleged that as the creditor, The Money Store violated the FDCPA by falsely attempting to suggest that a third party had been retained to collect the debt. The Second Circuit held that when "a creditor, in the process of collecting its own debts, hires a third party for the express purpose of representing to its debtors that the third party is collecting the creditor's debts, and the third party engages in no bona fide efforts to collect those debts, the creditor may be liable for violating the FDCPA." The court determined that the appropriate inquiry was whether a third party was making a bona fide attempt to collect a debt or was merely acting as a conduit for a collection process that the creditor controls. The court of appeals reversed the trial court's dismissal of the lawsuit and remanded the case for further proceedings. One judge dissented.

The Sixth Circuit limits servicers' liability under the TILA but reverses dismissal of a RESPA claim. *Marais v. Chase Home Finance LLC*, 736 F.3d 711 (6th Cir. 2013). The plaintiff obtained a mortgage from a lender in 2006, for which Chase Home Finance was the servicer. In 2011, the plaintiff sent a Qualified Written Request (QWR) to Chase, as provided under the RESPA and Regulation X, requesting information about the



loan, including the current owner of the loan. Chase did not respond in a timely way to this request, and the plaintiff filed a lawsuit alleging TILA and RESPA violations. For the TILA claim, the plaintiff alleged the servicer violated Section 131(f)(2) of the TILA, 15 U.S.C. §1641(f)(2), which requires a servicer, in response to a written request from a borrower, to identify the current owner of the mortgage. The plaintiff argued that the 2009 amendment to the TILA obligating servicers to disclose the current owner of the loan implicitly imposed liability on servicers for a violation. But the court found that the TILA's civil liability provisions only apply to creditors and, in certain cases, to assignees. The TILA also specifically provides that a servicer is not treated like an assignee unless it is or was the owner of the loan. Because Chase merely serviced the loan, and did not own it, the court held that it could not be liable under the TILA.

For the RESPA claim, the plaintiff alleged that she suffered damages because Chase failed to provide a timely response to her QWR. The QWR alleged that Chase failed to credit payments totaling nearly \$800 and overcharged the plaintiff interest by not reducing the outstanding balance by the amount of the uncredited payments. The lower court had granted Chase's motion to dismiss, finding that the plaintiff did not establish a link between the QWR and the alleged damages. But on appeal, the Sixth Circuit found that the plaintiff sufficiently alleged a plausible RESPA claim for which she has suffered damages if the allegations are proven at trial. Moreover, the plaintiff also alleged that Chase violated the RESPA's prohibition on negative reporting to the consumer reporting agencies within 60 days of receiving a QWR concerning disputed payments. The court of appeals therefore reversed the trial court's dismissal of the RESPA claim and remanded the case for further proceedings.

The Sixth Circuit rejects HUD's bona fide provider test for affiliated business arrangements. *Carter v. Welles-Bowen Realty, Inc.*, 736 F.3d 722 (6th Cir. 2013). The plaintiffs filed a class-action lawsuit against Welles-Bowen, a real estate agency, and its two affiliated title companies, WB Title and Chicago Title, alleging they violated the RESPA's prohibition on referral fees for settlement services. Welles-Bowen referred the plaintiffs to WB Title to obtain title insurance, which assigned the work to Chicago Title. Section 8(c)(4) of the RESPA, 12 U.S.C. §2607(c)(4), contains a safe harbor for referrals of settlement services among affiliated companies (known as an affiliated business arrangement) if three requirements are satisfied: (1) the referral must be disclosed to the consumer, (2) the consumer must be able to reject the referral, and (3) the person making the referral cannot receive any "thing of value from the arrangement" other than "a return on the ownership interest or franchise relationship." It was undisputed that all three requirements were satisfied in this case. However, the U.S. Department of Housing and Urban Development's (HUD) 1996 "Policy Statement on Sham Controlled Business Arrangements" added a fourth requirement: The affiliate receiving the referrals must be a bona fide provider of settlement services, as determined under a 10-factor test. The lawsuit alleged that WB Title was not a bona fide provider of services under the policy statement and thus the safe harbor for affiliated business arrangements did not apply. The district court found that HUD's policy statement was unconstitutionally vague and dismissed the case. On appeal, the Sixth Circuit affirmed, holding that as a matter of administrative law, HUD's policy statement was not entitled to the judicial deference normally accorded to agency interpretations of statutes they are charged with implementing because it was not a regulation issued under the Administrative Procedure Act, which would have the force of law. The court also found that HUD's 10-factor test for a bona fide provider did not have a basis in the statutory text and was therefore invalid.

* Links to the court opinions are available in the online version of *Outlook* at www.consumercomplianceoutlook.org.

NEW AND REVISED *INTERAGENCY QUESTIONS AND ANSWERS REGARDING COMMUNITY REINVESTMENT*: UPDATES TO COMMUNITY DEVELOPMENT GUIDANCE

were held in 2010. Comments received at those hearings covered a wide range of issues, including community development.⁴ The Interagency Q&As published in November 2013 address a number of concerns and questions raised by commenters about community development activities, which are discussed in more detail below.⁵

NEW AND REVISED INTERAGENCY Q&AS

Community Development Activities Outside an Institution's Assessment Area(s)

Broader Statewide or Regional Area

The CRA regulations allow for consideration of community development activities that benefit an institution's assessment area(s), or a broader statewide or regional area that includes its assessment area(s). The updated Interagency Q&As revise two Q&As addressing community development activities outside of financial institutions' assessment areas. Some bankers and community organization representatives have misinterpreted the pre-November 2013 Q&As to limit consideration of such activities.

First, revised Q&A §__.12(h)—7 was shortened to clarify the meaning of "regional area." The revised answer explains that a regional area may be an intrastate area or a multistate area that includes the institution's assessment area(s) and that typically involves some geographic, demographic, and/or economic in-

terdependencies within the regional area. The revised answer includes two examples and explains that regions "are often defined by the geographic scope and specific purpose of a community development organization or initiative."

Second, revised Q&A §__.12(h)—6 clarifies that community development activities in a broader statewide or regional area that includes an institution's assessment area will receive full CRA consideration under the quantitative criteria (i.e., the number and amount of such activities) — even if the institution's assessment area(s) does not receive immediate or direct benefit — as long as the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s). This revised Q&A further clarifies that even if the institution's assessment area(s) will not benefit from the community development activities, they will still be considered as long as the activities benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s) and the institution has been responsive to community development needs and opportunities within its assessment area(s).⁶ Accordingly, an institution that has been responsive has the flexibility to engage in, and receive consideration for, community development activities that benefit areas within the broader statewide or regional area, even if there is no benefit to its assessment area(s).

⁴ See www.federalreserve.gov/communitydev/cra_hearings.htm for information about the hearings

⁵ The Interagency Q&As also redesignated one question and answer about activities undertaken by majority-owned institutions in cooperation with minority- or women-owned financial institutions and low-income credit unions (MWLIs). It explains that activities undertaken with MWLIs, such as making a deposit or capital investment, purchasing a participation in a loan, or providing technical expertise to assist an MWLI, will be considered in a financial institution's CRA evaluation. The activities do not need to benefit the majority-owned financial institution's assessment area(s); however, they must help meet the credit needs of the local communities in which the MWLI is chartered. The redesignation reflects a regulatory change made in 2010 that clarified that these types of activities are considered for all types and sizes of financial institutions regardless of the CRA performance test and examination method used to evaluate performance.

⁶ Q&A §__.26(c)(4)—1, which explains responsiveness in terms of the intermediate small bank community development test, provides additional insight regarding responsiveness. This citation refers to the March 11, 2010, version of the Interagency Q&As, not the recent change, available at www.gpo.gov/fdsys/pkg/FR-2010-03-11/pdf/2010-4903.pdf.

When an examiner considers an institution's responsiveness to community development needs, he or she will review the volume and mix of the institution's community development activities that benefit its assessment area(s) and broader statewide or regional areas that include its assessment area. The examiner will also review the qualitative aspects of those activities in light of the institution's performance context, including the community development needs and opportunities in the assessment area(s) and the broader statewide or regional areas that include the assessment areas, the institution's business strategy, capacity, and constraints.

Nationwide Funds

Nationwide funds are important sources of investments that can help to meet community development needs in low- and moderate-income and underserved areas throughout the country. These investments can be particularly efficient vehicles for certain institutions, especially those with a nationwide branch network. The agencies revised Q&A §__.23(a)—2 in response to concerns that the existing Q&A could be interpreted to require financial institutions to obtain side letters or written documentation from nationwide funds earmarking or allocating funds to a particular area, which deterred some institutions from making otherwise appropriate community development investments. The revised answer confirms that nationwide funds may be suitable community development investments, particularly for large institutions with a nationwide branch footprint. Further, it explains that a nationwide fund may be used by other institutions to meet community development needs, but that the other institutions should review the fund's investment record to determine whether the fund's activities are consistent with their own investment goals and geographic focus. The geographic focus refers to the institution's assessment area or the broader statewide or regional area that includes the assessment area(s).

Examination Procedures

The agencies published revised large bank examination procedures on April 18, 2014, to incorporate the updates to the Interagency Q&As and to clarify how examiners consider community development activities related to regional and nationwide funds.⁷ The examination procedures clarify that activities are to be considered at the appropriate geographic level. Specifically:

AN EXAMINER WILL REVIEW THE VOLUME AND MIX OF THE INSTITUTION'S COMMUNITY DEVELOPMENT ACTIVITIES THAT BENEFIT ITS ASSESSMENT AREA(S) AND BROADER STATEWIDE OR REGIONAL AREAS THAT INCLUDE ITS ASSESSMENT AREA.

1. If an activity benefits and is targeted to an institution's assessment area(s) the activity will be considered first at the assessment area level.
2. If the activity benefits or is targeted to the broader statewide or multistate MSA area that includes the assessment area(s) and supports organizations or activities with a purpose, mandate, or function that includes serving the geographies or individuals located within the assessment area(s), the activity will be considered first at the state or multistate MSA level.
3. If the activity benefits or is targeted to a regional area of two or more states (which are not part of a multistate MSA) that includes the assessment area(s) and supports organizations or activities with a purpose, mandate, or function that includes serving the geographies or individuals located within the assessment area(s), the activity will be considered first at the institution level.

In addition, if an institution has been responsive to community development needs and opportunities in

⁷ See CA Letter 14-2, "Revised Interagency Large Institution CRA Examination Procedures and Consolidation of Interagency CRA Examination Procedures and Supporting Materials," April 18, 2014, available at www.federalreserve.gov/bankinforeg/caletters/caltr1402.htm

its assessment area(s), the examination procedures also require consideration of community development activities in the broader statewide or regional area that includes the assessment area(s), even if the organizations or activities do not have a purpose, mandate, or function that includes serving geographies or individuals located within the institution's assessment area(s). In other words, as long as an institution is responsive to the community development needs in its assessment area, community development activities outside its assessment area, but in the broader statewide or regional area, will be considered. All of these community development activities will be considered when rating an institution, but they will not be artificially attributed to assessment areas or states where benefits cannot be measured. Similarly, the public performance evaluation will discuss community development activities at the assessment area, state, or institution level as appropriate, based on the benefits received at the various levels and their performance context.

Community Services Targeted to Low- or Moderate-Income Individuals

The updated Interagency Q&As expanded Q&A §__.12(g)(2) to include new examples of ways to determine that services are community services targeted to low- or moderate-income individuals. The revised Q&A clarifies that detailed income information is not required when recipients of community services are (1) students or their families from a school at which the majority of students qualify for free or reduced-price meals, (2) individuals who receive or are eligible to receive Medicaid, or (3) recipients of government assistance programs that have income qualifications equivalent to, or stricter than, the definitions of low- and moderate-income defined by the CRA regulations.

Community Development Services

The updated Interagency Q&As provide guidance about whether activities conducted by an institution's employees will be considered community development services. Q&A §__.12(i)—3 explains that providing services to a community development organization reflecting a financial institution's employees' areas of expertise at the institution, such as human resources, information technology, and legal services, constitutes a technical assistance activity that is a community development service. Additionally, the revised

answer indicates that service on the board of directors of a community development organization is an example of a community development service.

Consideration of Investments Using Alternative Funding Structure

New Q&A §__.12(t)—9 was added to address a funding structure used by a limited number of community development organizations. If loans or investments are made to organizations that invest in security instruments that do not have a community development purpose, and only the income from the investments is used to support the organization's community development purpose, then only the amount of the investment income used to benefit the organization or activity that has a community development purpose will be considered. The new Q&A makes clear that in such situations, quantitative consideration of a qualified investment should be consistent with the amount supporting a community development purpose rather than the full amount provided to the organization. Alternatively, consideration is to be given to the dollar amount of qualified investments provided to community development organizations when the funds are placed in instruments without a community development purpose solely as a means of securing capital for leveraging purposes, securing additional financing, or of generating a return with minimal risk until funds can be deployed toward the originally intended community development activity.

Community Development Lending Under the Large Bank Lending Test

New Q&A §__.22(b)(4)—2 addresses concerns that community development lending activities were undervalued and not given sufficient weight in a large bank's lending test component. The new Q&A clarifies that community development lending performance is always considered in an institution's lending test rating. An institution's community development lending record may have a positive, neutral, or negative impact on the lending test rating depending on the level of the institution's performance and the performance context.

For more information on the CRA, including these Interagency Q&As and the agencies' CRA regulations, visit the Federal Financial Institutions Examination Council website (www.ffiec.gov/cra). Specific issues and questions should be raised with your primary regulator. ©

UNDERSTANDING THE COMMUNITY REINVESTMENT ACT'S ASSESSMENT AREA REQUIREMENTS

they are located in a multistate MSA.¹⁵ When more than one MSA is combined with another in a combined statistical area (CSA), performance is measured using data at the MSA level — not the CSA level.¹⁶ If an institution serves areas in a state that are separate and not contiguous, each area should be delineated as a separate assessment area.¹⁷ Similarly, if an institution serves an MSA with counties that abut the MSA but are not adjacent to one other (i.e., they extend substantially beyond the MSA), each county would be a separate assessment area.¹⁸ However, if the MSA and counties are in the same CSA, they could all be included in the same assessment area, except the data used in measuring CRA performance would not be based on the CSA-level data but on the MSA-level data for the MSA, and at the state, non-MSA levels for the counties.¹⁹

BENEFITS OF MAPPING SOFTWARE

To help verify compliance with these requirements, the Federal Reserve System and other federal regulators use maps that include relevant demographic information, which can be useful in several ways to both regulators and financial institutions. First, these maps can provide a visual representation of the income levels and racial compositions of census tracts in an assessment area. This visual representation can help determine if an assessment area arbitrarily excludes low- and moderate-income tracts or reflects illegal discrimination.

Second, maps can be used to depict an institution's lending activity, thus ensuring that the institution's delineated assessment area(s) includes the geogra-

phies in which the bank has originated or purchased a substantial portion of its loans. Maps, along with tables that segment the bank's aggregate lending inside and outside the bank's assessment area(s), will reflect whether a significant number of loans are extended *outside* the assessment area(s). If this is the case, the institution should consider adjusting its assessment area(s) to include the areas where significant lending is occurring, consistent with the regulatory requirements. For example, after reviewing a map of an institution's lending activity inside and outside of its assessment area, an institution may realize that it would be more appropriate to take an MSA as its assessment area rather than counties, or a county rather than individual towns.

Third, maps can help determine whether an assessment area is extremely large, has an unusual configuration, or has geographic barriers. The regulation allows institutions to adjust their assessment areas in any of these three circumstances.²⁰

Finally, a map that includes demographic data could help illustrate certain aspects of the institution's performance context. When conducting a CRA examination and assigning a CRA rating, examiners consider performance context — economic, demographic, institution- and community-specific information applicable during the evaluation period.²¹ For example, a map could identify geographic areas where no consumer, small business, or small farm lending could reasonably be expected to occur, such as a park or cemetery.

¹⁵ 12 C.F.R. §§228.41(e)(1), 228.41(e)(4)

¹⁶ Interagency Q&A §__.41(e)(4)—1

¹⁷ Interagency Q&A §__.41(e)(4)—1

¹⁸ Interagency Q&A §__.41(e)(4)—2

¹⁹ Interagency Q&A §__.41(e)(4)—2

²⁰ 12 C.F.R. §228.41(d)

²¹ 12 C.F.R. §228.21(b) and Interagency Q&A §__.21(b)—1

MONITORING ASSESSMENT AREAS

The factors that influence the designation of an assessment area can change over time. It is therefore important that institutions monitor their assessment areas so they can make necessary adjustments to ensure ongoing compliance with the regulation. For example, an institution's lending patterns can change, especially if the institution is growing. An institution may currently designate its assessment area(s) as A, B, and C counties, where it extends a substantial portion of its loans. But if the institution begins lending in neighboring D and E counties, it should determine whether its assessment area(s) should be expanded to include these counties, or the MSA containing these counties, to ensure that its assessment area(s) includes geographies where it has originated or purchased a substantial portion of its loans. The extent of lending in D and E counties would inform this decision.

The income and demographic composition of census tracts can also change over time, as reflected in updated census data. For example, the 2010 census data revealed that 17 percent of the census tracts designated as moderate-income tracts in 2000 changed to middle-income tracts in the 2010 census. Similarly, 25 percent of the census tracts designated as middle-minority tracts in the 2000 census (meaning 50–79 percent of the tract has a minority population) changed to high-minority tracts in the 2010 census (meaning 80 percent or more of the tract has a minority population).²²

If an institution finds that the demographics of its assessment area(s) have changed in a material way, it should examine its assessment area(s) and lending patterns to determine whether its assessment area(s) should be adjusted. As the Board has noted in its supervisory guidance, "CRA assessment area designations will be reviewed during the course of an examination to ensure that the bank adequately

adjusted its assessment area(s) to account for differences in census tract delineations based on the new 2010 census data."²³ But it is important to note that "the eligibility of a loan, investment, or service as a community development activity is based on demographic information available to the bank at the time the activity is undertaken."²⁴ For additional information, *Outlook* published an article in 2012 discussing the effect of changing census data on compliance with the CRA, the Home Mortgage Disclosure Act (HMDA), and fair lending laws.²⁵

The U.S. Census Bureau previously collected and reported census data every 10 years. But beginning in 2005, the Bureau began issuing new census data reports every five years. Thus, depository institutions should monitor the five-year census reports for any changes in their lending areas. The Federal Financial Institutions Examination Council website provides tools to access updated census data.²⁶

SUPERVISORY IMPLICATIONS OF ASSESSMENT AREAS

Examination data reveal that the majority of depository institutions supervised by the Board have delineated assessment areas that comply with the regulation. Occasionally, however, examiners identify assessment areas that do not meet the regulation's technical criteria.

Because a performance evaluation focuses on an institution's lending, investments, and/or services, examiners will generally not downgrade an institution's CRA rating for violating the technical requirements for designating assessment areas. Instead, examiners would designate corrected assessment area(s) to evaluate CRA performance. Additionally, examiners generally would document that the assessment area was redrawn to comply with Regulation BB and would cite any violations of the assessment area tech-

²² Outlook Live webinar: "2010 Census Data: What it Means for HMDA, CRA, and Fair Lending Compliance," June 21, 2012 (presentation slides 14, 18), available at www.philadelphiafed.org/bank-resources/publications/consumer-compliance-outlook/outlook-live/2012/062112.pdf

²³ CA Letter 12-4 "Guidance on the Usage of 2010 Census Data in Community Reinvestment Act Examinations," April 23, 2012; see also CA Letter 13-8 "Guidance on the Use of 2010 Census Data in Fair Lending Examinations," May 16, 2013.

²⁴ CA Letter 12-4

²⁵ Laura Gleason and Carole Foley, "The 2010 Census Data and Its Impact on HMDA, CRA, and Fair Lending Compliance," *Consumer Compliance Outlook*, Second Quarter 2012


²⁶ See www.ffiec.gov/census/

nical requirements of Regulation BB in the consumer compliance report of examination; however, examiners would not communicate the technical violation in the institution's CRA performance evaluation.

Crucially, one circumstance in which a violation could affect an institution's CRA rating and be noted in the CRA performance evaluation is an assessment area that reflects illegal discrimination.²⁷ This finding could result in a CRA rating downgrade depending on the particular circumstances of the violation, including the strength of the evidence of the practices, the policies and procedures the bank has in place to prevent such practices, corrective action the bank has taken or

committed to take, and any other relevant information.²⁸ A full discussion of this fair lending issue is beyond the scope of this article, but institutions should be aware of this risk.

CONCLUSION

Examiners evaluate CRA performance with reference to the institution's assessment area(s). It is, therefore, essential that institutions engage in due diligence when creating assessment areas, periodically monitor potential changes to assessment areas, and make appropriate adjustments when necessary. Specific issues and questions should be raised with your primary regulator. 

²⁷ 12 C.F.R. §228.41(e)(2)

²⁸ 12 C.F.R. §228.28(c)

COMMUNITY REINVESTMENT ACT: THE TRANSITION FROM SMALL BANK TO INTERMEDIATE SMALL BANK

BY MICAH SPECTOR, EXAMINER, FEDERAL RESERVE BANK OF PHILADELPHIA

As a community bank's assets increase over time, its classification under the Community Reinvestment Act (CRA) can change from a small bank (SB) to an intermediate small bank (ISB).¹ When this occurs, the relevant CRA examination procedures change because ISBs are subject to both a lending test and a community development (CD) test, while SBs are only subject to a streamlined lending test that focuses on retail activities. This change need not be a source of stress for the institution or its personnel provided they arm themselves with necessary information about, and undertake appropriate preparation for, the transition.

The CRA regulations provide different evaluation methods in response to basic differences in institutions' structures and operations.² This article reviews the CRA asset-size triggers that result in an institution evolving from an SB to an ISB, reviews the differences between SB and ISB evaluations, and proposes some recommendations for new and existing ISBs.

ISB ASSET-SIZE THRESHOLD

Regulation BB, 12 C.F.R. §228.12(u),³ defines an ISB as a "a small bank with assets of at least \$300 million as of December 31 of both of the prior two calendar years

¹ Likewise, community banks may grow sufficiently in asset size to become large banks for purposes of the CRA (or they could even decrease sufficiently in asset size and transition in the opposite direction). This article is solely focused on the transition from an SB to an ISB.

² Examination procedures to implement the CRA vary by size and kind of institution. In addition to the SB, ISB, and large bank CRA examination procedures, institutions may be examined pursuant to the wholesale and limited-purpose bank methodology or under a strategic plan.

³ Regulation BB, 12 C.F.R. part 228, is the Federal Reserve Board's implementing regulation for the CRA. The other banking agencies' CRA regulations are substantially similar. See 12 C.F.R. part 345 (Federal Deposit Insurance Corporation (FDIC)); 12 C.F.R. part 25, subparts A, B, and C (Office of the Comptroller of the Currency (OCC) for national banks); and 12 C.F.R. part 195 (OCC for federal savings associations).

and less than \$1.202 billion as of December 31 of either of the prior two calendar years.”⁴ Accordingly, if an institution’s assets were over the threshold of \$300 million as of both December 31, 2012, and December 31, 2013, it would be considered an ISB on January 1, 2014. Because asset sizes can fluctuate, both under and over the relevant threshold during the course of a given year, the year-end asset sizes for two successive years are used to determine whether a bank is an SB, an ISB, or a large bank and which set of examination procedures will be used for the bank’s CRA evaluation. The Federal Financial Institutions Examination Council has published a document that explains this further.⁵ Note that the ISB examination procedures are used for all ISBs, even for those that have just crossed the threshold. An SB that is approaching the ISB threshold can ensure success by understanding the performance tests and criteria for an ISB and becoming engaged and taking actions before it becomes an ISB.

SB VERSUS ISB CRA EXPECTATIONS

The CRA typically classifies institutions based upon their asset size. The classification determines which CRA performance criteria and tests are used to evaluate an institution’s CRA performance. As previously noted, the primary difference between SB and ISB performance evaluations is that an ISB evaluation includes the CD test in addition to the small bank lending test. The CD test will be new to institutions that have only recently become ISBs.⁶

Under the lending test, the following performance criteria are reviewed: net loan-to-deposit ratio; percentage of lending-related activities located inside the institution’s assessment area(s); geographic distribution of loans; record of lending to borrowers of different income levels and to businesses and farms of different sizes; and a record of taking action, if war-

ranted, in response to written complaints about the institution’s performance in helping meet community credit needs.⁷

The loan products evaluated under the lending test vary, depending on an institution’s major product lines. Relevant lending products include residential mortgage loans (e.g., home-purchase loans, home-improvement loans, and refinancings), small business loans, small farm loans, and consumer loans.

The CD test measures the extent to which an institution engages in community development activities. In evaluating the responsiveness of a bank’s community development activities, examiners review the volume, mix, and qualitative aspects of community development loans, of qualified investments, and of community development services. Specifically, the CD test uses the following performance criteria:

- number and amount of community development loans
- number and amount of qualified investments
- extent of community development services provided, and
- responsiveness of community development loans, qualified investments, and community development services to community development needs and opportunities.⁸

At its heart, the CD test focuses on determining whether an institution understands and is responsive to the community development needs of its assessment area(s). In many cases, new ISBs will already be well placed to do so; in other instances, however, recently classified ISBs may need to take deliberate steps to make community development loans, make qualified investments, and provide community de-

⁴ At the time of writing, an institution with assets less than \$1.202 billion as of either December 31, 2012, or December 31, 2013, is considered a “small bank.” The ISB is a subset of the small bank category. The CRA asset-size thresholds are adjusted annually.

⁵ See www.ffiec.gov/cra/pdf/Explanation_of_the_Community_Reinvestment_Act_Asset_Threshold_Change_2014.pdf

⁶ SBs may opt to be evaluated under the CD test as well if they wish to be considered for an outstanding rating.

⁷ 12 C.F.R. §228.26(b)

⁸ See 12 C.F.R. §228.12(g) (definition of “community development”); §228.12(h) (definition of “community development loan”); §228.12(i) (definition of “community development service”); §228.12(t) (definition of “qualified investment”). To qualify as a community development activity, Regulation BB states that an activity must have community development as its primary purpose.

velopment services that are responsive to community development needs in the area. The agencies that conduct CRA evaluations expect ISBs to engage in a mixture of community development loans, qualified investments, and community development services consistent with the institution's capacity and business strategy as well as with the community development needs and opportunities in the area.

To qualify as a community development activity, relevant loans, investments, and service activities must have community development as a primary purpose.⁹ The Federal Reserve Board, the FDIC, and the OCC publish *Interagency Questions and Answers Regarding Community Reinvestment* (Interagency Q&As).¹⁰ Interagency Q&A §__.12(h)—8 explains the meaning of "primary purpose":

A loan, investment, or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or promoting economic development by financing small businesses and farms that meet the requirements set forth in 12 CFR __.12(g).

The Interagency Q&As also state that if "a majority of the dollars or beneficiaries are identifiable to one

or more of the enumerated community development purposes, the activity will be considered to have community development as a primary purpose." Even in cases when less than a majority of the benefits or dollars are associated with an enumerated community development purpose, a loan, investment, or service is deemed to have been made with community development as a primary purpose provided that its express, bona fide intent is one of the enumerated community development purposes, the activity is specifically structured to achieve its express community development purpose, and the activity accomplishes, or is reasonably certain to accomplish, that purpose.¹¹

THE AGENCIES THAT CONDUCT CRA EVALUATIONS EXPECT ISBS TO ENGAGE IN A MIXTURE OF COMMUNITY DEVELOPMENT LOANS, QUALIFIED INVESTMENTS, AND COMMUNITY DEVELOPMENT SERVICES CONSISTENT WITH THE INSTITUTION'S CAPACITY AND BUSINESS STRATEGY ...

If the primary purpose is providing community services targeted to low- or moderate-income (LMI) individuals; economic development; or revitalizing or stabilizing LMI areas, designated disaster areas, distressed, or underserved nonmetropolitan middle-income areas, an institution can receive consideration for the *full* amount invested.¹² However, if the primary purpose is for affordable housing for LMI individuals, the institution can receive consideration under CRA for only the portion of the activities that helps to provide affordable housing to LMI individuals. For example, if an in-

⁹ 12 C.F.R. §228.12(h)(loans), (i)(services), and (t)(investments)

¹⁰ The most recent update to the Interagency Q&As was published in the Federal Register on November 20, 2013. See *Interagency Questions and Answers Regarding Community Reinvestment*, 78 Fed. Reg. 69671 (Nov. 20, 2013). This issue of *Outlook* contains an article discussing the changes, by Cathy Gates, "New and Revised *Interagency Questions and Answers Regarding Community Reinvestment*: Updates to Community Development Guidance."

¹¹ See 2010 Interagency Q&A §__.12(h)—8, available at www.gpo.gov/fdsys/pkg/FR-2010-03-11/pdf/2010-4903.pdf

¹² See 2010 Interagency Q&A §__.12(h)—8

stitution made a loan for \$10 million to a developer who designated 10 percent of the housing project as affordable housing for LMI individuals, the institution would receive CRA credit for \$1 million (i.e., 10 percent of the total project). If an institution has any questions about a potential community development activity's eligibility for CRA consideration, it should contact the agency that conducts its CRA evaluations.

Evaluation of an ISB's CRA performance involves not only analyzing the volume of community development activities but also the responsiveness of those activities to the community development needs of the institution's assessment area(s).¹³ The CD test was designed to be flexible, allowing each institution to decide how to allocate resources based on its capacity, business strategies, and community development needs and opportunities. From community to community, community development needs are likely to differ. Consideration of qualitative aspects recognizes that community development activities sometimes require special expertise or provide benefits that would otherwise not be made available. Consequently, a smaller loan may provide more qualitative benefit to a specific community than a larger dollar loan that is

To receive an outstanding rating on the CD test, an ISB's community development performance must demonstrate excellent responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services in light of the ISB's capacity and community development needs and opportunities. For a satisfactory rating on the CD test, an ISB's performance must demonstrate adequate responsiveness; in turn, poor responsiveness will lead to a needs to improve rating, and very poor responsiveness will lead to a substantial noncompliance rating.

For an ISB to receive an overall satisfactory rating for its CRA performance, it must receive at least a satisfactory rating on both the lending test and the CD test. If the institution receives an outstanding rating on one test and a satisfactory rating on the other, the institution *may* receive an overall outstanding rating. Both tests are weighted equally (unlike in CRA large bank evaluations where the large bank lending test is given more weight than the investment and services tests). However, if an ISB receives a needs to improve rating on either test, its overall rating will be needs to improve, as outlined in the following chart:

ISB Performance Evaluation Rating		
Lending Test	CD Test	Overall
Satisfactory	Satisfactory	Satisfactory
Outstanding	Satisfactory	Satisfactory or Outstanding
Satisfactory	Outstanding	Satisfactory or Outstanding
Needs to Improve	Satisfactory or Outstanding	Needs to Improve
Satisfactory or Outstanding	Needs to Improve	Needs to Improve

not as responsive to the area's community development needs.¹⁴ The agencies that conduct CRA evaluations understand that community banks do not have the resources of larger institutions; accordingly, qualitative factors such as "innovativeness" and "complexity," which are considered in CRA large bank evaluations, do not apply to ISBs.

PREPARING FOR THE ISB CD TEST

Understanding the rating system allows prospective, recent, and existing ISBs to fine-tune their CRA community development programs to be responsive to community development needs and opportunities. To ensure a satisfactory or outstanding rating, a bank will want to assess the needs in its community and en-

¹³ 12 C.F.R. §228.26(c)(4)

¹⁴ See 2010 Interagency Q&A §__.26(c)(4)—1

gage in activities responsive to those needs and the bank's capacities. The CD test allows an ISB to apply its resources strategically to help meet community development needs through loans, investments, and services. Accordingly, CRA program elements that will benefit ISBs include: community outreach to build an understanding of its assessment area(s), training for key personnel, tracking systems for demonstrating community development performance, and performing self-assessments. Discussions with customers and community groups should provide a deeper understanding of how community development activities could benefit the community.

Implementing an appropriate CRA program that includes an emphasis on community development and includes key personnel is an important step. In the CRA context, key personnel refers not only to the chief CRA officer but also to lending, investment, and marketing personnel. Lending staff should be able to understand and identify community development lending opportunities in the assessment area(s). Likewise, investment staff should be able to identify and evaluate potential qualified investments. Marketing staff with an understanding of community development services will be better able to tailor outreach for that purpose.

The results of outreach can be used to engage in the community development activities (loans, investments, and services) that are the most responsive to community development needs and opportunities within its assessment area(s). For example, if the community lacks affordable housing, the bank may decide to engage in multifamily affordable housing lending or invest in low-income housing tax credits that benefit the assessment area(s).

Many community banks already engage in activities that qualify as community development during the regular course of business. However, if the institution is unable to provide information about these activities to examiners, the activities could be overlooked during the evaluation. Establishing an appropriate mechanism for routinely capturing information about

all community development activities is an important step toward ensuring that activities are considered during the CRA examination. Once the information is collected and internally recorded, the CRA officer can compile a list of community development activities on a periodic basis (such as quarterly or annually) and have it ready for the next CRA evaluation. Tracking methods that leverage the institution's existing loan and investment software platforms may also be useful in assisting institutions to capture community development information.

As previously referenced, performance standards are based on a review of objective quantitative data and the qualitative aspects of a bank's performance. Self-assessments allow institutions to understand and monitor both the quantitative and qualitative aspects of their CRA performance between evaluations. Self-assessments can provide a good starting point for identifying strengths and gaps in a bank's CRA performance. A self-assessment should include information regarding economic conditions, demographic shifts, the bank's product offerings and business strategy, its capacity and constraints, and other factors relevant to responsiveness to community development needs and opportunities. Any information that helps to explain or quantify the extent and responsiveness of the bank's loans, activities, and investments to community development needs and opportunities will be helpful. Although an institution is not required to conduct self-assessments or to provide its results to examiners, those results can be very useful for planning future activities and when communicating with examiners about performance and performance context.¹⁵

CONCLUSION

Although an ISB CRA evaluation includes the requirement of the CD test that does not apply to an SB evaluation, new ISBs should not be unduly concerned. Many community banks are already involved in community development activities. With appropriate preparation and extra attention to their CRA programs, new and existing ISBs should find themselves well positioned for an ISB evaluation. Specific issues and questions should be raised with your primary regulator. ©

¹⁵ See 2010 Interagency Q&As §__.21(b)—1 and §__.21(b)(2)—1

FEDERAL RESERVE BOARD CONSUMER AFFAIRS LETTERS FOR 2013/2014

Consumer Affairs (CA) letters address significant policy and procedural matters related to the Federal Reserve System's consumer compliance supervisory responsibilities. CA letters are numbered sequentially by year. For example, the first letter issued in 2014 is numbered CA 14-1. Letters that have been superseded or contain confidential supervisory information are not included.

CA 14-2	Revised Interagency Large Institution CRA Examination Procedures and Consolidation of Interagency CRA Examination Procedures and Supporting Materials
CA 14-1 / SR 14-2*	Enhancing Transparency in the Federal Reserve's Applications Process
CA 13-26	Regulation X Homeownership Counseling List Requirement
CA 13-25	Revised Interagency Examination Procedures for Regulation Z and Applicability of CA 09-12
CA 13-24	Revised RESPA Interagency Examination Procedures
CA 13-23 / SR 13-20	Interagency Statement on Supervisory Approach for Qualified and Non-Qualified Mortgage Loans
CA 13-22	Social Media: Consumer Compliance Risk Management Guidance
CA 13-21 / SR 13-19	Guidance on Managing Outsourcing Risk
CA 13-20	Consumer Compliance and Community Reinvestment Act (CRA) Examination Frequency Policy
CA 13-19	Community Bank Risk-Focused Consumer Compliance Supervision Program
CA 13-18	Final Revisions to Interagency Questions and Answers Regarding Community Reinvestment
CA 13-17	Revised Interagency Examination Procedures for Regulation E
CA 13-16	Interagency Examination Procedures for Garnishment of Accounts Containing Federal Benefit Payments Rule
CA 13-15	Interagency Statement on Fair Lending Compliance and the Ability-to-Repay and Qualified Mortgage Standards Rule
CA 13-14	Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults
CA 13-11 / SR 13-15	Federal Reserve Resources for Minority Depository Institutions
CA 13-10 / SR 13-13	Supervisory Considerations for the Communication of Supervisory Findings
CA 13-8	Guidance on the Use of 2010 Census Data in Fair Lending Examinations
CA 13-7	Statement on Deposit Advance Products
CA 13-6 / SR 13-9	Minimum Standards for Prioritization and Handling Borrower Files with Imminent Scheduled Foreclosure Sale
CA 13-5 / SR 13-8	Extension of the Use of Indicative Ratings for Savings and Loan Holding Companies
CA 13-4 / SR 13-7	State Member Bank Branching Considerations
CA 13-3 / SR 13-6	Supervisory Practices Regarding Banking Organizations and Their Borrowers and Other Customers Affected by a Major Disaster or Emergency
CA 13-2	Interagency Statement on the Impact of Biggert-Waters Act
CA 13-1 / SR 13-1	Supplemental Policy Statement on the Internal Audit Function and Its Outsourcing

* In some cases, CA letters are issued jointly with the Federal Reserve's Banking Supervision and Regulation Division. Letters issued by that division are commonly known as SR Letters, which address significant policy and procedural matters related to the Federal Reserve System's supervisory responsibilities.

REGULATORY CALENDAR*

Effective Date	Implementing Regulation	Regulatory Change	Outlook Live Webinar
†	Various	Interagency proposal to establish minimum requirements for appraisal management companies	
†	Reg. E	Consumer Financial Protection Bureau (CFPB) proposal to extend until July 21, 2020, temporary provision allowing use of estimates for foreign remittance transfer pricing disclosures	
8/1/15	Regs. X and Z	Final rule integrating Real Estate Settlement and Procedures Act (RESPA) and Truth in Lending Act (TILA) mortgage disclosures	
1/18/14	Reg. B	Final rule on Dodd-Frank Act appraisal requirements under the Equal Credit Opportunity Act	
1/18/14**	Reg. Z	Final rule exempting subset of higher-priced mortgage loans (HPMLs) from appraisal requirements	
1/18/14	Reg. Z	Final rule on Dodd-Frank Act appraisal requirements for HPMLs	
1/10/14 (interim final rule)	Regs. X and Z	Amendment to RESPA and TILA mortgage rules	
1/10/14	Regs. X and Z	Final rule on Dodd-Frank Act requirements for high-cost mortgages and homeownership counseling	
1/10/14	Reg. Z	Final rule delaying effective date of Dodd-Frank Act prohibition on single-premium credit insurance	
1/10/14	Reg. Z	Final rule on Dodd-Frank Act ability-to-repay/qualified mortgage rule CFPB later amended the rule to clarify inclusion of loan originator compensation in points and fees test. CFPB also amended rule in June 2013 concerning ATR and loan servicing rules.	12/4/13
1/10/14	Reg. Z	Federal Housing Finance Agency announcement limiting Fannie Mae/Freddie Mac loan purchases to Qualified Mortgages	
1/10/14	Regs. X and Z	July 2013 final rule amending certain aspects of Dodd-Frank Act mortgage rules issued in January 2013	
1/10/14, except 1/1/14 and 1/18/14 for certain provisions	Regs. B, X, and Z	September 2013 final rule amending certain aspects of Dodd-Frank Act mortgage rules	
1/1/14	Reg. Z	Annual dollar amount adjustments to TILA	
1/1/14***	Reg. Z	Final rule on Dodd-Frank Act requirements for loan originator compensation, mandatory arbitration, Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), and single-premium credit insurance	
1/1/14	Reg. C	Annual adjustment to asset-size exemption threshold for Home Mortgage Disclosure Act requirements	
1/1/14	Reg. Z	Annual adjustment to asset-size exemption threshold for escrows for HPMLs	

† Rulemaking proposals generally do not have an effective date.

* Links to the regulatory changes are available in the online version of *Outlook* at tinyurl.com/calendar-cco.

** For manufactured homes, the effective date for the HPML appraisal requirement is July 18, 2015.

*** The amendment for mandatory arbitration was effective on June 1, 2013; amendments for SAFE Act and single-premium credit insurance took effect January 10, 2014.

ADDRESS SERVICE REQUESTED

CALENDAR OF EVENTS 2014

- | | |
|------------------------------------|--|
| May 29
1:00 p.m.–2:30 p.m. (PT) | The Development and Launch of a New Banking Product:
A UDAP Primer
FDIC Teleconference |
| June 4–6 | EMERGE: The Forum on Consumer Financial Services Innovation
Hyatt Regency Century Plaza
Los Angeles |
| June 8–11 | ABA National Regulatory & Compliance Conference
Hyatt Regency
New Orleans |
| October 16–17 | FDIC 4th Annual Consumer Research Symposium
Seidman Center
Arlington, VA |