

Community Reinvestment Act
Interagency Questions and Answers Regarding Community Reinvestment
New and Revised Q & A's
March 11, 2010

New

§11.12(g)(2)—1: Community development includes community services targeted to low- or moderate-income individuals. What are examples of ways that an institution could determine that community services are offered to low- or moderate-income individuals?

A1: Examples of ways in which an institution could determine that community services are targeted to low- or moderate-income persons include:

- The community service is targeted to the clients of a nonprofit organization that has a defined mission of serving low- and moderate-income persons, or, because of government grants, for example, is limited to offering services only to low- or moderate-income persons.
- The community service is offered by a nonprofit organization that is located in and serves a low- or moderate-income geography.
- The community service is conducted in a low- or moderate-income area and targeted to the residents of the area.
- The community service is a clearly defined program that benefits primarily low- or moderate-income persons, even if it is provided by an entity that offers other programs that serve individuals of all income levels.
- The community service is offered at a workplace to workers who are low- and moderate-income, based on readily available data for the average wage for workers in that particular occupation or industry (see, e.g., <http://www.bls.gov/bls/blswage.htm> (Bureau of Labor Statistics)).

Revised

§11.12(h)—8: What is meant by the term “primary purpose” as that term is used to define what constitutes a community development loan, a qualified investment, or a community development service?

A8. 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 11.12(g). To determine whether an activity is designed for an express community development purpose, the agencies apply one of two approaches. First, if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of

the enumerated community development purposes, then the activity will be considered to possess the requisite primary purpose. Alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the activity may still be considered to possess the requisite primary purpose, and the institution may receive CRA consideration for the entire activity, if (1) the express, bona fide intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; (2) the activity is specifically structured (given any relevant market or legal constraints or performance context factors) to achieve the expressed community development purpose; and (3) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved.

Generally, a loan, investment, or service will be determined to have a "primary purpose" of community development only if it meets the criteria described above. However, an activity involving the provision of affordable housing also may be deemed to have a "primary purpose" of community development in certain other limited circumstances in which these criteria have not been met. Specifically, activities related to the provision of mixed-income housing, such as in connection with a development that has a mixed-income housing component or an affordable housing set-aside required by federal, state, or local government, also would be eligible for consideration as an activity that has a "primary purpose" of community development at the election of the institution. In such cases, an institution may receive pro rata consideration for the portion of such activities that helps to provide affordable housing to low- or moderate-income individuals. For example, if an institution makes a \$10 million loan to finance a mixed-income housing development in which ten percent of the units will be set aside as affordable housing for low- and moderate-income individuals, the institution may elect to treat \$1 million of such loan as a community development loan. In other words, the pro rata dollar amount of the total activity will be based on the percentage of units set-aside for affordable housing for low- or moderate-income individuals.

The fact that an activity provides indirect or short-term benefits to low- or moderate-income persons does not make the activity community development, nor does the mere presence of such indirect or short-term benefits constitute a primary purpose of community development. Financial institutions that want examiners to consider certain activities should be prepared to demonstrate the activities' qualifications.

§11.42(b)(2)—3: When the primary purpose of a loan is to finance an affordable housing project for low- or moderate-income individuals, but, for example, only 40 percent of the units in question will actually be occupied by individuals or families with low or moderate incomes, should the entire loan amount be reported as a community development loan?

A3. It depends. As long as the primary purpose of the loan is a community development purpose as described in Q&A §11.12(h)—8, the full amount of the institution's loan should be included in its reporting of aggregate amounts of community development lending. Even though the entire amount of the loan is reported, as noted in Q&A §11.22(b)(4)—1, examiners may make qualitative distinctions among community development loans on the basis of the extent to which the loan advances the community development purpose.

In addition, if an institution that reports CRA data elects to request consideration for loans that provide mixed-income housing where only a portion of the loan has community development as its primary purpose, such as in connection with a development that has a mixed-income housing component or an affordable housing set-aside required by federal, state, or local government, the institution must report only the pro rata dollar amount of the portion of the loan that provides affordable housing to low- or moderate-income individuals. The pro rata dollar amount of the total activity will be based on the percentage of units that are affordable. See Q&A §11.12(h)—8 for a discussion of “primary purpose” of community development describing the distinction between the types of loans that would be reported in full and those for which only the pro rata amount would be reported.

Conforming Revision

§11.22(a)(2)—4: Other Loan Data Q&A §11.22(a)(2)—4, as adopted in January of 2009 (74 FR 517), stated that loans that do not have a primary purpose of community development, but where a certain amount or percentage of units is set aside for affordable housing, should be submitted by the financial institution for consideration as “other loan data.”

In the supplementary information published with the proposed revisions to the interagency questions and answers, the agencies advised that, if the proposed revision to Q&A §11.12(h)—8 were adopted, a conforming change to Q&A §11.22(a)(2)—4 would be made.

The answer to Q&A §11.22(a)(2)—4 has been revised to remove the reference to “loans that do not have a primary purpose of community development, but where a certain amount or percentage of units is set aside for affordable housing” as an example of “other loan data” because such activities are eligible for pro rata treatment.