

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10629**]
March 17, 1993]

**COMMUNITY REINVESTMENT
Revised Interagency Questions and Answers**

*To All Depository Institutions in the Second Federal
Reserve District, and Others Concerned:*

The following is from the text of a statement issued by the Federal Financial Institutions Examination Council announcing revisions to its Interagency Questions and Answers Regarding Community Reinvestment:

The Consumer Compliance Task Force of the Federal Financial Institutions Examination Council (FFIEC) has adopted revised Interagency Questions and Answers Regarding Community Reinvestment. To help financial institutions meet their responsibilities under the Community Reinvestment Act (CRA) 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 Thrift Supervision, and the Office of the Comptroller of the Currency have prepared answers to the most commonly asked questions about community reinvestment. The Questions and Answers should not be regarded as official interpretations. Their purpose is to provide useful guidance to agency personnel, financial institutions and the public. The document includes four new questions, which address the following:

- The agencies' emphasis on lending and investment rather than documentation (23);
- State CRA performance evaluations and the public file (13);
- Outside activities and CRA performance (22); and
- Institutions' targeting specific ethnic groups and CRA considerations (5).

The Questions and Answers are now organized by subject matter with the previously assigned numbers appearing in parentheses. Questions and answers previously numbered 4 and 5 were deleted because they were basically a reiteration of the regulation, and those previously numbered 11 and 19 were deleted because other questions and answers address the same issues. Other minor modifications were made as necessary to improve clarity.

Printed on the following pages is a revised set of questions and answers on community reinvestment, reprinted from the *Federal Register* of February 19, 1993; the previous set was sent to you with our Circular No. 10530, dated April 16, 1992. Questions on community reinvestment may be directed to our community affairs staff (Tel. No. 212-720-5921), or to one of the agencies listed on the next page.

Board of Governors of the Federal Reserve System

— Division of Consumer and Community Affairs

Tel. No. (202) 452-2631

Federal Deposit Insurance Corporation

— Office of Consumer Affairs

Tel. No. (202) 898-3536

— Division of Special Supervision

Tel. No. (202) 898-7155

Office of Thrift Supervision

— Specialized Programs

Tel. No. (202) 906-6000

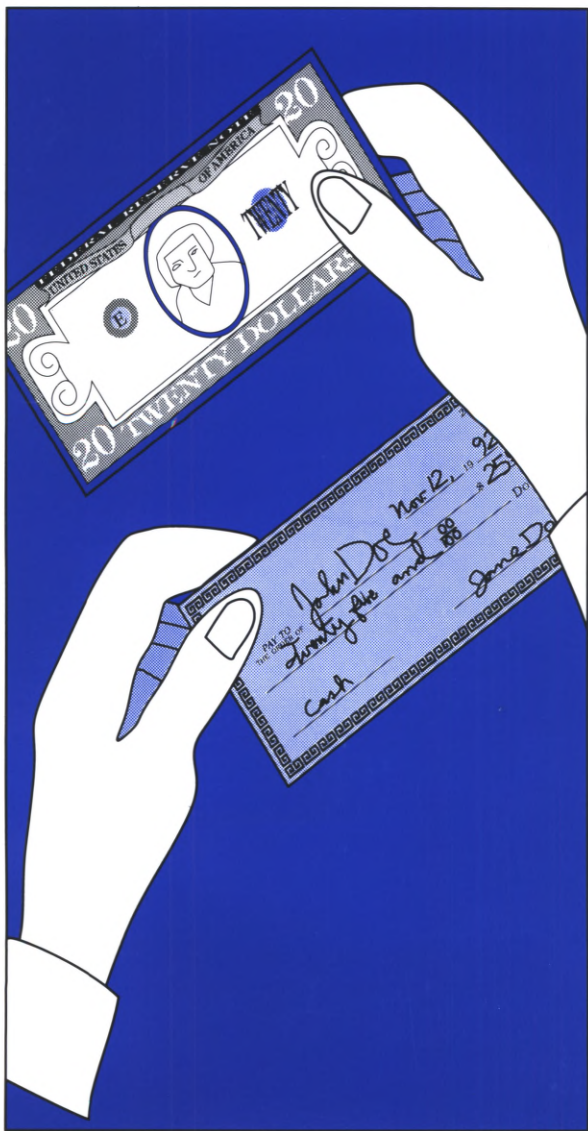
Office of the Comptroller of the Currency

— Compliance Management

Tel. No. (202) 874-4446

E. GERALD CORRIGAN,
President.

A Guide to Regulation CC Compliance



Determining Funds Availability

Regulation CC identifies when various deposits must be made available to your customers, measured by business days following the banking day on which the deposit is made. Regulation CC defines business days as Mondays through Fridays except for federal holidays. A banking day is any business day (up to the bank's cut-off hour) when your institution is open for substantially all transactions. When the number of days to funds availability is indicated in this brochure, it is the maximum time limit for making funds available. Keep in mind that your institution may provide earlier availability of funds if it chooses.

The following deposits must be made available on the first business day following the banking day of deposit ("next-day availability"):

1. **Cash** deposited in person to one of your employees.
2. **Electronic payments** received by your institution. An electronic payment is considered received (deposited) when your institution has received both payment in collected funds and information on the account and the amount to be credited.
3. **United States Treasury checks** deposited in an account held by a payee of the check. Unlike the remaining items which require deposits to be made in person, Treasury checks deposited at an ATM owned by your institution still receive next-day availability.
4. **U.S. Postal Service money orders** deposited in person to one of your employees and into an account held by a payee of the check.
5. **Federal Reserve Bank and Federal Home Loan Bank checks** deposited in person to one of your employees and into an account held by a payee of the check.
6. **State or local government checks** deposited in person to one of your employees and into an account held by a payee of the check if your institution is in the same state as the payor of the check. (Note: You may require use of a special deposit slip for next-day availability of these checks.)
7. **Cashier's, certified or teller's checks** deposited in person to one of your employees and into an account held by a payee of the check. (Note: You may require use of a special deposit slip for next-

When items 1, 4, 5, 6, or 7 are deposited at one of your ATMs rather than in person, you must make the funds available by the second business day. All deposits, cash or check, made at an ATM that you do not own (a "nonproprietary" ATM) must be made available by the fifth business day.

For deposited checks that do not receive next-day availability as discussed above, you generally must make funds available in accordance with a schedule contained in Regulation CC. That schedule varies depending on whether the check is considered "local" or "nonlocal."

- A check is considered "local" if your institution is located in the same check processing region as the paying institution. Funds must be made available by the second business day following the day of deposit.
- A check is considered "nonlocal" if your institution is not located within the same check processing region as the paying institution. Funds must be made available by the fifth business day following the day of deposit.

But remember—no matter whether the check is local or nonlocal, the first \$100 of the deposit which is not already subject to next-day availability must be made available on the first business day following the day of deposit.

There are two minor exceptions to the two- and five-day availability rules. They cover delaying availability for certain checks deposited outside the continental U.S. and delaying the availability of funds for cash withdrawals by one day. Further explanation can be found in section 229.12 of Regulation CC.

Delaying Funds Availability

Regulation CC permits institutions to delay for a "reasonable period of time," the availability of funds from certain deposits. Deposits of cash and electronic payments are not eligible for exception holds. "Reasonable" time periods are defined as 1 additional business day (total of 2 business days) for on-us checks, 5 additional business days (total of 7) for local checks, and 6 additional business days (total of 11) for nonlocal checks. If you decide to "hold" funds beyond your general availability periods, you must provide the customer with a notice at

The six categories of deposits eligible to be held for exception purposes:

- For **large deposits** (greater than \$5,000), any amount exceeding \$5,000 may be held. Your institution must make the first \$5,000 of the deposit available for withdrawal according to your availability policy and the remainder under the "reasonable" time frames discussed above.
- **Redeposited checks** may be held unless the check was returned because of a missing endorsement or because it was postdated, in which case it may not be held as a redeposited check if the deficiency has been corrected.
- Holds may also be placed on deposits to accounts that are **repeatedly overdrawn**. An account can be considered repeatedly overdrawn if:
 1. On six or more banking days in the previous six months the account had a negative balance, or would have had a negative balance if checks and charges had been paid; or
 2. On two or more banking days in the previous six months the account balance was negative in the amount of \$5,000 or more, or would have been had all checks and charges been paid.
- If you have **reasonable cause to doubt the collectibility of a check** you may hold those funds. Some examples of situations when you could doubt the collectibility include postdated checks, checks dated more than 6 months ago, and checks that the paying institution has indicated that it will not honor. The general rule for doubting collectibility states that there is "the existence of facts that would cause a well-grounded belief in the mind of a reasonable person" that the check is uncollectible. You must include the reason for your belief that the check is uncollectible in your notice to the customer.
- Checks deposited during **emergency conditions** that are beyond the control of your institution can be held until conditions permit you to provide availability of the checks. Examples of emergency conditions include a war, natural disasters, communications malfunctions, and other situations which prevent your bank from processing checks as it normally does.
- For deposits into **new accounts** (less than 30 days

day availability of these checks.)

8. **Checks drawn on an account held by your institution** (on-us checks) if the branch or branches involved are in the same state or check-processing region.
9. For a deposit that contains some checks other than those listed above, the **first \$100** (or the amount of the deposit if it is less than \$100) **of the non-"next-day" checks must receive next-day availability.**

Availability Rule Examples:

1. Your institution is open for all business functions on Saturday. Customer Jones deposits a \$4,000 U.S. Treasury check payable to him with a teller on Saturday. When must the funds be made available?

A: Tuesday. Saturday is not a banking day because it is not a business day, so the deposit is considered received on Monday—the next banking day. Since the funds are from a U.S. Treasury check, they must be made available by the first business day following the day of deposit.

2. Customer Martinez deposits a \$4,000 certified check payable to her with a teller at 10:00 a.m. on Monday. When must the funds be made available? What if the deposit was made at a proprietary ATM?

A: For the deposit made to the teller the funds must be made available by Tuesday. The deposit is received on Monday, and the funds must be made available by the first business day following the day of deposit.

For the deposit made at the ATM, the first \$100 must be available by Tuesday, and the remaining \$3,900 must be made available by Wednesday. Certified checks—and most other next-day checks—are considered "second day" items if the deposit is not made in person to one of your employees.

the time of the deposit explaining why you are holding the funds and when the funds will be available. If the deposit is not made in person to an employee of your institution or if you decide to extend the time when deposited funds will be made available after the time of the deposit, then you must mail or deliver the notice to the customer not later than the first business day following the banking day the deposit is made.

Note: If the ATM is nonproprietary, the funds must be available by the following Monday, the fifth business day. Also, at nonproprietary ATMs, the requirement to make the first \$100 available on the next day does not apply.

3. Customer Jackson deposits a \$400 local check payable to him with a teller at 10:00 a.m. on Monday. When must the funds be made available?

A: The deposit is considered received on Monday so the first \$100 must be available by Tuesday. Since it is a local check, the remaining \$300 must be available by Wednesday, the second business day after the day of deposit.

4. Customer Smith deposits a \$300 check from her state government with a teller at 10:00 a.m. on Monday. The bank's availability disclosure given to Ms. Smith states that a customer must use a special deposit slip to receive next-day availability for state and local government checks; however, Ms. Smith is in a hurry and chooses not to use the special deposit slip. When must the funds be available?

A: Since the special deposit slip was not used, the bank may treat this item as a local check (assuming the paying institution is in the same state or check processing region as Ms. Smith's bank) rather than next-day.

old) next-day availability only applies to cash, electronic payments, and the first \$5,000 of any other next-day items. The remaining amount from next-day items must be available by the 9th business day. Your institution may choose any availability schedule for deposits of local, nonlocal, and on-us checks into new accounts.

Therefore, the first \$100 must be available by Tuesday and the remaining \$200 should be available by Wednesday.

5. Customer Palmer deposits a \$10,000 nonlocal check with a teller at 10:00 a.m. on Monday the 1st. When must the funds be made available?

A: The first \$100 must be available by Tuesday the 2nd. Since it is a nonlocal check the remaining amount must be available by the fifth business day, which is Monday the 8th; however, the bank may choose to hold the amount over \$5,000 under the large deposit exception. If the bank chooses this option, it must give the customer a hold notice when the deposit is received (or within one business day after someone other than the teller makes the decision to hold the funds), and provide \$100 by Tuesday the 2nd, an additional \$4,900 by Monday the 8th, and the remaining \$5,000 by Tuesday the 16th.

6. Customer Washington deposits a \$400 local check at 3:00 p.m. on Monday. The bank's cut-off hour for the day's transactions is 2:00 p.m. When must the funds be available?

A: Since the deposit was made after the bank's cut-off hour, the deposit is considered received on Tuesday and the first \$100 must be made available by Wednesday. The remaining \$300 must be made available by Thursday.

Availability Policy Disclosure

Regulation CC requires your institution to provide your customers with disclosures describing when their funds will be available for withdrawal. Many institutions use the model disclosures found in Regulation CC. However, a common error is providing customers with a policy disclosure that does not reflect your actual availability practices. Your institution can monitor whether your disclosed policy reflects your practices by checking different examples of deposit transactions and comparing your institution's disclosure to its funds availability practices to see if they are the same. If not, your institution must change the practice or change the disclosure to reflect the practice. This verification should be done each time your funds availability practices are changed. Remember, while you are confirming that the practices match your disclosure, you also should verify that your practices conform to the Regulation.

Employee Training to Ensure Compliance

Your institution is required to establish procedures to ensure that the institution complies with the requirements of



Regulation CC, and to provide a copy of these procedures to any employee who performs duties affected by the regulation. For example, employees who issue hold notices should be instructed on when to hold funds and how to notify the customer that funds are being held.

Your employees should also have instructions about providing availability disclosures. Your institution must provide disclosures to customers before a new account is opened. If the availability terms are changed on an existing account, a new disclosure should be provided to non-business customers 30 days before the change is implemented; or if the change improves the availability of funds to the customer, not later than 30 days after the change becomes effective.

Posting Availability Policy where Employees Accept Deposits

Your institution must post, in each location where its employees accept consumer deposits, a notice of your availability policy pertaining to consumer accounts. The notice must specifically state the availability periods for the various deposits that may be made to consumer accounts. You need not post the notice at each teller window, but the

notice must be posted in a place where consumers seeking to make deposits are likely to see it before making their deposits. For example, the notice might be posted at the point where the line forms for teller service in the lobby. The notice is not required at any drive-through teller windows nor is it required at night depository locations.

Provide Deposit Availability Notice on Preprinted Deposit Slips

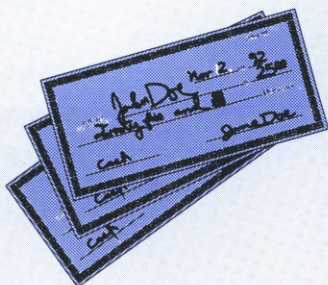
Regulation CC states that institutions must include a disclosure notice on all preprinted deposit slips. The notice on the front of the deposit slip need only state that deposits may not be available for immediate withdrawal. The notice is required only on preprinted deposit slips—those printed with the customer's account number and name and furnished by your institution in response to a customer's order. Your institution need not include the notice on deposit slips that are not preprinted with the customer's name and account number—such as counter deposit slips—or on special deposit slips used to secure next-day availability for state and local government checks, and cashier's, certified, and teller's checks. In addition, you are not responsible for ensuring that the notice appear on deposit slips that the customer does not obtain from or through you.

A Guide to Regulation CC Compliance

This brochure is intended to help you in your institution's compliance with Regulation CC—Availability of Funds and Collection of Checks. Many institutions—in fact, 27% of those examined in 1991—have been cited for one or more violations of the regulation. Here are the five requirements that caused the most compliance problems:

- Providing a specific availability-policy disclosure reflecting the policy followed in most cases.
- Adequately training employees and establishing procedures to ensure compliance.
- Posting the availability policy at locations where employees accept deposits.
- Providing the deposit availability notice on preprinted deposit slips.
- Providing next-day availability when required.

By highlighting the rules in these areas, this guide may answer your questions about Regulation CC. Of course, if you have more questions you can contact your federal supervisory agency's regional office.



Board of Governors
of the Federal Reserve System
Washington, D.C. 20551

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**FEDERAL FINANCIAL INSTITUTIONS
EXAMINATION COUNCIL****Community Reinvestment Act****Interagency Questions and Answers**

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Adoption of the Interagency Questions and Answers regarding community reinvestment.

SUMMARY: The Consumer Compliance Task Force of the Federal Financial Institutions Examination Council (FFIEC) today has adopted revised Interagency Questions and Answers Regarding Community Reinvestment. To help financial institutions meet their responsibilities under the Community Reinvestment Act (CRA) 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 Thrift Supervision, and the Office of the Comptroller of the Currency have prepared answers to the most commonly asked questions about community reinvestment. The Questions and Answers should not be regarded as official interpretations. Their purpose is to provide useful guidance to agency personnel, financial institutions and the public.

The document includes four new questions, which address the following:

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- Institutions' targeting specific ethnic groups and CRA considerations (5).

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ADDRESSES: Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Debra D. Clements, Compliance Analyst, Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue, NW., suite 200.

Washington, DC 20037. Specific agency related questions should be directed to the following: Federal Reserve Board—Division of Consumer and Community Affairs (202) 452-2631; Federal Deposit Insurance Corporation—Office of Consumer Affairs (202) 898-3536, or Division of Special Supervision (202) 898-7155; Office of Thrift Supervision—Specialized Programs (202) 906-6000; Office of the Comptroller of the Currency—Compliance Management (202) 874-4446.

EFFECTIVE DATE: February 17, 1993.

SUPPLEMENTARY INFORMATION:**Interagency Questions and Answers Regarding CRA Scope of the CRA's Coverage****1. (26) Are there any "regulated financial institutions" that are excluded from the scope of CRA?**

In general, the CRA defines a "regulated financial institution" as one that meets the definition of an insured depository institution, under Section 3 of the Federal Deposit Insurance Act. However, the 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. The banking agencies have also excluded from CRA certain financial institutions whose activities are limited to providing cash management controlled disbursement services. The rationale used in allowing certain financial institutions to be excluded from the scope of CRA is that these institutions are only incidentally involved, if at all, in granting credit to the public. The financial supervisory agencies periodically review the applicability of CRA to other types of financial institutions.

2. (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 financial supervisory agency.

3. (24) How are bank and savings association holding companies affected by the CRA?

The CRA applies to applications filed by holding companies to merge or to acquire banks and savings 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 savings association subsidiaries of the applicant holding company. The parent holding company need not prepare a CRA Statement or public notice, or maintain public comment files; but are encouraged to ensure that subsidiary financial institutions have expanded CRA statements that include a description of the institution's CRA performance. The holding company must conform to the requirements of the applicable regulation for media notices of corporate applications filed to acquire a bank or savings association.

Delineation of the CRA Community**4. (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.

5. (new) Can a financial institution identify a specific ethnic group, rather than a geographic area, as its delineated community; and can this financial institution target a specific ethnic group in designing and marketing products and services?

As indicated in the answer to Question four of this series, an institution must geographically delineate its local community(ies) on the basis of the locations of its offices. A delineation that does not have a geographic basis would be inconsistent with the CRA and implementing regulation. (The only permissible exception involves an institution's ability to delineate a "military community" in addition to the geographic communities surrounding its offices.)

If an institution can maintain compliance with the Fair Housing and Equal Credit Opportunity Acts (and this may not always be possible), it may direct the marketing of its products and services to one or more specific ethnic groups. However, institutions that target a single ethnic group, while having offices located in multi-ethnic areas, often exhibit significant lending disparities and unsatisfactory CRA performance.

6. (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. 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 state and local community development and planning agencies.

The CRA Statement

7. (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 same types of credit on the CRA Statement available at each office within a particular local community 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 financial supervisory agencies will have to decide whether the practice significantly discourages applications for such credit or otherwise adversely affects the institution's CRA performance.

The CRA Public Notice

8. (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 brochure, a supply of such brochures printed in easily read type and placed where they will be noticed will suffice.

The CRA and Public Comment

9. (14) What information and avenues of communication are available to members of a community who are concerned about the CRA performance of financial institutions in their community?

Financial institutions are encouraged to communicate with members of their community. The CRA regulations require financial institutions to make their CRA Statement and the public CRA Performance Evaluation available to the public. The statement contains a copy of the Community Reinvestment Act Notice which must be placed in the offices of all financial institutions. The notice states that the public may write to the financial institution or the appropriate supervisory agency about the institution's performance in helping to meet community credit needs.

The public may also review letters received by the financial institution regarding its CRA performance and the public CRA Performance Evaluation prepared by the institution's financial supervisory agency. Announcements of CRA-covered applications may be obtained by writing to the institution's financial supervisory agency. Anyone may comment on the filing of an application by writing to the appropriate financial supervisory agency listed either in the applicant's newspaper notice or its CRA notice. The financial supervisory agencies have varying comment periods for applications. Therefore, any questions about the comment period should be directed to the financial supervisory agency. Comments received within the appropriate period will be considered

by the financial supervisory agency in the application process.

10. (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 comment 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 exceptions are comments that 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 comment file. Signed, written comments which might harm a person's reputation should be retained in a confidential file for inspection by the examiner.

Comments received by a financial supervisory agency will be on file at that agency. Those comments are also available to the public unless the Freedom of Information Act prohibits their disclosure.

11. (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 in a confidential file for inspection by the examiner.

12. (21) In assessing an institution's CRA performance, does an examiner consider and evaluate information outside of the institution being examined?

Yes, an examiner should seek and consider any information that is necessary to complete a fair and accurate picture of the institution's CRA performance. Contacts will be made, for example, with persons who have commented on an institution's performance, local officials, local business owners, community residents, real estate brokers, or others who may be able to provide information concerning local financial institutions in helping to meet those needs. In addition, 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.

13. (new) May a State-chartered financial institution place a copy of a community reinvestment performance evaluation prepared by a State regulatory agency in the comment file(s) maintained for public inspection pursuant to Federal rules?

A signed written comment, that addresses an institution's CRA Statement or performance in helping to meet the credit needs of its community, received from the public during the past two years should be placed in the public comment file. For the purposes of the Federal financial supervisory agencies' CRA implementing rules, any comment not prepared by the institution itself or its Federal financial supervisory agency may be considered to be from "the public." Institutions should consider the answers to Questions 10 and 11 of this series if they are concerned that the disclosure of information received from a State regulatory agency or other source would violate Federal rules. Institutions are also advised to consult with their State regulatory agencies if they are unsure of what material received from the State is intended for public availability.

14. (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 financial supervisory agency. If any institution responds to a letter in the public comment file, the response must also be placed in that file, unless it reflects adversely on any person or violates a law.

15. (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 comment file

pertaining to a particular local community must be retained at a designated office in that community. A copy of the most recent public CRA Performance Evaluation prepared by the institution's Federal financial supervisory agency must be maintained in each of the public comment files.

Assessing the Record of Performance Under the CRA

16. (17) Will an institution's performance in helping to meet community credit needs be assessed even if an institution does not intend to make an application covered by the CRA?

Yes. While Congress directed that the approval or rejection of applications be used to encourage community reinvestment by banks and savings associations on a safe and sound basis, it also sought to have each financial supervisory agency use its examination process "to encourage" institutions to be sensitive to their responsibilities to help meet local credit needs.

17. (16) Will activities in addition to lending be considered in the CRA assessment?

Yes. Although the principal focus is on lending, the financial supervisory agencies recognize that other activities and efforts contribute toward the CRA's goals. The financial supervisory agencies will consider the extent to which an institution's activities foster local community revitalization. For example, the agencies will consider the institution's 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 meaningful dialogue with community members concerning credit needs of the community;
- The institution's record of opening and closing branches and offering services (including noncredit 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.

18. (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 financial supervisory agency approval.

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

Debt Investments and Related Securities

- 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 insured 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 banks 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 banks or holding company subsidiary banks.

Limited service or specialized banks in a holding company that owns a community development corporation operating in the bank'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 and secondary market intermediaries which focus on helping to 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;
- Development of secondary market vehicles or programs;
- Marketing assistance, including development of advertising and promotions, publications, workshops and conferences;
- Training for staff and management;
- Accounting/bookkeeping services;
- Fund-raising, including soliciting or arranging investments;
- 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.

19. (15) *Must an institution document that 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 the maintenance of any documentation other than the public comment files,

CRA Statements and CRA Notices. However, an institution's level of CRA performance depends far more on its credit activities than it does on strict regulatory compliance. In assessing CRA performance, examiners will review:

- Any analyses of the geographic distribution of the institution's credit extensions, applications, and denials prepared by the institution;

- Disclosure statements, aggregation tables and Loan Application Registers, if the institution is subject to the Home Mortgage Disclosure Act;

- Periodic financial reports filed by the institution with its supervisory agency;

- Records such as credit files required to be maintained under Federal Reserve Regulation B implementing the Equal Credit Opportunity Act;

- Other loan documentation that may be required under agency regulations and other information that the institution may have compiled for internal reporting and monitoring purposes;

- Marketing materials such as advertising copy.

The documentation that the agencies expect to be maintained is primarily that which is useful to the institution's own management in administering a successful CRA program.

20. (30) *When assessing CRA performance, do the financial supervisory agencies consider a financial institution's lending, investment, development and general support activities outside of the institution's delineated community?*

In general, the assessment of an institution's performance under CRA focuses on its record in helping to meet credit needs within its delineated community. The agencies are aware, however, that financial institutions may organize, support, or use a wide variety of programs, organizational mechanisms or intermediaries that help finance such things as low- and moderate-income housing, small and minority businesses and other community projects on a statewide, regional or even national basis. Although these programs or mechanisms may be available to support loans and investments within an institution's delineated community, they often provide the bulk of their financial support in other geographical areas.

Under certain circumstances, the agencies will give positive consideration in assessing CRA performance for active participation by a financial institution in such programs and mechanisms, even where most of all of the financing

provided may ultimately benefit low- and moderate-income borrowers or neighborhoods located outside of the institution's delineated community. In determining whether and to what extent positive consideration will be given, the agencies assess the activities undertaken in the context of an institution's overall CRA program. Where such participation augments or complements an overall CRA program that is directly responsive to the credit needs in an institution's delineated community, it will be considered favorably in reaching an overall CRA conclusion. However, such activities and involvements will be insufficient to compensate for an otherwise deficient record of addressing the credit needs of an institution's delineated community.

Examples of such programs or intermediary organizations (other than traditional direct lending) are:

- Lending consortia or loan pools that provide community development financing and technical assistance for low- and moderate-income housing, small and minority business development, or other neighborhood revitalization projects;
- Multi-investor community development corporations;
- Limited partnerships that invest in low- and moderate-income housing;
- Secondary market corporations and programs which explicitly target loans for low- and moderate-income housing, small and minority businesses, or small farms;
- Quasi-public housing, community development or economic development finance corporations in which state or local government agencies participate, often with financial institutions or other contributors;
- State bond programs for housing, community and economic development, or public infrastructure projects;
- Public or private intermediaries which provide loan guarantees or other credit enhancements used by financial institutions to support community development lending and investment;
- Capital investment, loan participation and other co-ventures undertaken with minority and women-owned financial institutions.

These and similar vehicles help institutionalize and support community development lending and investment. In general, they enhance the capacity of financial institutions to help meet community credit needs, including those of low- and moderate-income neighborhoods.

21. (20) *May an institution use a policy of making certain loans only to existing customers, without*

adversely affecting its CRA performance?

In examining an institution, the financial supervisory agencies will pay particular 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 restrictions have or would have a significantly greater impact on low- and moderate-income neighborhoods. 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. This type of spot lending activity need not be listed on the CRA Statement.

Any restrictive lending policies or practices found to be discriminatory on a prohibited basis will have a substantial adverse impact on an institution's CRA performance.

22. (new) *What criteria do examiners use to determine whether a director's, officer's or employee's outside activities contribute to an institution's CRA performance? What criteria do the examiners use to determine whether an institution's charitable donations contribute to its CRA performance?*

To contribute to an institution's CRA performance, an activity or charitable donation should fall into one of the following categories:

- It resulted in the sharing of information about the institution's lending services;
- Information was obtained regarding the community's credit needs;
- Community members were informed about how to get or use credit;
- The activity or charitable donation assisted in providing credit services or information to the community;
- The activity or donation assisted a community development or redevelopment effort.

23. (new) *Some parties have commented that the financial supervisory*

agencies emphasize assessment criteria relating to the CRA process over results such as lending. What is the current emphasis of the agencies in their supervisory efforts?

The principal focus of the financial supervisory agencies and the activity most encouraged through an examination continues to be lending and other activities within the community that result in extensions of credit that help meet identified credit needs. The answers to Questions 20 and 30 in this series also address this issue. A conclusion that performance is satisfactory or better generally requires that the community delineation is reasonable; that credit extensions are consistent with the capacity of the institution and the identified needs of the community; and that lending activity reflects a reasonable penetration of all segments of the community, including its low- and moderate-income neighborhoods.

When the above characteristics are not found to be present in an institution's reinvestment record, the underlying causes identified by the financial supervisory agencies' examiners are likely related to deficiencies in the institution's community reinvestment process. Agency recommendations for improving the institution's CRA performance usually involve:

- Oversight by the board of directors and management;
- The establishment of goals and objectives;
- Community outreach, product development and marketing;
- Management and employee training;
- Regular monitoring of the institution's progress and performance.

Process-oriented corrective measures should be implemented to make the institution more responsive to local credit needs on a regular, ongoing basis. However, no level of emphasis by an institution on the CRA process can make up for a seriously deficient record of lending and investment in the community.

24. (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 associations, 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.

25. (31) What effect would an institution's selling loans it has originated within its delineated community have on the institution's CRA performance?

The agencies have found that the sale of loans in the secondary market enhances CRA performance where such sales enable an institution to recycle funds for origination of additional loans within its delineated community.

Where loans are part of a comprehensive CRA program designed to ascertain and help meet credit needs within the institution's delineated community, such loans clearly help demonstrate CRA performance, whether or not they are ultimately sold on the secondary market. To ensure that appropriate consideration under CRA is given for loans sold, however, institutions should consider retaining information concerning when and where the loans were originated.

26. (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 helping to meet the credit needs identified in its local community, with appropriate attention to low- and moderate-income neighborhoods. As indicated in the answers to Questions 20 and 21 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. Currently the financial supervisory agencies are reviewing the applicability of CRA to financial institutions that have statutory restrictions placed on their loan or deposit activities.

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, with the issues expressed through these twelve factors. A financial institution's inability to provide 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 activities will include, at 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.

27. (28) What do the financial supervisory 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, meet 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.

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

Encouragement will be provided in four 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 understand the purposes of the CRA and how the financial supervisory agencies implement the act. Second, as part of each CRA examination, financial supervisory agency staff will discuss with management their findings about the institution's CRA performance. Where appropriate, the financial supervisory 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. Fourth, the financial supervisory agencies believe that the availability of the public CRA Performance Evaluations serve as an additional encouragement for institutions to help meet local credit needs on an ongoing basis.

The Effect of an Institution's CRA Performance on Applications

29. (22) What sanctions are available to the financial supervisory agencies under the CRA?

A poor CRA performance record may result in denial of corporate application. The financial supervisory agencies may also use the full range of their enforcement powers to ensure compliance with the requirements of the CRA regulation, including preparing a CRA Statement, maintaining public comment files and making them available, and providing the CRA Notice. In addition, widespread, repeat/uncorrected, or otherwise substantive violations of anti-discrimination laws and regulations are significant adverse factors in an institution's CRA performance record, and they will prompt enforcement actions under the Equal Credit Opportunity Act, Fair Housing Act, or other applicable fair lending rules.

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

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

31. (25) How does the CRA affect applications by banks and savings associations that are subsidiaries of holding companies?

Applications by a bank or savings association that is a subsidiary of a holding company will be treated by the financial supervisory agencies in the same manner as those filed by any bank or savings association. Only the CRA record of the applying bank or savings association and the activities of their subsidiaries will be taken into account. The bank or savings association may request, however, that the financial supervisory agency consider the contribution of any of the bank's or savings association's non-depository affiliates in helping to meet the credit needs of the community or communities of the applicant bank or savings association. For example, if the

applicant bank or savings association 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 financial supervisory agency in assessing the overall CRA record of the applicant.

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Executive Secretary, Federal Financial Institutions Examination Council.

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