



9575 Katy Freeway, Suite 300

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

Thomas E. Black, Jr., P. C.***

Calvin C. Mann, Jr., P. C.

Gregory S. Graham, P. C.

David F. Dulock

Diane M. Gleason

Benjamin R. Idziak **

Shawn P. Black **

Margaret A. Noles

Robert J. Brewer

Regina Uhl

Ali Hedayatifar

*** Also Licensed in New York, Washington, West Virginia and Iowa

** Also Licensed in New York

March 15, 2010

To: Clients and Friends

From: David F. Dulock

Subject: Community Reinvestment Act – Interagency Questions and Answers Regarding Community Reinvestment, Published in *Federal Register* (75 FR 11642-11680) on March 11, 2010

The following federal agencies (collectively, the “federal agencies”) - Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision - implement the Community Reinvestment Act (CRA) through their respective CRA regulations. These CRA regulations are interpreted primarily through the Interagency Questions and Answers Regarding Community Reinvestment (“Questions and Answers”), which provide guidance for use by the federal agency personnel, financial institutions, and the public.

In the July 11, 2007 issue of the *Federal Register* the federal agencies published proposed Questions and Answers that combined three previously adopted Questions and Answers, proposed nine new questions and answers, and proposed substantive and technical revisions to the existing questions and answers. In the January 6, 2009 issue of the *Federal Register* the federal agencies adopted as final the Questions and Answers that were published in the July 11, 2007 issue of the *Federal Register* and proposed one new question and answer and two revised questions and answers.

In the March 11, 2010 issue of the *Federal Register*, the federal agencies published notice that effective March 11, 2010, they adopted as final (with minor clarifications) the proposed questions and answers published in the January 6, 2009 issue of the *Federal Register* and also adopted conforming revisions to an existing question and answer. The complete text of the final Questions and Answers adopted by the federal agencies in the above-cited issues of the *Federal Register* is also published in the March 11, 2010 issue of the *Federal Register*, starting on page 11644.

The Questions and Answers are grouped by reference to the CRA regulations they discuss, are presented in the same order as the regulations, and use an abbreviated method of citing to the regulations (e.g., §____.26—*Small institution performance standards*.) The blank line denotes the part number in the CFR for each federal agency’s CRA regulations (see 12 CFR parts 25, 228, 345, and 563e). Each Question and Answer is numbered using a system that consists of the regulatory citation and a number, connected by a dash (e.g., the first Question and Answer addressing the performance standards regulations is identified as §____.26—1.) The Questions and Answers contain an index to aid readers in locating specific information in the Questions and Answers. The index contains keywords, listed alphabetically, along with numerical indicators of specific questions and answers that relate to that keyword. The list of questions and answers that relate to each keyword in the index is not intended to be exhaustive.

The Questions and Answers adopted by the federal agencies on March 11, 2010, contain one new question and answer (Q&A) and three revised Q&As, as discussed below:

1. New Q&A, § ____.12(g)(2)—1: Provides examples of ways an institution that provides community services could determine that the community services are targeted to low- and moderate-income individuals when the institution does not know the actual income of the individuals.
2. Revised Q&A § ____.12(h)—8: Revised to allow pro rata treatment in connection with any project that provides affordable housing to low-or moderate-income individuals, regardless of whether a governmental entity requires a set-aside. It states that institutions will determine the pro rata share of the activity that provides affordable housing to low-or moderate-income individuals based on the percentage of units set aside for affordable housing for low-or moderate-income individuals. The federal agencies state that this method of determining the portion of a loan or investment that provides affordable housing for low-or moderate-income individuals imposes the least amount of burden on developers and lenders to differentiate the construction costs, including the proportional share of costs related to infrastructure, common areas, and site amenities, between market and affordable units. It contains clarifying language to emphasize that the pro rata treatment applies only to affordable housing activities.
3. Revised Q&A § ____.42(b)(2)—3: Revised to also address data collection and reporting of the pro rata share of mixed-income housing loans. It provides that, if an institution elects to have the portion of a mixed-income housing loan that was set aside for low-or moderate-income housing considered as a community development loan, in order to receive consideration for the loan, 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 set-aside for affordable housing for low-or moderate-income individuals.
4. Conforming Revision to Q&A § ____.22(a)(2)—4: The answer 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.

You may print a copy of the complete Questions and Answers adopted by the federal agencies in the March 11, 2010 issue of the *Federal Register* from the following web address: <http://edocket.access.gpo.gov/2010/pdf/2010-4903.pdf>. If you are unable to access the *Federal Register*, you may request a copy of the Questions and Answers from us, if you so desire.

This Memorandum is provided as general information in regard to the subject matter covered, but no representations or warranty of the accuracy or reliability of the content of this information are made or implied. Opinions expressed in this memorandum are those of the author alone. In publishing this information, neither the author nor the law firm of Black, Mann & Graham L.L.P. is engaged in rendering legal services. While this information concerns legal and regulatory matters, it is not legal advice and its use creates no attorney-client relationship or any other basis for reliance on the information. Readers should not place reliance on this information alone, but should seek independent legal advice regarding the law applicable to matters of interest or concern to them. The law firm of Black, Mann & Graham L.L.P. expressly disclaims any obligation to keep the content of this information current or free of errors.