



FEDERAL RESERVE BANK
OF DALLAS

ROBERT D. McTEER, JR.
PRESIDENT
AND CHIEF EXECUTIVE OFFICER

January 7, 1994

DALLAS, TEXAS
75265-5906

Notice 94-04

TO: The Chief Executive Officer of each
member bank and others concerned in
the Eleventh Federal Reserve District

SUBJECT

**Request for Public Comment on
Proposed Changes to Regulation BB
(Community Reinvestment)**

DETAILS

In conjunction with the other Federal Financial Institution Supervisory agencies, the Federal Reserve Board has requested comment on proposed changes to its Regulation BB, which carries out provisions of the Community Reinvestment Act (CRA). The proposed changes to the regulation would provide more direct guidance to banks on the nature and extent of their CRA responsibilities and the means by which their obligations will be assessed and enforced.

The revised regulation would emphasize performance, rather than process; is intended to provide greater predictability and promote consistency in examinations; and would reduce the compliance burden on some institutions.

The Board must receive comments by February 22, 1994. Comments should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. All comments should refer to Docket No. R-0822.

ATTACHMENT AND ENCLOSURE

A copy of the agencies' notices as they appear on pages 67466-508, Vol. 58, No. 243, of the Federal Register dated December 21, 1993, is attached. Also enclosed is a staff memo to the Board of Governors that addresses issues related to the proposed revisions.

MORE INFORMATION

For more information, please contact Gloria Vasquez Brown at (214) 922-5266. For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

For additional copies, bankers and others are encouraged to use one of the following toll-free numbers in contacting the Federal Reserve Bank of Dallas: Dallas Office (800) 333-4460; El Paso Branch *Intrastate* (800) 592-1631, *Interstate* (800) 351-1012; Houston Branch *Intrastate* (800) 392-4162, *Interstate* (800) 221-0363; San Antonio Branch *Intrastate* (800) 292-5810.

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Part 25**

[Docket No. 93-19]

RIN 1557-AB32

FEDERAL RESERVE SYSTEM**12 CFR Part 228**

[Docket No. R-0822]

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Part 345**

RIN 3064-AB27

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****12 CFR Part 563e**

[Docket No. 93-234]

RIN 1550-AA69

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (the Federal financial supervisory agencies) are proposing to revise their regulations concerning the Community Reinvestment Act (CRA). The purpose of the CRA regulations is to implement the continuing and affirmative obligation of regulated financial institutions to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations and to provide guidance on how the agencies assess the performance of institutions in meeting that obligation.

The proposed new regulations are designed to provide clearer guidance to financial institutions on the nature and extent of their CRA obligation and the methods by which the obligation will be assessed and enforced. The proposed procedures are designed to emphasize

performance rather than process, to promote consistency in assessments, to permit more effective enforcement against institutions with poor performance, and to reduce unnecessary compliance burden while stimulating improved performance.

DATES: Comments must be received by February 22, 1994.

ADDRESSES: OCC: Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 93-19. Comments will be available for public inspection and photocopying at the same location.

BOARD: Comments should be directed to: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Docket No. R-0822, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street) at any time. Comments may be inspected in room MP-500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FDIC: Comments should be directed to: Hoyle L. Robinson, Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429. They may be hand delivered to room 402, 1176 F Street, NW., Washington, DC between 8:30 a.m. and 4:30 p.m. on business days. They may be sent by facsimile transmission to 202-898-3838. Comments will be available for public inspection at the FDIC Reading Room #7118 at 550 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

OTS: Comments should be directed to: Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: Docket No. 93-234. These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed, or misidentified submissions will not be considered in this rulemaking. Comments will be available for public inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m.

on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT:

OCC: Stephen M. Cross, Deputy Comptroller for Compliance, (202) 874-5216; and Matthew Roberts, Special Counsel, Chief Counsel's Office, (202) 874-5200.

BOARD: Glenn E. Loney, Associate Director, Division of Consumer and Community Affairs, (202) 452-3585, or Scott G. Alvarez, Associate General Counsel, Legal Division, (202) 452-3583.

FDIC: Bobbie Jean Norris, Deputy Director, Office of Consumer Affairs, (202) 898-6760; Valerie Thomas, Review Examiner (Compliance), Division of Supervision, (202) 898-7155; Ann Loikow, Counsel, (202) 898-3796; and Sandy Comenetz, Counsel, (202) 898-3582, Regulation and Legislation Section, Legal Division.

OTS: Timothy R. Burniston, Deputy Assistant Director for Policy, (202) 906-5629; Theresa A. Stark, Program Analyst, Specialized Programs, (202) 906-7054; Lewis A. Segall, Senior Attorney, Legal Policy Division, Chief Counsel's Office, (202) 906-6648.

SUPPLEMENTARY INFORMATION:**Introduction**

The Federal financial supervisory agencies are jointly proposing new regulations to implement the CRA. The proposed regulations would replace the existing regulations in their entirety.

The CRA is designed to promote affirmative and ongoing efforts by regulated financial institutions to help meet the credit needs of their entire communities, including low- and moderate-income areas, consistent with safe and sound operations. Despite the CRA's notable successes, bank and thrift industry, community, consumer and other groups maintain that its full potential has not been realized, in large part, because compliance efforts have focused on process at the expense of performance.

In accordance with a request by the President, the Federal financial supervisory agencies have undertaken a comprehensive effort to reform their evaluation standards and examination procedures. The proposed regulations implement one part of this reform effort by substituting for the current process-based assessment factors a new evaluation system that would rate institutions based on their actual performance in meeting community credit needs. In particular, the new system would evaluate the degree to which an institution is providing (1)

loans, (2) branches and other services, and (3) investments to low- and moderate-income areas. The proposed regulations also clarify how an institution's CRA performance would be considered in the corporate application process and seek to make the regulations more enforceable.

In addition to this rulemaking, the agencies will work together to improve examiner training and to increase interagency coordination regarding application of standards, performance of examinations, assignment of ratings, and use of enforcement tools. The agencies will also work together to improve public access to data collected pursuant to the Home Mortgage Disclosure Act (HMDA) and the proposed regulations. These efforts should produce a CRA assessment process that is less burdensome for many institutions and yields more results for the local communities the law is intended to benefit.

Background

In 1977, the Congress enacted the CRA to encourage banks and thrifts to help meet the credit needs of low- and moderate-income communities. In the CRA, the Congress found that regulated financial institutions are required to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business, and that the convenience and needs of communities include the need for credit as well as deposit services.

The CRA requires each of the four Federal financial supervisory agencies to use its authority when examining regulated banks and thrifts to encourage institutions to help meet the credit needs of the communities in which they do business, consistent with safe and sound banking practices. Recently, the CRA has come to play an increasingly important role in improving access to credit among under-served communities—both rural and urban—across this country. Under the impetus of the CRA, many banks and thrifts have opened new branches, provided expanded services, and made substantial commitments to increase lending to all segments of society. It is estimated that tens of billions of dollars have flowed to low- and moderate-income areas as a result of the CRA.

Despite these successes, the CRA examination and enforcement system has been criticized. Financial institutions have complained that policy guidance from the supervisory agencies on the CRA is unclear and that examination standards are applied inconsistently. Financial institutions

have also complained that the CRA examination process encourages them to generate excessive paperwork at the expense of providing loans, services, and investments. In surveys of compliance costs, the institutions have often identified the CRA as the most burdensome of consumer protection and community reinvestment statutes.

Community, consumer, and other groups have agreed with the industry that there are inconsistencies in CRA evaluations and that current examinations overemphasize process and underemphasize performance. Community and consumer groups have also criticized the regulatory agencies for failing to penalize banks and thrifts aggressively for poor performance.

Believing that the CRA examination and enforcement process can be improved, the President requested in July that the Federal financial supervisory agencies reform the CRA examination and enforcement system. The President asked the agencies to consult with the banking and thrift industries, Congressional leaders, and leaders of community-based organizations across the country to develop new CRA regulations and examination procedures that "replace paperwork and uncertainty with greater performance, clarity, and objectivity."

Specifically, the President asked that the agencies refocus the CRA examination system on more objective, performance-based assessment standards that minimize compliance burden while stimulating improved performance. He also asked that the agencies develop a well-trained corps of examiners who specialize in CRA examinations. The President asked that in undertaking this effort, the regulators seek to promote consistency and evenhandedness, to improve public CRA performance evaluations, and to institute more effective sanctions against institutions with consistently poor performance.

Public Hearings

To implement the President's initiative, the four agencies held a series of seven public hearings across the country. At those hearings, the agencies heard from over 250 witnesses. Nearly 50 others submitted written statements. Individuals, small business men and women, representatives of banks and thrifts and their trade associations, state and local government officials, members of local community-based organizations, and leaders of national community and consumer advocacy groups presented their views. While the oral and written statements submitted by the over 300

witnesses encompassed a variety of views, some common themes emerged.

Most commenters—bankers, state and local government officials, and leaders of community-based organizations—endorsed a more performance-based CRA evaluation system. Most witnesses, however, also rejected a formulaic approach that would be applied on a national basis. They emphasized that examinations should focus on lending, particularly to low- and moderate-income individuals, minorities, small farms, small businesses, and affordable housing and economic development organizations. However, they stressed that the facts and data about an institution's lending record should be evaluated in light of its business strategy, its financial condition, and the credit needs of the community in which it operates. A need to make the evaluations more geographically specific for those institutions that operate in multiple locations was also noted.

A number of respondents, both from the financial service industry and community-based organizations, expressed interest in the idea of financial institutions developing strategic plans for CRA performance in conjunction with the representatives of the communities within which they operate. Some wanted the regulatory agencies to make enforceable agreements between financial institutions and community groups a central focus of the CRA process. Others suggested that the agreements should be between the institutions and the supervisory agencies.

Many of those same respondents criticized the agencies for a lack of consistency in examinations and urged the agencies to develop cooperative training programs for their examiners. All groups stressed the need to improve the training of examiners responsible for CRA evaluations. While most witnesses focused on training for examiners who conduct CRA examinations, a number of the respondents also urged CRA training for commercial examiners so that they can develop a better understanding of community development lending.

Many community-based organizations and local government officials commented on the need for data to be collected on small business and consumer loans similar to that collected for housing loans under the Home Mortgage Disclosure Act. Those witnesses urged that the geographic distribution of those loans be monitored, and many also suggested that data on the race or ethnicity of the borrower be collected as well. They contended that the lack of this data was

a serious impediment to the public's and the regulatory agencies' ability to evaluate an institution's performance in these significant areas. However, other witnesses, particularly those representing smaller lenders, complained about current reporting burdens—citing the Home Mortgage Disclosure Act reporting requirements—and urged that no additional reporting of loans be mandated.

Many smaller financial institutions and some community groups also stated that the present system was too focused on punishing institutions that fail to perform, and the emphasis instead should be on rewards for institutions truly meeting a wide range of community lending and service needs. Witnesses identified a need to recognize that investments in intermediary community development organizations are beneficial for society and should be considered as strengths in evaluating an institution's CRA performance, even though the benefits of the investment may not flow back to the specific service community delineated by the institution. While there was an emphasis on rewards, respondents outside the banking community were overwhelmingly against the adoption of a "safe harbor" for financial institutions from CRA protests on the basis of ratings assigned by the regulatory agencies.

Many small institution respondents also noted the burden imposed by the present regulations. They felt that a different level of documentation and different approaches to reviewing their performance were appropriate. Small bankers stressed the high costs in terms of both time and money required to meet the perceived documentation requirements of the present approach. In many cases they stated that these burdens were actually impeding their institutions' ability to meet credit and service needs.

Finally, a number of respondents from the financial services industry and community-based organizations proposed that non-chartered financial service providers, such as insurance companies, finance companies, and other similar types of credit providers be subject to community reinvestment requirements similar to the CRA.

We have attempted to address many of these concerns within the proposed regulations. Without resorting to fixed formulas, the proposed regulations set forth a different, more objective and more enforceable approach to evaluating performance under the Act. The new regulations would maintain the present regulations' emphasis on evaluating each institution's record in light of its

business strategy and community. The new regulations would require additional data reporting for consumer, small business, and home mortgage loans, with provisions for disclosing that information to the public in a timely manner. To provide incentives for strong performance, the new regulations would clarify how CRA performance would be considered in the application process. However, the regulations would not contain a "safe harbor" provision. Under the new assessment system, further incentives would be provided to institutions that show strong performance by reducing the frequency of examinations. Finally, the regulations would provide a different evaluation framework for small institutions.

The Proposed Regulations

In General

In order to promote consistency, to reduce compliance burden and to improve performance, the proposed regulations eliminate the current regulations' twelve assessment factors and substitute a performance-based evaluation system. Under the proposed system, financial institutions would not be assessed on their efforts to meet community credit needs. Such assessments have given rise to unnecessary documentation that has reduced the effectiveness and undermined the credibility of current evaluations. Similarly, the agencies would not evaluate the methods used by an institution to assess credit needs. However, to perform under the proposed performance-based standards, institutions would have to provide loans, investments, and services for which there is a market. Therefore, they would have an incentive to perform needs assessments in their communities.

In assessing an institution's CRA performance, the agencies would recognize that the institution is expected to help meet the credit needs of its entire community. In examinations, however, particular attention would be paid to the institution's record of helping to meet the credit needs in low- and moderate-income areas.

Institutions would be evaluated based on their lending, service, and investment performance. Generally, independent institutions with at least \$250 million in assets and members of holding companies with that level of banking and thrift assets would be evaluated based on some combination of lending, service, and investment tests. As a predicate for evaluation under the

tests, institutions would have to report to the agencies and make available to the public data on the geographic distribution of their loan applications, denials, originations and purchases. Small banks and thrifts could elect to be evaluated under a streamlined method that would not require them to report this data. Every institution would have the option to choose assessment based on a pre-approved strategic plan that had been subjected to review and comment by community-based organizations and the rest of the public. However, the plan option would not relieve an institution of its data reporting obligations.

The lending test applicable to large institutions would consider the extent to which the institution is making loans in low- and moderate-income portions of its service areas. The test would also give an institution credit for other community development loans and partnerships with community groups to promote credit availability. The service test would consider the extent to which the institution is making branches accessible to low- and moderate-income areas in its service areas and is providing other services that promote credit availability. The investment test would consider investments in community and economic development activities and would also take into account grants to support community and economic development activities, donations or sales on favorable terms of branches to women- or minority-owned institutions, and investment partnerships with community organizations.

The three tests would not apply uniformly to all institutions. As a general rule, institutions would be evaluated on the basis of the product lines offered to their customers in the normal course of business. The lending test would apply to retail institutions, and the investment test would apply to wholesale and limited-purpose institutions. A retail institution would be evaluated under the investment test but its performance would only count to boost its lending test rating. All institutions would be evaluated under the service test, but wholesale and limited-purpose institutions would be evaluated under a different standard than retail institutions.

An institution evaluated under a given test would receive one of five ratings of its performance under that test: Outstanding, High Satisfactory, Low Satisfactory, Needs to Improve, or Substantial Noncompliance. The agencies have proposed five ratings rather than four ratings for each test to measure as accurately as possible

variations in performance among institutions. The agencies propose to have only four composite ratings, however, because the four ratings are required by the statute.

Small institutions that choose not to report loan data would be evaluated under a streamlined measure of lending performance that would focus on their loan-to-deposit ratio, the degree to which they make their loans in their service area, their loan mix (across product lines and income levels of borrowers), their fair lending record, and their record of community complaints. Institutions that are currently subject to reporting under the Home Mortgage Disclosure Act (HMDA) would also be evaluated on the reasonableness of the distribution of the loans they have reported. The investment and service records of small institutions would be considered to boost their ratings based on the lending measure.

The regulations would not require institutions to offer specific loan products, to make specific loans or investments or to make loans or investments that are expected to result in losses or are otherwise inconsistent with safe and sound banking practices. However, the regulations would require demonstrated performance by institutions in lending, service, and investments that benefit low- and moderate-income areas and individuals. Institutions would be permitted and encouraged to develop and apply flexible underwriting standards that are consistent with safe and sound operations for loans that benefit low- and moderate-income individuals and areas.

Under the proposal, wholesale and limited purpose institutions are defined as insured depository institutions that are in the business of extending credit to the public but that do not make a significant amount of reportable loans. This would include banks that make primarily large commercial loans, as well as credit card banks, and similar institutions.

The proposed regulations would not apply to institutions that engage solely in the correspondent banking business, trust company business, or the business of acting as a clearing agent. The agencies have previously indicated that these institutions are not governed by the CRA because these institutions generally do not perform commercial or retail banking services and do not generally extend credit to the public for their own account.

Community Reinvestment Obligation and Enforcement

The agencies propose to state in the regulations that financial institutions have a continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations, and that a purpose of the regulations is to implement this obligation. An institution that received a composite rating of Substantial Noncompliance would be subject to enforcement actions under 12 U.S.C. 1818.

The agencies propose these provisions as a method of improving the effectiveness and fairness of CRA. If the consequences for inadequate performance are restricted to the application process, then institutions not contemplating applications may have little incentive to comply. Community reinvestment is an obligation of all institutions, whether or not they are contemplating an application. In the absence of agency enforcement actions, communities in which institutions that do not anticipate filing applications are chartered may not receive the community reinvestment that the statute intends. The proposed provisions on the community reinvestment obligation and the consequent availability of formal enforcement actions would strengthen the agencies' ability to encourage institutions to meet their community reinvestment obligation.

The Lending Test

The lending test would evaluate primarily whether a retail institution is making loans in low- and moderate-income areas as well as in other areas. The test would examine both direct lending by the institution and, if the institution elected, its proportionate share of indirect lending made through lending consortia in which the institution participates, subsidiaries of the institution, funded non-chartered affiliates of the institution, and women- or minority-owned institutions, low-income credit unions, and other lenders in which the institution has made lawful investments. The test would also take into account loans made by an institution to community development organizations and intermediaries.

Under the lending test, an institution would be evaluated on the basis of its performance in making reportable loans in comparison to other lenders subject to CRA in its service area. An institution would also be evaluated independently of how others are performing. The agencies would evaluate the

institution's performance relative to other CRA lenders by comparing the institution's share (market share) of reported housing, small business, and consumer loans in low- and moderate-income areas in its service area with its share of such loans in the other parts of its service area. The agencies would evaluate the institution's performance independent of other CRA lenders' performances by examining the ratio of such loans made by the institution in low- and moderate-income areas in its service area to such loans made throughout its service area or by examining the geographic distribution of such loans across the low- and moderate-income areas in the institution's service area. By doing so, the agencies would assure that, in order to achieve a good rating under this test, either the institution has a good distribution of loans in the low- and moderate-income areas in its service areas or has a significant amount of loans to such areas.

The agencies believe that this formulation would allow an institution to target its community development lending to particular areas if doing so is critical to serving as a catalyst to community development lending throughout its service area. The agencies are aware that, in some cases, a concentrated lending effort is more useful and effective than a dispersed effort across a broader geographic area. However, the agencies have attempted to make clear that this standard would not permit institutions unreasonably to exclude low- and moderate-income areas from their lending.

The proposal indicates that the agencies will make all lending test calculations using both volume of loans made and number of loans made. In addition, in evaluating an institution's performance relative to other CRA lenders, the agencies will calculate market shares separately for small business, home mortgage, and consumer lending and weigh the calculations for those categories in reaching an overall judgment of an institution's market share performance. These decisions reflect the belief that, in different communities, one loan type may be more critical than others, and that, for different loan types, one form of measurement (either the number of loans or dollar volume) may be more useful and instructive than another. This proposal would give the agencies the flexibility to make the relevant calculations, weigh the results in reaching an assessment of an institution's performance, and discuss them in the public evaluation in the manner deemed most informative.

At the election of an institution, the agencies would consider indirect loans attributable to the institution under the lending test. Indirect loans would be defined as loans made by third parties, such as lending consortia, subsidiaries of the institution or non-chartered affiliates that it assists in funding, and women- or minority-owned institutions, low-income credit unions, and other lenders that lend to low- and moderate-income individuals or areas and in which the institution has made lawful investments. If an institution reported its attributable indirect loans and chose to have them attributed to it, the agencies would attribute the indirect loans in proportion to the institution's investment taking into account both the total lending by the third party and the lending done by the third party in the institution's service area. The proposal intends that the institution receive credit for a proportionate share of the total loans made by the third party based on the institution's investment, funding or participation. However, in claiming this credit, the loans should not be counted twice and the institution must take a representative geographic distribution of the loans in its service area or areas.

The proposal makes a distinction between the ability of an institution to claim credit under the lending test for indirect loans by its subsidiaries and funded non-chartered affiliates and its ability to claim credit for indirect loans made by other lenders. The institution could claim credit for the lending of subsidiaries or non-chartered affiliates, under the same rules regarding proportionate shares, whether it invests in the entity or makes a loan to it. For other third party lenders, the institution would be required to have made an investment in the entity in order to claim credit under the lending test for its loans. The purpose of this distinction is to recognize the unique relationship between the institution and its subsidiaries and affiliates, and to enhance the ability of institutions and their parent corporations to structure their community development lending flexibly.

The agencies could adjust an institution's rating based on the described factors upward, and, in exceptional cases, downward. Upward adjustment might be warranted if an institution made a substantial amount of loans requiring innovative underwriting or loans for which there is special need, such as loans for multifamily housing construction and rehabilitation, loans to start-up or very small businesses, loans to community development organizations or facilities and loans to

very low-income individuals and areas. While the agencies would expect such lending to be made within the confines of safety and soundness, it is understood that lending in low- and moderate-income areas can sometimes require a unique approach to establishing that the loan can be safely underwritten. It is the agencies' purpose to recognize the unique quality of these loans and the special expertise and effort they require on the part of the lender by making clear that such loans will be given particular consideration by the agencies in arriving at a rating under the lending test. Particular consideration will also be given to loans made to community development lending institutions.

An institution could also receive an upward adjustment to its lending rating based on the operation of a program under which the institution would reevaluate applications that, based on an initial evaluation, the institution planned to deny. To the extent that an institution operates such a "second look" program in which applications are reviewed by community organizations, the institution must request applicants to waive any privacy rights under state or federal law in order to share their applications with those organizations. The institutions should also make sure that the participating organizations take appropriate steps to protect applicants' confidentiality.

In exceptional cases, an institution's rating might be adjusted downward. For example, an adjustment might be warranted if the quantitative measures inaccurately portrayed the institution's actual lending to low- or moderate-income geographies or individuals.

Based on these measures, an institution's lending effort would be assigned a preliminary rating of outstanding, high satisfactory, low satisfactory, needs to improve, or substantial noncompliance. Preliminary ratings would be presumptive and could be rebutted by the institution if, for example, it believed the presumptive rating did not accurately or adequately reflect its lending record because of particular economic or demographic characteristics.

Investments and Other Factors

Wholesale and limited-purpose institutions would normally be evaluated under the investment test instead of the lending test. Retail institutions would be evaluated under the investment test, but investment performance would not be used to lower the overall rating of a retail institution. However, all institutions would be

encouraged to engage in investment activities.

The focus of the investment test would be the ultimate impact of the institution's investment rather than the investment *per se*. Therefore, qualified investments would not be credited under the test unless they had a demonstrable impact, e.g. in providing loans or community development projects that benefit low- and moderate-income individuals and areas.

Institutions would be evaluated under the investment test based on the amount of assets compared to their risk-based capital that they have devoted to qualified investments for which they have not already received credit under the lending test. If an institution made a qualified investment that generated some attributable indirect loans but also created non-loan benefits for low- and moderate-income areas or individuals, the institution could receive credit under the lending test for the indirect loans and credit under the investment test for that part of the investment that was not considered as indirect lending.

Qualified investments would include lawful investments that benefit low- and moderate-income geographies or individuals in an institution's service area: in support of local affordable housing and community, economic, or small business development; in community development financial institutions, community development corporations, community development projects, small business investment corporations (including minority small business investment corporations), and minority- and women-owned financial institutions and other community development financial intermediaries; in consortia or other structures serving low- and moderate-income individuals and areas; and in state and local government agency housing bonds or state and local government revenue bonds specifically aimed at helping low- and moderate-income areas and individuals. The CRA does not grant institutions any investment authority, so investments must comply with other statutory and regulatory limitations and requirements.

Eligible grants would be considered qualifying investments. Donation or sale on favorable terms of branches to minority- or women-owned institutions would also count as qualifying investments. Loans by wholesale and limited purpose banks that would constitute qualified investments were they in the form of investments would be treated as qualified investments for the purposes of the Investment Test. For purposes of the investment test, wholesale and limited-purpose

institutions would be deemed to have nationwide service areas.

The agencies could adjust an institution's rating under the investment test to take into account whether the institution's investments are particularly innovative or meet a special need and whether the institution's activities in connection with the investments are particularly complex or intensive or involve innovative partnerships with community-based organizations. Examples of such activities include helping to establish a new entity to conduct community development activities or providing significant service or assistance in support of a qualified investment. The agencies could also adjust an institution's rating if the institution has made a large amount of investments that would be qualified investments except that they fail to benefit the bank's service area. Downward adjustments would only be justified in exceptional cases.

Based on these measures, an institution's investment effort would be assigned a preliminary rating of outstanding, high satisfactory, low satisfactory, needs to improve, or substantial noncompliance. Preliminary ratings would be presumptive and could be rebutted by the institution.

The Service Test

In the CRA, Congress found that regulated financial institutions are required by law to demonstrate that they serve the convenience and needs of their communities and that "the convenience and needs of communities include the need for credit services as well as deposit services." See 12 U.S.C. 2901. The CRA focuses, however, on an institution's effort to help meet the credit needs of its community or communities.

Branch availability in a community is critical to the availability of credit, as well as deposit, services. The loan origination process (including initial contacts, pre-application counseling, application completion and application filing) often occurs at branches. Moreover, accessible branches are critical to the development of the full-service banking relationships that facilitate participation in the credit system.

Therefore, the service test would evaluate a retail institution primarily on the basis of the percentage of its branches that are located in or that are readily accessible to low- and moderate-income areas. Generally, in a densely populated area, a branch would be considered readily accessible if it was in easy walking distance. In a less

populated area, a branch would generally be considered readily accessible if it was in easy or normal driving distance. The percentage of branches that an institution would be expected to have in or readily accessible to low- and moderate-income areas in each service area would depend, in part, on the number of such areas in the service area.

The agencies could adjust a retail institution's service record upward or downward to reflect more accurately its branch service to low- or moderate-income geographies or individuals, but downward adjustments would be made only in exceptional cases.

In determining the appropriateness and degree of any adjustment, the agencies might consider the institution's record of opening and closing branches, whether branches wherever located are actually serving low- and moderate-income individuals, any significant differences in the quality, quantity or types of services offered to low- or moderate-income individuals or geographies, and similar factors.

The agencies could also adjust a retail institution's rating upward to reflect a strong record of providing or supporting other services that promote credit availability for low- and moderate-income individuals and areas. Particular weight in this consideration would be given to credit and home-ownership counseling, small and minority-owned business counseling, low-cost check-cashing, and low-cost deposit services.

Appropriate consideration would be given to the limitations faced by institutions with a small number of branches. No institution would be required to expand the size of its branching network or to operate branches at a loss. Because they generally do not have branch systems, wholesale and limited-purpose institutions would be evaluated based on their support for services that promote credit availability rather than their provision of branches.

Based on these measures, an institution's service performance would be assigned a preliminary rating of outstanding, high satisfactory, low satisfactory, needs to improve, or substantial noncompliance. Preliminary ratings would be presumptive and could be rebutted by the institution.

Composite Ratings

As required by the statute, there would be four possible composite ratings: outstanding, satisfactory, needs to improve, and substantial noncompliance. For retail institutions, the institution's rating under the lending test would form the basis for its

composite rating. For wholesale or limited-purpose institutions, the institution's rating under the investment test would serve as the basis for the composite rating. For retail institutions, the rating would then be increased by two levels in the case of outstanding investment performance or by one level in the case of high satisfactory investment performance. For all institutions, the rating would be increased by one level in the case of outstanding service and decreased by one level in the case of substantial non-compliance in service.

The rating would be converted to the statutorily-required four level rating system, with high satisfactory and low satisfactory both scored as satisfactory. An institution that would otherwise receive a needs to improve rating would be rated in substantial noncompliance if the institution received no better than a needs to improve rating on both of its last two examinations. Finally, the rating would be adjusted, if necessary, to take into account illegal lending discrimination by the institution to arrive at a final composite rating.

Lending Discrimination

A financial institution is not serving its entire community adequately if it is discriminating illegally. Therefore, there would be a rebuttable presumption that an institution would receive a composite rating of less than satisfactory if the institution committed an isolated act of illegal discrimination of which it has knowledge that it has not corrected fully or is not in the process of correcting fully or engaged in a pattern or practice of illegal discrimination that it has not corrected fully. The presumption could be rebutted in the case of technical or *de minimis* violations, for example, if an institution violates the Equal Credit Opportunity Act by offering a preferential credit program for individuals over age 55 (rather than limiting the program to individuals over age 62 as the law requires).

Multiple Service Areas

An institution's CRA rating should reflect its performance in all the local communities in which it does business. If an institution operates in more than one service area, the agencies would evaluate all the institution's loan data and would conduct full lending and service tests in a sample of the service areas in which the institution operates. The agencies would then assign separate composite ratings for each area. The institution's overall rating would reflect the performance of the institution in all service areas studied.

Small Institution Assessment Option

The CRA requires the agencies to assess an institution's record of meeting the credit needs of its entire community, but does not specify the methods by which the assessments are to be made. The agencies believe that the Congress gave the agencies broad discretion to determine the appropriate methods for CRA assessments. The Congress recognized that assessment methods must be appropriate for communities and institutions of different sizes, conditions, needs and attributes.

Many small institutions and their representatives have urged that the agencies exercise their discretion to exempt small institutions from CRA assessments. However, the agencies do not believe that an exemption is permitted by the statute. Moreover, the agencies believe that an exemption would be unwise because it could result in neglect of the credit needs of communities that are served by exempted institutions.

The agencies believe, however, that they may exercise their discretion to create different assessment methods to take into account differences among classes of financial institutions. The agencies further believe that a different assessment method may be warranted to provide appropriate treatment of small banks and thrifts. The proposed regulations therefore generally offer small banks and thrifts the option of choosing evaluation under a streamlined assessment method. Concomitantly, the regulations would not impose upon small institutions the data collection requirements that are necessary for the general assessment method applied to other institutions. This difference in method may be appropriate because the disproportionate burden that would be otherwise imposed on small institutions does not appear to be necessary to achieve the purposes of the regulations. Collection and reporting by small banks and thrifts of data on the geographic distribution of their loans may impose a burden on those institutions disproportionate to larger institutions. In addition, small banks and thrifts often serve geographically compact communities, so the benefits of geographic coding and reporting of loans by such institutions are generally minimal.

Finally, the streamlined examination process proposed by the agencies is designed to measure accurately whether small banks and thrifts are, in fact, serving the needs of their *entire* communities. In this regard, the agencies stress that the examinations for

small banks and thrifts will not be implemented as *de facto* exemptions. Examinations will not be formalities or simple reviews in which examiners quickly determine whether institutions have met the items on a "check list." Meaningful examinations, including reviews of the loan files of small institutions, will be conducted, but the burden of the examinations will be shifted largely from the banks being examined to the examiners.

Small banks and thrifts would be defined as independent institutions with assets of less than \$250 million or institutions with less than \$250 million in assets that are members of holding companies the total banking and thrift assets of which are less than \$250 million. Approximately 9% of the combined assets of U.S. commercial banks (including development, industrial and cooperative banks, and State and federally-chartered savings banks) are in banks or in bank holding companies with assets less than \$250 million and with a loan-to-deposit ratio of 60% or higher.

The primary basis for a small institution's rating would be an evaluation of its lending record. An institution would be presumed to receive a satisfactory rating if it has a reasonable loan-to-deposit ratio, makes the majority of its loans locally, has a good loan mix (makes a variety of loans to the extent permitted by law and regulation and lends across income levels), has no legitimate, bona-fide complaints from community members, has not committed an isolated act of illegal discrimination of which it has knowledge that it has not corrected fully or is not in the process of correcting fully, and has not engaged in a pattern or practice of illegal discrimination that it has not corrected fully. In addition, if an institution is required to report loans under the HMDA, the institution would also be required to have a reasonable geographic distribution of reported loans.

A small institution that meets each of the standards for a satisfactory rating and exceeds some or all of those standards could receive an overall rating of outstanding. In assessing whether a small institution's CRA record is outstanding, the relevant agency would consider the extent to which the institution's loan-to-deposit ratio, its lending to its service area, and its loan mix exceed the standards for a satisfactory rating. In addition, at the option of the institution, the agency would evaluate the institution's record of making qualified investments and its record of providing branches, remote service facilities (RSFs), automated

teller machines (ATMs), and other services that enhance credit availability or in other ways meet the convenience and needs of low- and moderate-income persons in its service area.

If a small institution failed to meet or exceed all of the standards for a satisfactory rating, the relevant agency would conduct a more extensive examination of the institution's loan-to-deposit record, its record of lending to its local community, and its loan mix. The agency would also contact members of the community, particularly in response to complaints about the institution, and review the findings of its most recent fair lending examination. In addition, at the option of the institution, the agency would assess the institution's record of making qualified investments and its record of providing branches, RSFs, ATMs, and other services that enhance credit availability or in other ways meet the convenience and needs of low- and moderate-income persons in its service area.

If a small institution operates in more than one service area, the relevant agency would evaluate the institution's performance in all of those service areas.

Plan Assessment Option

Any institution, as an alternative to being rated under the lending, service, and investment tests or the assessment method for small institutions, could elect to submit for agency approval a CRA plan with measurable goals against which its subsequent performance would be assessed. This plan would be required to be publicly disclosed and subject to public comment before approval. If the agency approved the plan, it would assess the institution's performance to determine if the institution met or exceeded the plan goals. If the institution failed to meet or exceed the preponderance of the measurable goals set forth in the plan, the institution's performance would be evaluated under the applicable tests or standards described above. Assessment under a plan would not relieve an institution from its obligation to report data on the geographic distribution of its loans.

Definition of Service Area

The geographic areas surrounding each office or group of offices in which a retail institution (including a small institution) makes most of its direct loans would be used to define its service areas. A rebuttable presumption would exist that an institution's service area is acceptable if it is broad enough to include low- and moderate-income areas, and does not arbitrarily exclude

low- and moderate-income areas. For example, service areas defined by the institution to include the areas around branches in which it makes a substantial portion of its loans and all other areas equidistant from the branches would normally be acceptable. Institutions would not be evaluated on the method they use to delineate their service areas. Wholesale and limited-purpose institutions would not have to define service areas.

A retail institution would generally have multiple service areas if it serves significant areas across state or metropolitan boundaries. An institution could have multiple service areas within one metropolitan area, and service areas need not necessarily be coterminous with metropolitan statistical area or state boundaries. However, a service area generally should not include more than one metropolitan statistical area and should not include both a metropolitan statistical area and a rural area.

Data Collection and Reporting

In addition to data already collected under the HMDA and the agencies' fair housing data collection requirements, institutions that do not elect or are not eligible for the small institution streamlined assessment method would be required to collect and report to the agencies data on the geographic distribution of their home mortgage, consumer, small business (including small farm) loan written applications, application denials, originations and purchases. In the case of a retail institution that elected to count its attributable indirect loans for its lending test, data would have to include reports on attributable indirect loans (including loans made outside low- or moderate-income areas). Data on small business loans would be reported in four categories based on the sales volume of the business. Data on the race and gender of borrowers would not be required to be collected and reported, except to the extent such data are required by current law. Data would have to be reported in summary form (see appendix A) and would have to be submitted to the agencies by January 31 of the calendar year following the calendar year for which the data were collected. These data would be used by the agencies to make the calculations under the lending test and would be made available to the public.

Home mortgage loans would be defined to include all mortgage loans reportable under HMDA and its implementing regulations. These include closed-end purchase and improvement loans (including

refinancings) for single family, 1-4 family, and multifamily housing. Institutions already covered by HMDA would not be required to collect any additional information on their home mortgage loans but would be required to submit home mortgage data in summary form by the January 31 deadline. Institutions not now covered by HMDA would have to collect and report the summary home mortgage data required by the proposed CRA regulations but would not have to report home mortgage data in the detail required by HMDA. Reporting of open-end home equity lines of credit is not required under HMDA and would not be required under the proposed regulations, because the burdens of collection and reporting appear to outweigh the associated benefits.

Consumer loans are defined to include all closed-end loans, secured and unsecured, extended to a natural person primarily for personal, family, or household purposes, except for credit card loans and motorized vehicle loans and those loans included in the definition of home mortgage loans. Consumer loans also would not include open-end credit lines.

The agencies have not proposed to require collection and reporting of data on open-end credit lines, credit card loans, and motorized vehicle loans because the burdens associated with collection and reporting of the data appear to outweigh the associated benefits. The legislative history of the Community Reinvestment Act reveals that Congress was primarily concerned with the availability of home mortgage loans and small business loans. In addition, collection of data on revolving credit (including credit card loans) and automobile loans is particularly burdensome given the nature of those loans.

Documentation and Disclosure

Every institution would have to make available for public inspection a file with all signed, written comments from the public that it has received for the past 2 years, its performance data for that period, maps of its service areas and lists of the census tracts or block numbering areas that make up each service area, and a copy of the public section of its most recent CRA Performance Evaluation. If an institution elected assessment under the plan option, it would be required to include in the public file a copy of its plan. Copies of information in the public file would be required to be made available at cost to members of the public on request. The public file would be required to be maintained at the

institution's main office. Materials relating to a given service area would also be required to be maintained at each branch in that service area. Every institution would have to post in the public lobby of every branch a notice of its CRA obligation and the public's ability to comment on and review data concerning that performance.

Publication of Examination Schedule and Public Comment

The proposed regulation provides that the agencies will publish a list of the institutions which are scheduled to undergo CRA examinations in the next calendar quarter. The list would be published at least 30 days in advance of the quarter and would contain the names of the institutions that have been scheduled for a CRA examination in that quarter. Members of the public would be invited to submit comments to the appropriate agency regarding the CRA performance of any institution whose name appears on the list. If received prior to the start of an examination, those comments would be taken into consideration during the examination in addition to any comments already in the institution's public CRA file. As the precise timing of any particular examination, including the length of time any particular examination takes to complete, cannot always be accurately judged, members of the public would be urged to submit their comments as soon as possible after the list of institutions is published. Additionally, the agencies would urge all interested members of the public to file comments with institutions regarding their CRA performance on an ongoing basis and not to wait until any particular institution has been scheduled for a CRA examination to file comments either with the institution itself or the appropriate agency. This is especially important as from time to time it might be necessary or advisable for the agencies to conduct a CRA examination of an institution which had not been previously scheduled to receive an examination that quarter. In short, the fact that an institution's name does not appear on the published list would in no way preclude the agencies from conducting a CRA examination.

Applications

The CRA requires the agencies to consider the CRA performance record of an insured depository institution in considering applications by the institution for a deposit facility. Applications for a deposit facility include applications to charter a bank or Federal savings association, to obtain Federal deposit insurance, to establish

or relocate a branch office or ATM, and to acquire another insured depository institution or its assets. The agencies propose in the regulation to explain how CRA ratings achieved through performance-based examinations will be considered in these applications.

Under the proposal, the CRA examination rating would continue to be an important and often controlling factor in assessing the CRA aspect of an application, including where appropriate the convenience and needs factor. The CRA examination rating is not conclusive, however, and the proposal recognizes that other information related to CRA performance and the convenience and needs of communities, including information collected through public comment and through periodic and special reports, is also relevant and must be considered.

As proposed, an "outstanding" rating generally would result in a finding that the CRA aspect of the application is consistent with approval of the application and would receive extra weight in reviewing the application. A "satisfactory" rating generally would result in a finding that the CRA aspect of the application is consistent with approval of the application. A "needs to improve" rating generally would be an adverse factor in the CRA aspect of the application, and absent demonstrated improvement in the bank's CRA performance or other countervailing factors, generally would result in denial or conditional approval of the application. A "substantial noncompliance" rating generally would be so adverse a finding on the CRA aspect of the application as to result in denial of the application.

In addition to consideration of CRA performance in the application process and use of their general enforcement powers (which could include issuing cease and desist orders or imposing civil money penalties), the agencies plan to use the frequency of CRA examinations to provide incentives for strong performance. Institutions with outstanding ratings will generally be examined less frequently than the average institution, and institutions with less than satisfactory ratings will generally be examined more frequently. Of course, other factors, such as an institution's financial condition, will also affect the frequency of examinations. The agencies believe that linking examination frequency to performance makes sense not only because it provides an incentive for strong performance but also because it reflects a sensible allocation of the agencies' limited examination resources.

Transition

Under the proposed regulations, the data collection and reporting requirements will go into effect July 1, 1994 for all institutions that are required under the regulations to collect and report data. Data collected from July 1, 1994 through December 31, 1994 would be required to be reported to the agencies no later than January 31, 1995. Thereafter, institutions would be required to collect the data on an annual basis and to report the data no later than January 31 of the following year.

Evaluations based upon the new assessment standards could begin by April 1, 1995, by which time sufficient data will have been collected and analyzed to accommodate the quantitative analyses contemplated by the regulations. However, the agencies anticipate that financial institutions may need time to adjust to the new approach. Therefore, from April 1, 1995 to July 1, 1995, an institution could elect to be evaluated under the standards that were in place under the old system rather than the new standards. After July 1, 1995, the new standards would be mandatory except that, until April 1, 1996, an institution showing good cause could request evaluation under the old standards. An institution could also elect to be evaluated under a strategic plan during the transition period. However, as would be the case whenever an institution elects evaluation under the plan option, the institution would have to submit the strategic plan at least 3 months prior to the plan's proposed effective date. The purpose of this requirement is to allow the agencies sufficient lead time to review, assess, and determine whether to approve the plan.

Finally, the agencies are concerned that some institutions may have difficulty adapting to the new assessment standards and that such institutions may, despite clear efforts to the contrary, find that their first CRA rating under the new standards is substantially below their most recent rating under the old system. The proposed regulations provide a reasonable accommodation for institutions that find themselves in that situation. If an institution's first rating under the new standards is more than one category below the institution's last rating under the old standards, the agencies would not disapprove any corporate application nor take any other enforcement action against the institution based on that lower rating if the agencies determined that the drop in the institution's rating occurred despite

the institution's good faith efforts to perform at least satisfactorily under the new standards.

Review

The agencies recognize that the proposed regulations represent a dramatic change in existing practices and that cautious administration is therefore required. Consultation by financial institutions with the agencies on compliance with the new standards and procedures will be encouraged, as will liberal use of agency appeals processes. The supervisory agencies will engage in an internal review of the effectiveness of the new regulations. The agencies contemplate reconsideration of the regulations to improve their effectiveness within the next several years. The agencies intend for the proposed regulations to require demonstrated performance but to impose as little unnecessary compliance burden as possible, and the agencies will review the regulations to determine whether they are advancing these goals.

Other Efforts

In addition to this rulemaking, the agencies will work together to improve examiner training and to increase interagency coordination regarding application of standards, performance of examinations, assignment of ratings, and use of enforcement tools. The agencies will work together to make examinations as short in duration as possible, to minimize unnecessary compliance burden, and to ensure consistency and reliability in the rating process.

The agencies will also work together to improve public access to data collected pursuant to HMDA and the proposed regulations. To that end, the agencies will strive to make the summary data reported under the proposed CRA regulations available to the public as soon as possible. The Federal Reserve Board will also strive to make HMDA data available by May 30 of the year following the year for which the data are submitted.

CRA Loan Data Format

The agencies are proposing a common CRA Loan Data Format, included in each regulation as appendix A. That common format appears at the end of this preamble, but would be published with each agency's regulation if this proposal is adopted as a final rule.

Specific Areas for Public Comment

Comment is invited on all aspects of the proposal. In addition to general comments, the agencies request

PART B.—HOME IMPROVEMENT LOANS

[Loans on 1-to-4 family dwellings]

| Census tract/ block numbering area | Total # of apps. | | Total # of app. de- nials | | Total # of apps. approved | | \$ amount ap- proved | | Total # & \$ pur- chased | | Indirect loans # and \$ amount | |
|--|------------------|-------|------------------------------|-------|------------------------------|-------|-------------------------|-------|-----------------------------|---------------|-----------------------------------|---------------|
| | Govt. | Other | Govt. | Other | Govt. | Other | Govt. | Other | Govt. # \$ | Other # \$ | Govt. # \$ | Other # \$ |
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PART C.—REFINANCING

[Home purchase or home improvement 1-to-4 family dwellings]

| Census tract/ block numbering area | Total # of apps. | | Total # of app. de- nials | | Total # of apps. approved | | \$ amount ap- proved | | Total # & \$ pur- chased | | Indirect loans # and \$ amount | |
|--|------------------|-------|------------------------------|-------|------------------------------|-------|-------------------------|-------|-----------------------------|---------------|-----------------------------------|---------------|
| | Govt. | Other | Govt. | Other | Govt. | Other | Govt. | Other | Govt. # \$ | Other # \$ | Govt. # \$ | Other # \$ |
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PART D.—MULTIFAMILY DWELLING LOANS

[Home purchase, home improvement and refinancings]

| Census tract/ block numbering area | Total # of apps. | | Total # of app. de- nials | | Total # of apps. approved | | \$ amount ap- proved | | Total # & \$ pur- chased | | Indirect loans # and \$ amount | |
|--|------------------|-------|------------------------------|-------|------------------------------|-------|-------------------------|-------|-----------------------------|---------------|-----------------------------------|---------------|
| | Govt. | Other | Govt. | Other | Govt. | Other | Govt. | Other | Govt. # \$ | Other # \$ | Govt. # \$ | Other # \$ |
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Paperwork Reduction Act

OCC: The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Comptroller of the Currency, Legislative, Regulatory, and International Activities, Attention: 1557-0160, 250 E. Street, SW., Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1557-0160), Washington, DC 20503.

The collections of information in this proposed regulation are in 12 CFR 25.11, 25.12, 25.13, and 25.14. This information is required to evidence national bank efforts in satisfying their continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas.

This information will be used to assess national bank performance in

satisfying the credit needs of their communities and in evaluating certain corporate applications. The likely respondents/recordkeepers are for-profit institutions including small businesses.

The estimated annual burden per respondent/recordkeeper varies from six to 90 hours, depending on individual circumstances, with an estimated average of 18 hours.

There will be an estimated 532 respondents averaging two hours and 3,450 recordkeepers averaging 16 hours.

Board: In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the Federal Reserve Board will review the proposed collection under the authority delegated to the Board by the Office of Management and Budget after consideration of comments received during the public comment period. Comments on the collections of information should be sent to William W. Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collections of information in this proposed regulation are in 12 CFR 228.11, 228.12, 228.13, and 228.14. This information would be required to evidence the efforts of banks in satisfying their continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas. This information will be used to assess banks' performance in satisfying the credit needs of their communities and in evaluating certain applications.

Approximately 973 banks would be subject to recordkeeping requirements under the proposed regulation; 274 of them (respondents) would also be subject to reporting requirements. It is estimated that the annual burden per bank under these requirements will vary from 6 hours to 250 hours, including time to maintain the public disclosure file under existing rules and to review instructions, gather and maintain the new data needed and complete the information collection under the proposed rules.

FDIC: The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (3604-0092), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F-453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

The collection of information requirements in this proposed regulation are found in 12 CFR 345.11 through 345.14 and concern alternative assessment methods, including the option of being assessed according to a strategic CRA plan; the delineation of the institution's service area; the collection, reporting and disclosure of specified data on the bank's home mortgage, consumer, small business and small farm loans; and the maintenance of a public CRA file.

This information is required to evidence efforts of financial institutions in satisfying their continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas. It will be used to assess an institution's performance in satisfying the credit needs of its communities and in evaluating certain corporate applications.

The likely respondents/recordkeepers are for-profit financial institutions, including small businesses.

The estimated annual burden per respondent/recordkeeper varies from six to 90 hours, depending on individual circumstances, and whether an institution qualifies as a small institution. The estimated average burden is 18 hours. There will be an estimated 645 respondents averaging two hours and 7,300 recordkeepers averaging 16 hours.

OTS: The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550-0012), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The collections of information in this proposed regulation are in 12 CFR 563e.11, 563e.12, 563e.13 and 563e.14. This information is required to evidence savings association efforts in satisfying their continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas.

This information will be used to assess savings association performance in satisfying the credit needs of their communities and in evaluating certain corporate applications.

The likely respondents/recordkeepers are for-profit savings associations, including small businesses.

The estimated annual burden per respondent/recordkeeper varies from six to 90 hours, depending on individual circumstances, with an estimated average of 18 hours. There will be an estimated 450 respondents averaging two hours and 1,800 recordkeepers averaging 16 hours.

Regulatory Flexibility Act

OCC: It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small banks. Accordingly, a regulatory flexibility analysis is not required. This proposal would enable most small banks to avoid the data collection requirements in part 25 and will encourage greater small business lending by banks of all sizes.

Board: It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small banks. This proposal would enable most small banks to avoid the data collection requirements in part 228 and will encourage greater small business lending by financial institutions of all sizes. Accordingly, a regulatory flexibility analysis is not required.

FDIC: It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small banks. This proposal would enable most small banks to avoid the data collection requirements in part 345 and will encourage greater small business lending by financial institutions of all sizes. Accordingly, a regulatory flexibility analysis is not required.

OTS: It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small savings associations. This proposal provides an alternative means of evaluating a small savings association's CRA requirements that would enable most such savings associations to avoid

the data collection requirements in part 563e and will encourage greater small business lending by savings associations of all sizes.

Executive Order 12866

OCC: It has been determined that this document is a significant regulatory action. The proposal would clarify existing requirements and would exempt small banks from many of the requirements in part 25. Further, the proposal will encourage greater small business lending by banks of all sizes.

OTS: It has been determined that this document is a significant regulatory action. The proposal sets forth a more focused and streamlined method of evaluating savings associations' compliance with existing statutory requirements; moreover it would exempt small savings associations from many of the requirements in part 563e. Further, the proposal will encourage greater small business lending by savings associations of all sizes.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Adoption of Proposed Common Appendix

The agency specific proposals to adopt the common appendix, which appears in the common preamble, are set forth below:

Authority and Issuance

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR Chapter I

For the reasons set out in the preamble, the Office of Comptroller of the Currency proposes to amend 12 CFR chapter I as set forth below:

1. Part 25 is revised to read as follows:

PART 25—COMMUNITY REINVESTMENT ACT REGULATIONS

Sec.

- 25.1 Authority and OMB control number.
- 25.2 Community reinvestment obligation.
- 25.3 Purposes.
- 25.4 Scope.
- 25.5 Definitions.
- 25.6 Assessment standards — summary.
- 25.7 Lending Test.
- 25.8 Investment Test.
- 25.9 Service Test.
- 25.10 Composite ratings.
- 25.11 Alternative assessment methods.
- 25.12 Service area — delineation.
- 25.13 Loan data — collection, reporting, and disclosure.
- 25.14 Public file and disclosure.
- 25.15 Public notice by banks.
- 25.16 Publication of planned examination schedule.
- 25.17 Effect of ratings — corporate applications.
- 25.18 Transition rules.

Appendix A to Part 25—CRA Loan Data Format

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1818, 1828(c), and 2901 through 2907.

§ 25.1 Authority and OMB control number.

(a) *Authority.* The authority for this part is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1818, 1828(c), and 2901 through 2907.

(b) *OMB control number.* The collection of information requirements contained in this part were approved by the Office of Management and Budget under OMB control number 1557-0160.

§ 25.2 Community reinvestment obligation.

National banks have a continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations.

§ 25.3 Purposes.

The purposes of this part are to implement the community reinvestment obligation of national banks; to explain how the Office of the Comptroller of the Currency (OCC) assesses the performance of national banks in satisfying the community reinvestment obligation; and to describe how that performance is taken into account in certain corporate applications.

§ 25.4 Scope.

(a) *General.* This part applies to all insured national banks that are in the business of extending credit to the public, including wholesale and limited-purpose banks.

(b) *Banks not engaged in lending activities.* This part does not apply to

banks that engage solely in the correspondent banking business, trust company business, or the business of acting as a clearing agent. Such institutions, although they are chartered as banks, do not perform commercial or retail banking services and do not extend credit to the public for their own account.

(c) *Federal branches and agencies.* As provided in § 28.102 of this chapter, this part does not apply to Federal agencies, limited Federal branches, and uninsured Federal branches. However, this part does apply to insured Federal branches. References in this part to "head office" mean, in the case of insured Federal branches of foreign banks, the principal branch within the United States. The "service area" of an insured Federal branch refers to the community or communities located within the United States served by the branch as described in § 25.12. The phrase "office or group of offices" refers to insured branches located within the United States.

§ 25.5 Definitions.

For purposes of this part, the following definitions apply:

(a) *Automated Teller Machines (ATMs)* means immobile, automated, unstaffed banking facilities at which deposits are received, checks paid, or money lent.

(b) *Branches* means staffed banking facilities (shared or unshared) with a fixed site at which deposits are received or checks paid or money lent, including mini-branches in grocery stores or branches operated in conjunction with any other local businesses, churches, or other non-profit organizations.

(c) *Consumer loans* means closed-end loans extended to a natural person primarily for personal, family, or household purposes, but does not include home mortgage loans as defined in paragraph (e) of this section, credit card loans, or motor vehicle loans.

(d) *Geographies* means census tracts or block numbering areas.

(e) *Home mortgage loans* means closed-end loans that are mortgage loans as defined in section 303(1) of the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2802(1)), and implementing regulations.

(f) *Illegal discrimination* means discrimination on a prohibited basis as set forth in the Equal Credit Opportunity Act, 15 U.S.C. 1691 through 1691f, or the Fair Housing Act, 42 U.S.C. 3601 through 3619.

(g) *Indirect loans* means loans made indirectly by a bank through participation in a lending consortium in which lenders pool their resources, by

subsidiaries of the bank, by non-chartered affiliates funded by the bank, or by lawful investments in or with community development and affordable housing lenders, women-owned or minority-owned financial institutions, low-income credit unions, and others that lend to low- and moderate-income geographies and individuals.

(h) *Loans or investments benefiting low- and moderate-income geographies or persons* means loans or investments where the proceeds are provided to, invested in, used by or otherwise directly benefit—

(1) Persons that reside in low- or moderate-income geographies or have low or moderate incomes;

(2) Businesses located in low- or moderate-income geographies or employing mostly persons residing in such geographies;

(3) Non-profit organizations located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies; or

(4) Construction or renovation of facilities located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies.

(i) *Low- and moderate-income geographies* means geographies where the median family income is less than 80% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) less than 80% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(1) *Low-income geographies* means geographies where the median family income is less than 50% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) less than 50% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(2) *Moderate-income geographies* means geographies where the median family income is at least 50% and less than 80% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) at least 50% and less than 80% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(j) *Reportable loans* means home mortgage loans, consumer loans, and loans to small businesses and small farms.

(k) *Retail banks* means insured banks that are in the business of extending credit to the public and that make a significant amount of reportable loans.

(l) *Small banks* means—(1) Independent banks with total assets of less than \$250 million; or

(2) Banks with total assets of less than \$250 million that are subsidiaries of a holding company with total banking and thrift assets of less than \$250 million.

(m) *Small businesses* means private for-profit organizations that had for the calendar or fiscal year preceding the making of the loan—

(1) Average annual gross receipts of less than \$10 million for a concern providing services; or

(2) Up to 500 employees for a manufacturing concern.

(n) *Small farms* means private organizations engaged in farming operations with average annual gross receipts of less than \$500,000 for the calendar or fiscal year preceding the making of the loan.

(o) *Wholesale and limited-purpose banks* means insured banks that are in the business of extending credit to the public but make no significant amount of reportable loans.

§ 25.6 Assessment standards—summary.

(a) Except for banks assessed under the special standards of § 25.11, the OCC assesses a bank's CRA performance as described in this section. The OCC reviews, among other things, the bank's CRA public file and any signed, written comments about the bank's CRA performance submitted to the bank or the OCC. In assessing a bank's CRA performance, the OCC considers whether the bank is helping to meet the credit needs of its entire community. In examinations, however, the OCC pays particular attention to the bank's record of helping to meet the credit needs in low- and moderate-income geographies. That record is primarily evaluated using three measures: the Lending Test (described in § 25.7), the Investment Test (described in § 25.8) and the Service Test (described in § 25.9). Based on these separate assessments, the OCC assigns the bank one of four overall composite ratings as described in § 25.10. The four composite ratings are Outstanding, Satisfactory, Needs to Improve, and Substantial Noncompliance.

(b) The composite ratings reflect the extent of compliance or noncompliance with the community reinvestment obligation described in § 25.2. A bank that receives a composite rating of Substantial Noncompliance shall be subject to enforcement actions pursuant to 12 U.S.C. 1818.

(c) This part and the CRA do not require any bank to make loans or investments that are expected to result

in losses or are otherwise inconsistent with safe and sound operations. However, banks are permitted and encouraged to develop and apply flexible underwriting standards (that are consistent with safe and sound operations) for loans that benefit low- and moderate-income geographies or individuals.

§ 25.7 Lending Test.

(a) *Summary.* The Lending Test evaluates primarily whether a retail bank is making loans in low- and moderate-income geographies as well as to wealthier geographies. The test examines direct lending by the bank itself and, if the bank elects, indirect lending to the extent permitted by this part.

(b) *Standards.* The OCC rates a bank's lending performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the OCC presumes a bank is lending in an outstanding fashion if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area significantly exceeds its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in the vast majority of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a substantial percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies from its lending).

(2) *High Satisfactory.* Subject to rebuttal, the OCC presumes an institution is lending in a high satisfactory fashion if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in most of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a very significant percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies from its lending).

(3) *Low Satisfactory.* Subject to rebuttal, the OCC presumes a bank is lending in a low satisfactory fashion if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in many of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a significant percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies from its lending).

(4) *Needs to Improve.* Subject to rebuttal, the OCC presumes a bank needs to improve its record under the Lending Test if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is less than, and not roughly comparable to, its market share of reportable loans in the remainder of its service area; or

(ii) It has made reportable loans in only a few of the low- and moderate-income geographies in its service area, and reportable loans to low- and moderate-income geographies in its service area represent an insignificant percentage of its reportable loans in its service area.

(5) *Substantial Noncompliance.* Subject to rebuttal, the OCC presumes a bank is in substantial noncompliance with the Lending Test if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is significantly less than its market share of reportable loans in the remainder of its service area; and

(ii) It has made very few, if any, reportable loans in the low- and moderate-income geographies in its service area.

(c) *Method of computation—(1) General.* For purposes of the Lending Test, the OCC, rather than the bank, is responsible for making the computations. The OCC bases such computations upon the bank's reported loan data required under § 25.13 and the aggregate reported loan data supplied by the Federal financial supervisory agencies. In making lending test computations, the OCC measures market share, amount of loans, and percentage using both volume of loans and number of loans.

(2) *Market share.* The OCC computes market share for volume and number of loans for each type of reportable loans: Home mortgage loans, consumer loans, and small business and farm loans. The OCC awards an overall market share performance rating after weighing each leading category based on such factors as the needs of the community being served, the bank's capabilities and business plans, and the degree to which the bank's performance with respect to one of the loan categories, in fact, balances or compensates for its performance under another category.

(d) *Adjustments.* (1) The OCC may increase a bank's lending rating if the bank participates in a program for giving further reviews to loan applications that would otherwise be denied. More credit will be given for such a program if it is done in conjunction with a community organization in such a way that the organization either participates in the review or offers applications from low- and moderate-income individuals that the bank will consider for credit. The OCC may also increase the rating if the bank has made a substantial amount of loans requiring creative or innovative underwriting (while maintaining a safe and sound quality) or loans for which there is particular need, such as loans for multifamily housing construction and rehabilitation, loans to start-ups, very small businesses or community development organizations or facilities and loans to very low-income individuals and areas. The OCC will also consider favorably in reaching a rating loans made to third parties, such as community development organizations and intermediaries, that make loans or facilitate lending in low- and moderate-income geographies, even if the loans by the bank are not reportable under this part, are not made to third parties in the bank's service area, or are made to third parties that serve service areas other than the bank's.

(2) In exceptional cases, the OCC may reduce a rating achieved under this section if it concludes that the quantitative measures in this section fail to reflect the bank's actual record of lending to low- or moderate-income individuals or geographies.

(e) *Indirect lending.* (1) If the bank elects, the OCC will attribute to a bank its reported attributable indirect loans.

(2) In the usual case, the indirect loans attributable to a bank equal the bank's percentage share (based on the level of the bank's investment or participation) of each loan made through the entity in which the bank has invested or participated.

(3) At the option of all investing or participating institutions, an alternative method of attributing loans among the investing or participating institutions may be established. In no case, however:

(i) May the indirect loans attributed to any bank exceed its percentage share of the total loans (measured in both number and volume) made directly by the lending entity in which the institutions invested or participated;

(ii) May the investors or participants claim, in the aggregate, indirect loans (measured in both number and volume) in excess of the loans actually made in any geography by the lending entity in which they invested or participated; or

(iii) May any bank be assigned a disproportionate share of all loans (measured in both number and volume) made in low- and moderate-income geographies by a lending entity in which the institutions invested or participated.

(4) If a bank elects, indirect loans attributed to a bank under this paragraph (e) may be included in "reportable loans" for purposes of the Lending Test if a bank reports them under § 25.13.

(f) *Application to wholesale and limited-purpose banks.* The Lending Test of this section does not apply to wholesale or limited-purpose banks. In evaluating the record of wholesale and limited-purpose banks in satisfying their community reinvestment obligation, the OCC uses the Investment Test in § 25.8 instead of the standards of paragraph (b) of this section. For purposes of assigning a composite rating as described in § 25.10, the OCC substitutes a wholesale or limited-purpose bank's rating under the Investment Test for a rating under the Lending Test.

(g) *Rebutting presumptions.* A bank can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the OCC that the quantitative measures in this section do not accurately present its lending performance because, among other reasons—

(1) The quantitative measures of this section do not reflect the bank's significant amount of loans benefiting low- and moderate-income geographies or persons;

(2) Other quantitative measures of the bank's lending performance demonstrate a higher level than that reflected by the measures under this section;

(3) Peculiarities in the demographics of the bank's service area exist that significantly distort the quantitative measures of this section;

(4) Economic or legal limitations peculiar to the bank or its service area or unusual general economic conditions have affected its performance and ought to be considered; or

(5) The bank's performance as measured by the market share component of the Lending Test does not reflect its overall lending performance because of the extraordinarily high level of performance, in the aggregate, by lenders in the bank's service area.

§ 25.8 Investment test.

(a) *Summary.* The Investment Test evaluates banks on the amount of their investments benefiting low- and moderate-income geographies or persons.

(b) *Standards.* The OCC rates a bank's investment performance under the following rebuttable presumptions:

(1) *Outstanding.* Subject to rebuttal, the OCC presumes a bank is providing qualified investments in an outstanding fashion if the bank has made such investments in an amount that is substantial as compared to its capital.

(2) *High satisfactory.* Subject to rebuttal, the OCC presumes a bank is providing qualified investments in a high satisfactory fashion if the bank has made such investments in an amount that is very significant as compared to its capital.

(3) *Low satisfactory.* Subject to rebuttal, the OCC presumes a bank is providing qualified investments in a low satisfactory fashion if the bank has made such investments in an amount that is significant as compared to its capital.

(4) *Needs to improve.* Subject to rebuttal, the OCC presumes a bank needs to improve its record of providing qualified investments if the bank has made such investments in an amount that is insignificant as compared to its capital.

(5) *Substantial noncompliance.* Subject to rebuttal, the OCC presumes a bank is in substantial noncompliance with the Investment Test if the bank has devoted very little, if any, capital to qualified investments.

(c) *Qualified investments.* Qualified investments are lawful investments that demonstrably benefit low- and moderate-income geographies or persons in the bank's service area. Qualified investments may include investments:

(1) In support of affordable housing, small business, consumer, and other economic development initiatives;

(2) In community development banks, community development corporations, community development projects, small business investment corporations,

minority small business investment corporations and minority- and women-owned financial institutions and other community development financial intermediaries;

(3) In consortia or other structures serving low- and moderate-income individuals and neighborhoods and poor rural areas;

(4) In state and local government agency housing bonds or state and local government revenue bonds specifically aimed at helping low- and moderate-income communities and individuals.

(d) *Capital.* For purposes of the Investment Test, the OCC will evaluate the amount of qualified investments against the amount of the bank's risk-based capital.

(e) *Benefit to service area.* In order to be eligible as a qualified investment under paragraph (c) of this section, the activity or entity supported by an investment need not solely benefit the bank's service area. However, the activity or entity supported by the investment must significantly benefit low- and moderate-income geographies or persons in the bank's service area.

(f) *Exclusion of indirect loans.* Investments that a bank has elected to report as indirect lending under the Lending Test are not counted as qualified investments under this Test.

(g) *Grants.* Grants that would constitute qualified investments were they in the form of investments will be treated as qualified investments for purposes of the Investment Test. A bank may also donate, sell on favorable terms, or make available on a rent-free basis any branch which is located in a predominately minority neighborhood to a minority depository institution or women's depository institution as defined in 12 U.S.C. 2907.

(h) *Application to wholesale and limited purpose banks.* For purposes of determining qualified investments under paragraph (c) of this section, the service area of wholesale and limited purpose banks is defined to include all low- and moderate-income geographies or persons within the United States and its territories. Loans by wholesale and limited purpose banks that would constitute qualified investments were they in the form of investments will be treated as qualified investments for the purposes of the Investment Test.

(i) *Adjustments to Investment Test.* The OCC may adjust a bank's rating under the Investment Test. Adjustments may increase or, in exceptional cases, decrease the rating. In making these adjustments the OCC considers whether:

(1) The bank's qualified investments are particularly innovative or meet a special need, or if the bank's activities

in connection with its qualified investments have been particularly complex, innovative or intensive for a bank of its size, or involve innovative partnerships with community organizations (examples include helping to establish an entity to conduct community development activities or providing significant service or assistance in support of a qualified investment); or

(2) The bank has made a large amount of investments that would be qualified investments but for the fact that they fail to benefit the bank's service area as required by paragraph (e) of this section, provided the bank has not neglected investments that benefit its service area.

§ 25.9 Service test.

(a) *Summary.* The Service Test evaluates the accessibility of a retail bank's branches and the extent to which any bank provides other services that enhance credit availability. The Service Test does not require a bank to expand the size of its branching network or to operate facilities at a loss. Appropriate consideration is given to the limitations faced by banks with a small number of branches. The OCC evaluates retail banks with multiple branches under the Service Test primarily on the extent to which they offer branches. The OCC evaluates wholesale and limited-purpose banks on the extent to which they provide other services that enhance credit availability.

(b) *Standards for retail banks.* The OCC rates a retail bank's service performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the OCC presumes a bank is providing service in an outstanding fashion if a substantial percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(2) *High satisfactory.* Subject to rebuttal, the OCC presumes a bank is providing service in a high satisfactory fashion if a very significant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(3) *Low satisfactory.* Subject to rebuttal, the OCC presumes a bank is providing service in a low satisfactory fashion if a significant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(4) *Needs to improve.* Subject to rebuttal, the OCC presumes a bank needs to improve its record of providing service if an insignificant percentage of the bank's branches are located in or

readily accessible to low- and moderate-income geographies in its service area.

(5) *Substantial noncompliance.* Subject to rebuttal, the OCC presumes a bank is in substantial noncompliance with the Service Test if very few, if any, of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(c) *Adjustments for retail banks.* If necessary, the OCC adjusts a retail bank's rating to reflect more accurately the service provided to low- and moderate-income geographies and individuals.

(1) *Adjustment to reflect more accurately branch service.* The OCC may adjust a bank's record upward or downward to reflect more accurately its branch service to low- or moderate-income geographies or individuals. Downward adjustments will occur only in exceptional cases. In determining the appropriateness and degree of any adjustment, the OCC may consider the bank's record of opening and closing branches. The OCC may also consider whether branches in or readily accessible to low- and moderate-income geographies actually serve low- and moderate-income individuals and whether branches not located in or readily accessible to such geographies are nonetheless serving low- and moderate-income individuals. The OCC may also take into account significant differences in the quantity, quality or types of services offered to low- or moderate-income individuals or geographies and similar considerations.

(2) *Adjustment to reflect other services that promote credit availability.* The OCC may adjust a bank's rating upward to reflect a strong record of offering or supporting services that promote credit availability for low- and moderate-income geographies or individuals. These services include credit counseling, low-cost check cashing, "lifeline" checking accounts, financial planning, home ownership counseling, loan packaging assisting small and minority businesses, partnerships with community-based organizations to promote credit-related services, extensive provision of ATMs or other non-branch delivery systems that are particularly accessible and convenient to low- and moderate-income geographies or individuals, and similar programs.

(d) *Application to wholesale and limited-purpose banks.* The OCC rates a wholesale or limited-purpose bank's service performance under the following rebuttable presumptions:

(1) *Outstanding.* Subject to rebuttal, the OCC presumes a bank is providing service in an outstanding fashion if it is

providing a substantial amount of the services described in paragraph (c)(2) of this section or providing substantial support for organizations that furnish such services.

(2) *High satisfactory.* Subject to rebuttal, the OCC presumes a bank is providing service in a high satisfactory fashion if it is providing a very significant amount of the services described in paragraph (c)(2) of this section or providing very significant support for organizations that furnish such services.

(3) *Low satisfactory.* Subject to rebuttal, the OCC presumes a bank is providing service in a low satisfactory fashion if it is providing a significant amount of the services described in paragraph (c)(2) of this section or providing significant support for organizations that furnish such services.

(4) *Needs to improve.* Subject to rebuttal, the OCC presumes a bank needs to improve its record of providing service if it is providing an insignificant amount of the services described in paragraph (c)(2) of this section or providing insignificant support for organizations that furnish such services.

(5) *Substantial noncompliance.* Subject to rebuttal, the OCC presumes a bank is in substantial noncompliance with the Service Test if it provides very few, if any, services described in paragraph (c)(2) of this section or very little, if any, support for organizations that furnish such services.

(e) *Rebutting presumptions.* A bank can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the OCC that the quantitative measures in this section do not accurately represent its service performance because, among other reasons—

(1) The quantitative measures of this section do not reflect the bank's significant degree of services that promote credit availability to low- and moderate-income geographies or persons;

(2) Peculiarities in the demographics of the bank's service area exist that significantly distort the quantitative measures of this section; or

(3) Limitations imposed by the bank's financial condition, economic or legal limitations on branch operation or location, or similar circumstances have affected its performance and ought to be considered.

§ 25.10 Composite ratings.

(a) *Composite rating standards.* OCC assigns composite ratings as follows:

(1) *Base rating.* For retail banks, the bank's rating under the Lending Test forms the basis for its composite rating.

For wholesale or limited-purpose banks, the bank's rating under the Investment Test serves as the basis for the composite rating. The base rating under this paragraph is adjusted as described in paragraphs (a)(2) and (a)(3) of this section.

(2) *Effect of investment rating.* For retail banks, the base rating is increased by two levels if the bank has an outstanding rating in the Investment Test or by one level if the bank has a high satisfactory rating in the Investment Test.

(3) *Effect of service rating.* The base rating is increased by one level if the bank has an outstanding rating in the Service Test and is decreased by one level if the bank has a rating of substantial non-compliance in the Service Test.

(4) *Final composite rating.* Subject to paragraph (b) of this section, the OCC converts the rating resulting from paragraphs (a)(1) through (a)(3) of this section into a final composite rating as described in this paragraph. High satisfactory and low satisfactory ratings are both scored as satisfactory in the final composite rating. A bank that would otherwise receive a composite rating of needs to improve will receive a final composite rating of substantial noncompliance if the bank received no better than a needs to improve rating on both of its last two examinations.

(b) *Effect of discrimination.* Evidence that a bank has engaged in illegal discrimination may affect the bank's CRA rating. Notwithstanding paragraph (a) of this section and subject to rebuttal, the OCC assigns a bank a final composite rating lower than satisfactory if the bank has—

(1) Engaged in a pattern or practice of illegal discrimination that it has not corrected fully; or

(2) Committed an isolated act of illegal discrimination of which it has knowledge and that it has not corrected fully or is not in the process of correcting fully.

(c) *Multiple service areas.* Where a bank operates in more than one service area, the OCC conducts Lending, Investment and Service tests in a sample of all of the service areas in which a bank operates. The OCC assigns separate composite CRA ratings to the bank's performance in each of the service areas studied. A list of the service areas in which the bank's CRA performance was examined, along with the rating assigned to the bank's CRA record in each of the service areas, shall be included in the bank's public performance evaluation. The overall rating for the bank reflects the

performance of the bank in the service areas studied.

§ 25.11 Alternative assessment methods.

(a) *Small bank assessment standards.* A small bank (as defined in § 25.5(l)) may choose to have the OCC assess its CRA performance under this section rather than the general standards described in §§ 25.6 through 25.10.

(1) The OCC presumes a small bank's overall CRA performance is satisfactory if the bank:

(i) Has a reasonable loan-to-deposit ratio (a ratio of 60 percent, adjusted for seasonal variation, is presumed to be reasonable) given its size, its financial condition, and the credit needs in its service area;

(ii) Makes the majority of its loans in its service area;

(iii) Has a good loan mix (*i.e.*, makes, to the extent permitted by law and regulation, a variety of loans to customers across economic levels);

(iv) Has no legitimate, bona-fide complaints from community members;

(v) Has not engaged in a pattern or practice of illegal discrimination that it has not corrected fully; and has not committed isolated acts of illegal discrimination, of which it has knowledge, that it has not corrected fully or is not in the process of correcting fully; and

(vi) In the case of a bank already subject to reporting home mortgage lending data under HMDA, has a reasonable geographic distribution of such loans.

(2) A small bank that meets each of the standards for a satisfactory rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of outstanding. In assessing whether a small bank's CRA record is outstanding, the OCC will consider the extent to which the bank's loan-to-deposit ratio, its lending to its service area, and its loan mix exceed the standards for a satisfactory rating. In addition, at the option of the bank, the OCC will evaluate:

(i) Its record of making qualified investments (as described in § 25.8(c)); and

(ii) Its record of providing branches, ATMs, and other services that enhance credit availability or in other ways meet the convenience and needs of low- and moderate-income persons in its service area.

(3) A small bank that fails to meet or exceed all of the standards for a satisfactory rating under this paragraph is not presumed to be performing in a less than satisfactory manner. Rather, for those banks, the OCC conducts a

more extensive examination of the bank's loan-to-deposit record, its record of lending to its local community, and its loan mix. The OCC will also contact members of the community, particularly in response to complaints about the bank, and review the findings of its most recent fair lending examination. In addition, at the option of the bank, the OCC will assess:

(i) Its record of making qualified investments (as described in § 25.8(c)); and

(ii) Its record of providing branches, ATMs, and other services that enhance credit availability or in other ways serve the convenience and needs of low- and moderate-income persons in its service area.

(4) *Multiple service areas.* If a small bank operates in more than one service area, the OCC evaluates the bank's performance in all of those service areas.

(b) *Strategic plan assessment.* (1) As an alternative to being rated after the fact under the lending, service and investment tests or the small bank assessment method, a bank may submit to the OCC for approval a strategic plan detailing how the bank proposes to meet its CRA obligation.

(i) The plan must be submitted at least three months prior to the proposed effective date of the plan so that the OCC has sufficient time to review the plan and to determine whether to approve it.

(ii) A bank submitting a proposed plan for approval must publish notice in a newspaper of general circulation in each of its service areas stating that a plan has been submitted to the OCC for review, that copies of the plan are available for review at offices of the bank, and that comments on the proposed plan may be sent to the OCC in accord with §§ 5.10 and 5.11 of this chapter.

(iii) The OCC assesses every plan under the standards of this part and will not approve a plan unless it provides measurable goals against which subsequent performance can be evaluated and the proposed performance is at least overall satisfactory under the standards of this part.

(iv) No plan may have a term that exceeds two years. Further, during the term of a plan, the bank may petition the OCC to approve an amendment to the plan on grounds that a material change in circumstances has made the plan no longer appropriate.

(2) The OCC will assess the performance of a bank operating under an approved plan to determine if the bank has met or exceeded the plan

goals. However, if the bank fails to meet or exceed the preponderance of the measurable goals set forth in the plan, its performance will be evaluated under the lending, service and investment tests or the small bank assessment method, as applicable.

§ 25.12 Service area—delineation.

(a) The effective lending territory of a retail bank defines the bank's service area. The effective lending territory is that area around each office or group of offices where the preponderance of direct reportable loans made through the office or offices are located.

(b) Subject to rebuttal, a bank's service area is presumed to be acceptable if the area is broad enough to include low- and moderate-income geographies and does not arbitrarily exclude low- and moderate-income geographies.

(c) A bank can show that its service area is acceptable despite its failure to satisfy the criteria of paragraph (b) of this section by clearly demonstrating to the satisfaction of the OCC that the criteria of paragraph (b) of this section are inappropriate because, for example, there are no low- or moderate-income geographies within any reasonable distance given the size and financial condition of the bank.

(d) The OCC can reject as unacceptable a service area meeting the criteria of paragraph (b) of this section if the OCC finds that the service area does not accurately reflect the true effective lending territory of the bank or reflects past redlining or illegal discrimination by the bank.

(e) A bank shall delineate more than one service area when the geographies it serves extend substantially across state boundaries or extend substantially across boundaries of a Metropolitan Statistical Area.

(f) A bank whose business predominantly consists of serving persons who are active duty or retired military personnel or their dependents and who are located outside its local community or communities may delineate a "military community" for those customers as a service area.

(g) A wholesale or limited-purpose bank need not delineate a service area.

(h) A bank shall compile and maintain a list of all the geographies within its service area or areas and a map of each service area showing the geographies contained therein.

§ 25.13 Loan data—collection, reporting, and disclosure.

(a) Every bank, except small banks electing the small bank assessment method, shall collect and maintain the following data on its government

insured and other reportable loans: number of written applications, number of application denials, number and amount of approvals, number and amount of loans purchased, and number and amount of indirect loans the bank elects to have evaluated using the lending test. All information is to be provided by the geography where the loan is located.

(1) A bank choosing to be rated under the strategic plan assessment described in § 25.11(b) is not relieved from its obligation to report the data as required by this section.

(2) The information required under this section shall be collected:

(i) Beginning July 1, 1994, for the remaining six months of 1994. A summary of the bank's data for the six months shall be submitted to OCC by January 31, 1995.

(ii) Beginning January 1, 1995, on an annual basis, a summary of the bank's data collected under this section shall be submitted to OCC by January 31 of the following year. The summary data shall be submitted in the format prescribed in appendix A of this part.

(3) Small business loan data shall be collected, reported, and disclosed in the summary format described in paragraph (a) of this section for the following categories: small businesses with average annual gross receipts of less than \$250,000, those with average annual gross receipts of \$250,000 or more and less than \$1 million; those with average annual gross receipts of \$1 million or more and less than \$10 million; and manufacturing businesses with average annual gross receipts of \$10 million or more and less than 500 employees.

(4) Home mortgage loan data shall be collected, reported, and disclosed in the summary format described in paragraph (a) of this section for the following categories: 1-4 family home purchase, 1-4 family home improvement, 1-4 family refinancings, and multi-family loans.

(b) The OCC will make summary data collected pursuant to this section available to the public and to the banks. The data will be used by the OCC to apply the Lending Test under § 25.7.

(c) For purposes of this section, a loan is located in a geography as follows:

(1) Consumer loans are located in the geography where the borrower resides.

(2) Loans secured by real estate are located in the geography where the relevant real estate is located.

(3) Small business loans are located in the geography where the headquarters or principal office of the business is located.

(4) Small farm loans are located in the geography where the farm property is located.

(d) A bank is not required to report under this section indirect loans unless the bank elects to have the indirect loans attributed to it as described in § 25.7(e) for purposes of the Lending Test. If a bank elects to report its indirect loans, it shall report all attributable indirect loans outside low- or moderate-income geographies as well as loans inside such geographies.

§ 25.14 Public file and disclosure.

(a) Banks shall maintain files that are readily available for public inspection containing the information required by this section.

(b) Each bank shall include in its public file the following information—

(1) All signed, written comments received from the public for the current year and past two calendar years that specifically relate to the bank's performance in helping to meet the credit needs of its community or communities, and any response to the comments by the bank;

(2) A copy of the public section of bank's most recent CRA Performance Evaluation prepared by the OCC. The bank shall place this copy in the public file within 30 business days after its receipt from the OCC; and

(3) A list of the bank's service areas and the geographies within each service area and a map of each service area showing the geographies contained therein.

(c) A bank that is not a small bank shall include in its public file the lending data the bank has reported to the OCC under § 25.13 for the current and past two calendar years.

(d) A small bank shall include in its public file the bank's Loan-to-Deposit ratio computed at the end of the most recent calendar year.

(e) A bank that has been approved to be assessed under a strategic plan as described in § 25.11(b) shall include in its public file a copy of that plan.

(f) Each bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet community credit needs.

(g) A bank shall maintain its public file or required portions of the file at the following offices—

(1) Head offices shall have a copy of the complete public file; and

(2) Branches shall have copies of all materials in the public file relating to the service area in which the branch is located.

(h) A bank shall provide copies of the information in the public file to

members of the public upon request. A bank may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

§ 25.15 Public notice by banks.

A bank shall provide, in the public lobby of its head office and each branch, the public notice set forth in this section. Bracketed material shall be used only by banks having more than one service area. The last two sentences shall be included only if the bank is a subsidiary of a holding company and the last sentence only if the company is not prevented by statute from acquiring additional banks.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency evaluates and enforces our compliance with our obligation to help meet the credit needs of this community consistent with safe and sound operations. The Comptroller also takes our CRA performance into account when the Comptroller decides on certain applications submitted by us. Your involvement is encouraged. You should know that:

You may look at and obtain in this office information on our performance in this community. This information includes a file of all signed, written comments received by us, any responses we have made to the comments, evaluations by the Comptroller of our CRA performance, and data on the loans we have made in this community during the past two years. (Current CRA information on our performance in other communities served by us is available at our head office, located at _____.)

You may send signed, written comments about our CRA performance in helping to meet community credit needs to (title and address of bank official) and to the Deputy Comptroller (address). Your letter, together with any response by us, may be made public.

You may ask the Comptroller to look at any comments received by the Deputy Comptroller. You also may request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. We are a subsidiary of (name of holding company), a bank holding company. You may request from the Federal Reserve Bank of (city, address) an announcement of applications covered by the CRA filed by bank holding companies.

§ 25.16 Publication of planned examination schedule.

The OCC will publish at least 30 days in advance of the beginning of each calendar quarter a list of the banks that are scheduled for CRA examinations in that quarter. Any member of the public may submit comments to the OCC regarding the CRA performance of any bank whose name appears on the list.

§ 25.17 Effect of ratings—corporate applications.

(a) The OCC takes into account the applicant's record of performance in considering applications for—

(1) Establishment of a domestic branch, ATM, or other facility with the ability to accept deposits;

(2) Relocation of the main office, a branch office or ATM;

(3) Merger or consolidation with or the acquisition of assets or assumption of liabilities of a federally-insured depository institution; and

(4) Conversion of a federally-insured depository institution to a national bank charter.

(b) An applicant for a national bank charter (other than a federally-insured depository institution) shall submit a description of its proposed CRA performance when the application is made. In considering the application, the OCC takes into account the bank's proposed CRA performance.

(c) In considering CRA performance in a corporate application, the OCC will take into account any views expressed by State or other Federal financial supervisory agencies or other interested parties, which are submitted in accordance with the OCC's procedures set forth in part 5 of this chapter or § 25.16.

(d) In the OCC's consideration of the bank's CRA record in a corporate application, the CRA rating assigned to a bank is an important, and often controlling, factor. However, the rating is not conclusive evidence of performance. Absent other evidence on performance, CRA ratings generally affect corporate applications as follows:

(1) An "outstanding" rating generally will result in a finding that the CRA aspect of the application is consistent with approval of the application and will receive extra weight in reviewing the application.

(2) A "satisfactory" rating generally will result in a finding that the CRA aspect of the application is consistent with approval of the application.

(3) A "needs to improve" rating generally will be an adverse factor in the CRA aspect of the application, and absent demonstrated improvement in the bank's CRA performance or other countervailing factors, generally will result in denial or conditional approval of the application.

(4) A "substantial noncompliance" rating generally will be so adverse a finding on the CRA aspect of the application as to result in denial of the application.

§ 25.18 Transition rules.

(a) *Data collection.* The data collection and reporting requirements of

§ 25.13 will go into effect July 1, 1994. Data collected from July 1, 1994 to year end must be reported to the OCC no later than January 31, 1995. Thereafter banks will collect data on an annual basis and the data shall be reported no later than January 31 of the following year.

(b) *Assessment standards.* Evaluation under the new standards is mandatory after July 1, 1995, except that, until April 1, 1996, for good cause, an institution may request the OCC to evaluate it under the standards in place prior to [effective date of final regulation]. During the time period from April 1, 1995 until July 1, 1995, a bank may, at its option, choose to be evaluated under the new standards or under the standards in place prior to [effective date of final regulation].

(c) *Strategic plan.* If a bank elects to be evaluated under an approved strategic plan during the transition period, a bank may submit a strategic plan anytime after [effective date of final regulation].

(d) *Corporate applications.* If the first rating a bank receives under the new standards (whether that rating is given during the transition period or after the new standards become effective) is more than one rating category below the last rating the bank received prior to [effective date of final regulation], the OCC will not disapprove any corporate application or take any other enforcement action against the bank based on that lower rating if the OCC has determined that the drop in the bank's rating occurred despite the bank's good faith efforts to perform at least satisfactorily under the new standards.

2. Appendix A to part 25 is added as set forth in the common preamble.

Appendix A to Part 25—CRA Loan Data Format

Dated: December 2, 1993.

Eugene A. Ludwig,
Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

For the reasons outlined in the preamble, the Board proposes to amend 12 CFR chapter II as set forth below:

3. Part 228 is revised to read as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

Sec.

228.1 Authority.

228.2 Community reinvestment obligation.

Sec.

228.3 Purposes.

228.4 Scope.

228.5 Definitions.

228.6 Assessment standards—summary.

228.7 Lending Test.

228.8 Investment Test.

228.9 Service Test.

228.10 Composite ratings.

228.11 Alternative assessment methods.

228.12 Service area—delineation.

228.13 Loan data collection, reporting, and disclosure.

228.14 Public file and disclosure.

228.15 Public notice by banks.

228.16 Publication of planned examination schedule.

228.17 Effect of ratings—applications.

229.18 Transition rules.

Appendix A to Part 228—CRA Loan Data Format

Authority: 12 U.S.C. 321, 325, 1814, 1816, 1828, 1842, and 2901 *et seq.*

§ 228.1 Authority.

(a) The Board of Governors of the Federal Reserve System issues this part to implement the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*). The regulations comprising this part are issued under the authority of the Community Reinvestment Act and under the provisions of the United States Code authorizing the Board to conduct examinations of State-chartered banks that are members of the Federal Reserve System (12 U.S.C. 325), to conduct examinations of bank holding companies and their subsidiaries (12 U.S.C. 1844), and to consider applications for domestic branches by state member banks (12 U.S.C. 321), for federal deposit insurance in connection with applications for membership in the Federal Reserve System by state banks (12 U.S.C. 321, 1814, 1816), for merger in which the resulting bank would be a state member bank (12 U.S.C. 1828), and for formation of, acquisitions of banks by, and mergers of, bank holding companies (12 U.S.C. 1842).

(b) Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. _____.

§ 228.2 Community reinvestment obligation.

State member banks have a continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations.

§ 228.3 Purposes.

The purposes of this part are to implement the community reinvestment obligation of State member banks, to

explain how the Board assesses the performance of State member banks in satisfying the community reinvestment obligation; and to describe how that performance is taken into account in certain applications.

228.4 Scope.

(a) *General.* This part applies to all insured State member banks that are in the business of extending credit to the public, including wholesale and limited-purpose banks.

(b) *Banks not engaged in lending activities.* This part does not apply to banks that engage solely in the correspondent banking business, trust company business, or the business of acting as a clearing agent. Such institutions, although they are chartered as banks, do not perform commercial or retail banking services and do not extend credit to the public for their own account.

(c) *Applications by bank holding companies.* Section 228.17 applies to applications filed by bank holding companies under section 3 of the Bank Holding Company Act.

§ 228.5 Definitions.

For purposes of this part, the following definitions apply:

(a) *Automated Teller Machines (ATMs)* means immobile, automated, unstaffed banking facilities at which deposits are received, checks paid, or money lent.

(b) *Branches* means staffed banking facilities (shared or unshared) with a fixed site at which deposits are received or checks paid or money lent, including mini-branches in grocery stores or branches operated in conjunction with any other local businesses, churches, or other non-profit organizations.

(c) *Consumer loans* means closed-end loans extended to a natural person primarily for personal, family, or household purposes, but does not include home mortgage loans as defined in paragraph (e) of this section, credit card loans, or motor vehicle loans.

(d) *Geographies* means census tracts, or block numbering areas.

(e) *Home mortgage loans* means closed-end loans that are mortgage loans as defined in section 303(l) of the Home Mortgage Disclosure Act (12 U.S.C. 2802(1), hereinafter HMDA) and implementing regulations.

(f) *Illegal discrimination* means discrimination on a prohibited basis as set forth in the Equal Credit Opportunity Act, 15 U.S.C. 1691 through 1691f, or the Fair Housing Act, 42 U.S.C. 3601 through 3619.

(g) *Indirect loans* means loans made indirectly by a bank through

participation in a leading consortium in which lenders pool their resources, by subsidiaries of the bank, by affiliates funded by the bank, or by lawful investments in or with community development and affordable housing lenders, women-owned or minority-owned financial institutions, low-income credit unions, and others that lend to low- and moderate-income geographies and individuals.

(h) *Loans or investments benefiting low- and moderate-income geographies or persons* means loans or investments where the proceeds are provided to, invested in, used by or otherwise directly benefit the following entities:

(1) Persons that reside in low- or moderate-income geographies or have low or moderate incomes;

(2) Businesses located in low- or moderate-income geographies or employing mostly persons residing in such geographies;

(3) Non-profit organizations located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies; or

(4) Construction or renovation of facilities located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies.

(i) *Low- and moderate-income geographies* means geographies where the median family income is less than 80% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) less than 80% of the non-metropolitan State-wide median family income for the State in which the geography is located.

(1) *Low-income geographies* means geographies where the median family income is less than 50% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) less than 50% of the non-metropolitan State-wide median family income for the State in which the geography is located.

(2) *Moderate-income geographies* means geographies where the median family income is at least 50% and less than 80% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) at least 50% and less than 80% of the non-metropolitan State-wide median family income for the State in which the geography is located.

(j) *Reportable loans* means home mortgage loans, consumer loans, and loans to small businesses and small farms.

(k) *Retail banks* means insured banks that are in the business of extending

credit to the public and that make a significant amount of reportable loans.

(l) *Small banks* means:

(1) Independent banks with total assets of less than \$250 million; or

(2) Banks with total assets of less than \$250 million that are subsidiaries of a holding company with total banking and thrift assets of less than \$250 million.

(m) *Small businesses* means private for-profit organizations that had for the calendar or fiscal year preceding the making of the loan:

(1) Average annual gross receipts of less than \$10 million for a concern providing services; or

(2) Up to 500 employees for a manufacturing concern.

(n) *Small farms* means private organizations engaged in farming operations with average annual gross receipts of less than \$500,000 for the calendar or fiscal year preceding the making of the loan.

(o) *Wholesale and limited-purpose banks* means insured banks that are in the business of extending credit to the public but make no significant amount of reportable loans.

§ 228.6 Assessment standards—summary.

(a) Except for banks assessed under the special standards of § 228.11, the Board assesses a bank's CRA performance as described in this section. The Board reviews, among other things, the bank's CRA public file and any signed, written comments about the bank's CRA performance submitted to the bank or the Board. In assessing a bank's CRA performance, the Board considers whether the bank is helping to meet the credit needs of its entire community. In examinations, however, the Board pays particular attention to the bank's record of helping to meet the credit needs in low- and moderate-income geographies. That record is primarily evaluated using three measures: the Lending Test (described in § 228.7), the Investment Test (described in § 228.8), and the Service Test (described in § 228.9). Based on these separate assessments, the Board assigns the bank one of four overall composite ratings as described in § 228.10. The four composite ratings are Outstanding, Satisfactory, Needs to Improve, and Substantial Noncompliance.

(b) The composite ratings reflect the extent of compliance or noncompliance with the community reinvestment obligation described in § 228.2. A bank that receives a composite rating of Substantial Noncompliance shall be subject to enforcement actions pursuant to 12 U.S.C. 1818.

(c) This part and the CRA do not require any bank to make loans or investments that are expected to result in losses or are otherwise inconsistent with safe and sound operations. However, banks are permitted and encouraged to develop and apply flexible underwriting standards (that are consistent with safe and sound operations) for loans that benefit low- and moderate-income geographies or individuals.

§ 228.7 Lending test.

(a) *Summary.* The lending test evaluates primarily whether a retail bank is making loans in low- and moderate-income geographies, as well as to wealthier geographies. The test examines direct lending by the bank itself and, if the bank elects, indirect lending to the extent permitted by this part.

(b) *Standards.* The Board rates a bank's lending performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the Board presumes a bank is lending in an outstanding fashion if:

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area significantly exceeds its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in the vast majority of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a substantial percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies or persons from its lending).

(2) *High satisfactory.* Subject to rebuttal the Board presumes an institution is lending in a high satisfactory fashion if:

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in most of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a very significant percentage of its reportable loans in its service area (provided that the bank

does not unreasonably exclude low- and moderate-income geographies from its lending).

(3) *Low satisfactory.* Subject to rebuttal, the Board presumes a bank is lending in a low satisfactory fashion if:

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in many of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a significant percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies from its lending).

(4) *Needs to improve.* Subject to rebuttal, the Board presumes a bank needs to improve its record under the Lending Test if:

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is less than, and not roughly comparable to, its market share of reportable loans in the remainder of its service area; or

(ii) It has made reportable loans in only a few of the low- and moderate-income geographies in its service area, and reportable loans to low- and moderate-income geographies in its service area represent an insignificant percentage of its reportable loans in its service area.

(5) *Substantial noncompliance.* Subject to rebuttal, the Board presumes a bank is in substantial noncompliance with the Lending Test if:

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is significantly less than its market share of reportable loans in the remainder of its service area; and

(ii) It has made very few, if any, reportable loans in the low- and moderate-income geographies in its service area.

(c) *Method of computation—(1) General.* For purposes of the Lending Test, the Board, rather than the bank, is responsible for making the computations. The Board bases such computations upon the bank's reported loan data required under § 228.13 and the aggregate reported loan data supplied by the Federal financial supervisory agencies. In making lending test computations, the Board measures market share, amount of loans, and

percentage using both volume of loans and number of loans.

(2) *Market share.* The Board computes market share for volume and number of loans for each type of reportable loans: home mortgage loans, consumer loans, and small business and farm loans. The Board awards an overall market share performance rating after weighing each lending category based on such factors as the needs of the community being served, the bank's capabilities and business plans, and the degree to which the bank's performance with respect to one of the loan categories, in fact, balances or compensates for its performance under another category.

(d) *Adjustments.* (1) The Board may increase a bank's lending rating if the bank participates in a program for giving further reviews to loan applications that would otherwise be denied. More credit will be given for such a program if it is done in conjunction with a community organization in such a way that the organization either participates in the review or offers applications from low- and moderate-income individuals that the bank will consider for credit. The Board may also increase the rating if the bank has made a substantial amount of loans requiring creative or innovative underwriting (while maintaining a safe and sound quality) or loans for which there is particular need, such as loans for multifamily housing construction and rehabilitation, loans to start-ups, very small businesses or community development organizations or facilities and loans to very low-income individuals and areas. The Board will also consider favorably in reaching a rating loans made to third parties, such as community development organizations and intermediaries, that make loans or facilitate lending in low- and moderate-income geographies, even if the loans by the bank are not reportable under this part, are not made to third parties in the bank's service area, or are made to third parties that serve service areas other than the bank's.

(2) In exceptional cases, the Board may reduce a rating achieved under this section if it concludes that the quantitative measures in this section fail to reflect the bank's actual record of lending to low- or moderate-income individuals or geographies.

(e) *Indirect lending.* (1) If the bank elects, the Board will attribute to a bank its reported attributable indirect loans.

(2) In the usual case, the indirect loans attributable to a bank equal the bank's percentage share (based on the level of the bank's investment or participation) of each loan made

through the entity in which the bank has invested or participated.

(3) At the option of all investing or participating institutions, an alternative method of attributing loans among the investing or participating institutions may be established. In no case, however:

(i) May the indirect loans attributed to any bank exceed its percentage share of the total loans (measured in both number and volume) made directly by the lending entity in which the institutions invested or participated;

(ii) May the investors or participants claim, in the aggregate, indirect loans (measured in both number and volume) in excess of the loans actually made in any geography by the lending entity in which they invested or participated; or

(iii) May any bank be assigned a disproportionate share of an loans (measured in both number and volume) made in low- and moderate-income geographies by a lending entity in which the institutions invested or participated.

(4) If a bank elects, indirect loans attributed to a bank under this paragraph (e) may be included in "reportable loans" for purposes of the Lending Test if a bank reports them under § 228.13.

(f) *Application to wholesale and limited-purpose banks.* The Lending Test of this section does not apply to wholesale or limited-purpose banks. In evaluating the record of wholesale and limited-purpose banks in satisfying their community reinvestment obligation, the Board uses the Investment Test in § 228.8 instead of the standards of paragraph (b) of this section. For purposes of assigning a composite rating as described in § 228.10, the Board substitutes a wholesale or limited-purpose bank's rating under the investment test for a rating under the lending test.

(g) *Rebutting presumptions.* A bank can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the Board that the quantitative measures in this section do not accurately present its lending performance because, among other reasons:

(1) The quantitative measures of this section do not reflect the bank's significant amount of loans benefiting low- and moderate-income geographies or persons;

(2) Other quantitative measures of the bank's lending performance demonstrate a higher level than that reflected by the measures under this section;

(3) Peculiarities in the demographics of the bank's service area exist that

significantly distort the quantitative measures of this section;

(4) Economic or legal limitations peculiar to the bank or its service area or unusual general economic conditions have affected its performance and ought to be considered; or

(5) The bank's performance as measured by the market share component of the Lending Test does not reflect its overall lending performance because of the extraordinarily high level of performance, in the aggregate, by lenders in the bank's service area.

§ 228.8 Investment test.

(a) *Summary.* The investment test evaluates banks on the amount of their investments benefiting low- and moderate-income geographies or persons.

(b) *Standards.* The Board rates a bank's investment performance under the following rebuttable presumptions:

(1) *Outstanding.* Subject to rebuttal, the Board presumes a bank is providing qualified investments in an outstanding fashion if the bank has made such investments in an amount that is substantial as compared to its capital.

(2) *High satisfactory.* Subject to rebuttal, the Board presumes a bank is providing qualified investments in a high satisfactory fashion if the bank has made such investments in an amount that is very significant as compared to its capital.

(3) *Low satisfactory.* Subject to rebuttal, the Board presumes a bank is providing qualified investments in a low satisfactory fashion if the bank has made such investments in an amount that is significant as compared to its capital.

(4) *Needs to improve.* Subject to rebuttal, the Board presumes a bank needs to improve its record of providing qualified investments if the bank has made such investments in an amount that is insignificant as compared to its capital.

(5) *Substantial noncompliance.* Subject to rebuttal, the Board presumes a bank is in substantial noncompliance with the Investment Test if the bank has devoted very little, if any, capital to qualified investments.

(c) *Qualified investments.* Qualified investments are lawful investments that demonstrably benefit low- and moderate-income geographies or persons in the bank's service area. Qualified investments may include investments:

(1) In support of affordable housing, small business, consumer, and other economic development initiatives;

(2) In community development banks, community development corporations,

community development projects, small business investment corporations, minority small business investment corporations and minority- and women-owned financial institutions and other community development financial intermediaries;

(3) In consortia or other structures serving low- and moderate-income individuals and neighborhoods and poor rural areas;

(4) In State and local government agency housing bonds or State and local government revenue bonds specifically aimed at helping low- and moderate-income communities and individuals.

(d) *Capital.* For purposes of the Investment Test, the Board will evaluate the amount of qualified investments against the amount of the bank's risk-based capital.

(e) *Benefit to service area.* In order to be eligible as a qualified investment under paragraph (c) of this section, the activity or entity supported by an investment need not solely benefit the bank's service area. However, the activity or entity supported by the investment must significantly benefit low- and moderate-income geographies or persons in the bank's service area.

(f) *Exclusion of indirect loans.* Investments that a bank has elected to report as indirect lending under the lending test are not counted as qualified investments under this test.

(g) *Grants.* Grants that would constitute qualified investments were they in the form of investments will be treated as qualified investments for purposes of the investment test. A bank may also donate, sell on favorable terms, or make available on a rent-free basis any branch which is located in a predominately minority neighborhood to a minority depository institution or women's depository institution as defined in 12 U.S.C. 2907.

(h) *Application to wholesale and limited purpose banks.* For purposes of determining qualified investments under paragraph (c) of this section, the service area of wholesale and limited purpose banks is defined to include all low- and moderate-income geographies or persons within the United States and its territories. Loans by wholesale and limited purpose banks that would constitute qualified investments were they in the form of investments will be treated as qualified investments for the purpose of the Investment Test.

(i) *Adjustments to investment test.* The Board may adjust a bank's rating under the investment test. Adjustments may increase or, in exceptional cases, decrease the rating. In making these adjustments the Board considers whether:

(1) The bank's qualified investments are particularly innovative or meet a special need, or if the bank's activities in connection with its qualified investments have been particularly complex, innovative or intensive for a bank of its size, or involve innovative partnerships with community organizations (examples include helping to establish an entity to conduct community development activities or providing significant service or assistance in support of a qualified investment); or

(2) The bank has made a large amount of investments that would be qualified investments but for the fact that they fail to benefit the bank's service area as required by paragraph (e) of this section, provided the bank has not neglected investments that benefit its service area.

§ 228.9 Service test.

(a) *Summary.* The service test evaluates the accessibility of a retail bank's branches and the extent to which any bank provides other services that enhance credit availability. The service test does not require a bank to expand the size of its branching network or to operate facilities at a loss. Appropriate consideration is given to the limitations faced by banks with a small number of branches. The Board evaluates retail banks with multiple branches under the service test primarily on the extent to which they offer branches. The Board evaluates wholesale and limited-purpose banks on the extent to which they provide other services that enhance credit availability.

(b) *Standards for retail banks.* The Board rates a retail bank's service performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the Board presumes a bank is providing service in an outstanding fashion if a substantial percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(2) *High satisfactory.* Subject to rebuttal, the Board presumes a bank is providing service in a high satisfactory fashion if a very significant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(3) *Low satisfactory.* Subject to rebuttal the Board presumes a bank is providing service in a low satisfactory fashion if a significant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(4) *Needs to improve.* Subject to rebuttal, the Board presumes a bank needs to improve its record of providing

service if an insignificant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(5) *Substantial noncompliance.* Subject to rebuttal, the Board presumes a bank is in substantial noncompliance with the Service Test if very few, if any, of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(c) *Adjustments for retail banks.* If necessary, the Board adjusts a retail bank's rating to reflect more accurately the service provided to low- and moderate-income geographies and individuals.

(1) *Adjustment to reflect more accurately branch service.* The Board may adjust a bank's record upward or downward to reflect more accurately its branch service to low- or moderate-income geographies or individuals. Downward adjustments will occur only in exceptional cases. In determining the appropriateness and degree of any adjustment, the Board may consider the bank's record of opening and closing branches. The Board may also consider whether branches in or readily accessible to low- and moderate-income geographies actually serve low- and moderate-income individuals and whether branches not located in or readily accessible to such geographies are nonetheless serving low- and moderate-income individuals. The Board may also take into account significant differences in the quantity, quality or types of services offered to low- or moderate-income individuals or geographies and similar considerations.

(2) *Adjustment to reflect other services that promote credit availability.* The Board may adjust a bank's rating upward to reflect a strong record of offering or supporting services that promote credit availability for low- and moderate-income geographies or individuals. These services include credit counseling, low-cost check cashing, "lifeline" checking accounts, financial planning, home ownership counseling, loan packaging assisting small and minority businesses, partnerships with community-based organizations to promote credit-related services, extensive provision of ATMs or other non-branch delivery systems that are particularly accessible and convenient to low- and moderate-income geographies or individuals, and similar programs.

(d) *Application to wholesale and limited-purpose banks.* The Board rates a wholesale or limited purpose bank's service performance under the following rebuttable presumptions:

(1) *Outstanding.* Subject to rebuttal, the Board presumes a bank is providing service in an outstanding fashion if it is providing a substantial amount of the services described in paragraph (c)(2) of this section or providing substantial support for organizations that furnish such services.

(2) *High satisfactory.* Subject to rebuttal, the Board presumes a bank is providing service in a high satisfactory fashion if it is providing a very significant amount of the services described in paragraph (c)(2) of this section or providing very significant support for organizations that furnish such services.

(3) *Low satisfactory.* Subject to rebuttal, the Board presumes a bank is providing service in a low satisfactory fashion if it is providing a significant amount of the services described in paragraph (c)(2) of this section or providing significant support for organizations that furnish such services.

(4) *Needs to improve.* Subject to rebuttal, the Board presumes a bank needs to improve its record of providing service if it is providing an insignificant amount of the services described in paragraph (c)(2) of this section or providing insignificant support for organizations that furnish such services.

(5) *Substantial noncompliance.* Subject to rebuttal, the Board presumes a bank is in substantial noncompliance with the Service Test if it provides very few, if any, services described in paragraph (c)(2) of this section or very little, if any, support for organizations that furnish such services.

(e) *Rebutting presumptions.* A bank can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the Board that the quantitative measures in this section do not accurately represent its service performance because, among other reasons:

(1) The quantitative measures of this section do not reflect the bank's significant degree of services that promote credit availability to low- and moderate-income geographies or persons;

(2) Peculiarities in the demographics of the bank's service area exist that significantly distort the quantitative measures of this section; or

(3) Limitations imposed by the bank's financial condition, economic or legal limitations on branch operation or location, or similar circumstances have affected its performance and ought to be considered.

§ 228.10 Composite ratings.

(a) *Composite rating standards.* The Board assigns composite ratings as follows:

(1) *Base rating.* For retail banks, the bank's rating under the lending test forms the basis for its composite rating. For wholesale or limited-purpose banks, the bank's rating under the investment test serves as the basis for the composite rating. The base rating under this paragraph is adjusted as described in paragraphs (a)(2) and (a)(3) of this section.

(2) *Effect of investment rating.* For retail banks, the base rating is increased by two levels if the bank has an outstanding rating in the investment test or by one level if the bank has a high satisfactory rating in the investment test.

(3) *Effect of service rating.* The base rating is increased by one level if the bank has an outstanding rating in the service test and is decreased by one level if the bank has a rating of substantial non-compliance in the service test.

(4) *Final composite rating.* Subject to paragraph (b) of this section, the Board converts the rating resulting from paragraphs (a)(1) through (a)(3) of this section into a final composite rating as described in this paragraph. High satisfactory and low satisfactory ratings are both scored as satisfactory in the final composite rating. A bank that would otherwise receive a composite rating of needs to improve will receive a final composite rating of substantial noncompliance if the bank received no better than a needs to improve rating on both of its last two examinations.

(b) *Effect of discrimination.* Evidence that a bank has engaged in illegal discrimination may affect the bank's CRA rating. Notwithstanding paragraph (a) of this section and subject to rebuttal, the Board assigns a bank a final composite rating lower than satisfactory if the bank has:

(1) Engaged in a pattern or practice of illegal discrimination that it has not corrected fully; or

(2) Committed an isolated act of illegal discrimination of which it has knowledge and that it has not corrected fully or is not in the process of correcting fully.

(c) *Multiple service areas.* Where a bank operates in more than one service area, the Board conducts lending, investment and service tests in a sample of all of the service areas in which a bank operates. The Board assigns separate composite CRA ratings to the bank's performance in each of the service areas studied. A list of the service areas in which the bank's CRA performance was examined, along with

the rating assigned to the bank's CRA record in each of the service areas, shall be included in the bank's public performance evaluation. The overall rating for the bank reflects the performance of the bank in the service areas studied.

§ 228.11 Alternative assessment methods.

(a) *Small bank assessment standards.* A small bank (as defined in § 228.5(l)) may choose to have the Board assess its CRA performance under this section rather than the general standards described in §§ 228.6 through 228.10.

(1) The Board presumes a small bank's overall CRA performance is satisfactory if the bank:

(i) Has a reasonable loan-to-deposit ratio (a ratio of 60 percent, adjusted for seasonal variation, is presumed to be reasonable) given its size, its financial condition, and the credit needs in its service area;

(ii) Makes the majority of its loans in its service area;

(iii) Has a good loan mix (i.e., makes, to the extent permitted by law and regulation, a variety of loans to customers across economic levels);

(iv) Has no legitimate, bona-fide complaints from community members;

(v) Has not engaged in a pattern or practice of illegal lending discrimination that it has not corrected fully; and has not committed isolated acts of illegal discrimination, of which it has knowledge, that it has not corrected fully or is not in the process of correcting fully; and

(vi) In the case of a bank already subject to reporting home mortgage lending data under HMDA or part 203 of this chapter, has a reasonable geographic distribution of such loans.

(2) A small bank that meets each of the standards for a satisfactory rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of outstanding. In assessing whether a small bank's CRA record is outstanding, the Board will consider the extent to which the bank's loan-to-deposit ratio, its lending to its service area, and its loan mix exceed the standards for a satisfactory rating. In addition, at the option of the bank, the Board will evaluate:

(i) Its record of making qualified investments (as described in § 228.8(c)); and

(ii) Its record of providing branches, ATMs, and other services that enhance credit availability or in other ways meet the convenience and needs of low- and moderate-income persons in its service area.

(3) A small bank that fails to meet or exceed all of the standards for a satisfactory rating under this paragraph is not presumed to be performing in a less than satisfactory manner. Rather, for those banks, the Board conducts a more extensive examination of the bank's loan-to-deposit record, its record of lending to its local community, and its loan mix. The Board will also contact members of the community, particularly in response to complaints about the bank, and review the findings of its most recent fair lending examination. In addition, at the option of the bank, the Board will assess:

(i) Its record of making qualified investments (as described in § 228.8(c)); and

(ii) Its record of providing branches, ATMs, and other services that enhance credit availability or in other ways serve the convenience and needs of low- and moderate-income persons in its service area.

(4) *Multiple service areas.* If a small bank operates in more than one service area, the Board evaluates the bank's performance in all of those service areas.

(b) *Strategic plan assessment.* (1) As an alternative to being rated after the fact under the lending, service and investment tests or the small bank assessment method, a bank may submit to the Board for approval a strategic plan detailing how the bank proposes to meet its CRA obligation.

(i) The plan must be submitted at least three months prior to the proposed effective date of the plan so that the Board has sufficient time to review the plan and to determine whether to approve it.

(ii) A bank submitting a proposed plan for approval must publish notice in a newspaper of general circulation in each of its service areas stating that a plan has been submitted to the Board for review, that copies of the plan are available for review at offices of the bank, and that comments on the proposed plan may be sent to the appropriate Federal Reserve Bank.

(iii) The Board assesses every plan under the standards of this part and will not approve a plan unless it provides measurable goals against which subsequent performance can be evaluated and the proposed performance is at least overall satisfactory under the standards of this part.

(iv) No plan may have a term that exceeds two years. Further, during the term of a plan, the bank may petition the Board to approve an amendment to the plan on grounds that a material

change in circumstances has made the plan no longer appropriate.

(2) The Board will assess the performance of a bank operating under an approved plan to determine if the bank has met or exceeded the plan goals. However, if the bank fails to meet or exceed the preponderance of the measurable goals set forth in the plan, its performance will be evaluated under the lending, service and investment tests or the small bank assessment method as applicable.

§ 228.12 Service area—delineation.

(a) The effective lending territory of a retail bank defines the bank's service area. The effective lending territory is that area around each office or group of offices where the preponderance of direct reportable loans made through the office or offices are located.

(b) Subject to rebuttal, a bank's service area is presumed to be acceptable if the area is broad enough to include low- and moderate-income geographies, and does not arbitrarily exclude low- and moderate-income geographies.

(c) A bank can show that its service area is acceptable despite its failure to satisfy the criteria of paragraph (b) of this section by clearly demonstrating to the satisfaction of the Board that the criteria of paragraph (b) of this section are inappropriate because, for example, there are no low- or moderate-income geographies within any reasonable distance given the size and financial condition of the bank.

(d) The Board can reject as unacceptable a service area meeting the criteria of paragraph (b) of this section if the Board finds that the service area does not accurately reflect the true effective lending territory of the bank or reflects past redlining or illegal discrimination by the bank.

(e) A bank shall delineate more than one service area when the geographies it serves extend substantially across State boundaries or extend substantially across boundaries of a metropolitan statistical area.

(f) A bank whose business predominantly consists of serving persons who are active duty or retired military personnel or their dependents and who are located outside its local community or communities may delineate a "military community" for those customers as a service area.

(g) A wholesale or limited-purpose bank need not delineate a service area.

(h) A bank shall compile and maintain a list of all the geographies within its service area or areas and a map of each service area showing the geographies contained therein.

§ 228.13 Loan data collection, reporting, and disclosure.

(a) Every bank, except small banks electing the small bank assessment method, shall collect and maintain the following data on its government insured and other reportable loans: number of written applications, number of application denials, number and amount of approvals, number and amount of loans purchased, and number and amount of indirect loans the bank elects to have evaluated using the lending test. All information is to be provided by the geography where the loan is located.

(1) A bank choosing to be rated under the strategic plan assessment described in § 228.11(b) is not relieved from its obligation to report the data as required by this section.

(2) The information required under this section shall be collected:

(i) Beginning July 1, 1994, for the remaining six months of 1994. A summary of the bank's data for the six months shall be submitted to Board by January 31, 1995.

(ii) Beginning January 1, 1995, on an annual basis, a summary of the bank's data collected under this section shall be submitted to Board by January 31 of the following year. The summary data shall be submitted in the format prescribed in appendix A of this part.

(3) Small business loan data shall be collected, reported, and disclosed in the summary format described in paragraph (a) of this section for the following categories: small businesses with average annual gross receipts of less than \$250,000, those with average annual gross receipts of \$250,000 or more and less than \$1 million; those with average annual gross receipts of \$1 million or more and less than \$10 million; and manufacturing businesses with average annual gross receipts of \$10 million or more and less than 500 employees.

(4) Home mortgage loan data shall be collected, reported, and disclosed in the summary format described in paragraph (a) of this section for the following categories: 1-4 family home purchase, 1-4 family home improvement, 1-4 family refinancings, and multi-family loans.

(b) The Board will make summary data collected pursuant to this section available to the public and to the banks. The data will be used by the Board to apply the lending test under § 228.7.

(c) For purposes of this section, a loan is located in a geography as follows:

(1) Consumer loans are located in the geography where the borrower resides.

(2) Loans secured by real estate are located in the geography where the relevant real estate is located.

(3) Small business loans are located in the geography where the headquarters or principal office of the business is located.

(4) Small farm loans are located in the geography where the farm property is located.

(d) A bank is not required to report under this section indirect loans unless the bank elects to have the indirect loans attributed to it as described in § 228.7(e) for purposes of the lending test. If a bank elects to report its indirect loans, it shall report all attributable indirect loans outside low- or moderate-income geographies as well as loans inside such geographies.

§ 228.14 Public file and disclosure.

(a) Banks shall maintain files that are readily available for public inspection containing the information required by this section.

(b) Each bank shall include in its public file the following information:

(1) All signed, written comments received from the public for the current year and past two calendar years that specifically relate to the bank's performance in helping to meet the credit needs of its community or communities, and any response to the comments by the bank;

(2) A copy of the public section of bank's most recent CRA performance evaluation prepared by the Board. The bank shall place this copy in the public file within 30 business days after its receipt from the Board; and

(3) A list of the bank's service areas and the geographies within each service area and a map of each service area showing the geographies contained within.

(c) A bank that is not a small bank shall include in its public file the lending data the bank has reported to the Board under § 228.13 for the current and past two calendar years.

(d) A small bank shall include in its public file the bank's loan-to-deposit ratio computed at the end of the most recent calendar year.

(e) A bank that has been approved to be assessed under a strategic plan as described in § 228.11(b) shall include in its public file a copy of that plan.

(f) Each bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet community credit needs.

(g) A bank shall maintain its public file or required portions of the file at the following offices:

(1) Head offices shall have a copy of the complete public file; and

(2) Branches shall have copies of all materials in the public file relating to the service area in which the branch is located.

(h) A bank shall provide copies of the information in the public file to members of the public upon request. A bank may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

§ 228.15 Public notice by banks.

A bank shall provide, in the public lobby of its head office and each branch, the public notice set forth in this section. Bracketed material shall be used only by banks having more than one service area. The last two sentences shall be included only if the bank is a subsidiary of a holding company and the last sentence only if the company is not prevented by statute from acquiring additional banks.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Reserve Board evaluates and enforces our compliance with our obligation to help meet the credit needs of this community consistent with safe and sound operations. The Board also takes our CRA performance into account when the Board decides on certain applications submitted by us. Your involvement is encouraged. You should know that:

You may look at and obtain in this office information on our performance in this community. This information includes a file of all signed, written comments received by us, any responses we have made to the comments, evaluations by the Board of our CRA performance, and data on the loans we have made in this community during the past two years. (Current CRA information on our performance in other communities served by us is available at our head office, located at _____.)

You may send signed, written comments about our CRA performance in helping to meet community credit needs to (title and address of bank official) and to the Community Reinvestment Officer, Federal Reserve Bank of _____ (address). Your letter, together with any response by us, may be made public.

You may look at any comments received by the Federal Reserve Bank of _____. You also may request from the Federal Reserve Bank of _____ an announcement of our applications covered by the CRA filed with the Federal Reserve System. We are a subsidiary of (name of holding company), a bank holding company. You may request from the Federal Reserve Bank of (city, address) an announcement of applications covered by the CRA filed by bank holding companies.

§ 228.16 Publication of planned examination schedule.

The Board will publish at least 30 days in advance of the beginning of each calendar quarter a list of the banks that are scheduled for CRA examinations in that quarter. Any member of the public may submit comments to the Board regarding the CRA performance of any bank whose name appears on the list.

§ 228.17 Effect of ratings—applications.

(a) Among other factors, the Board takes into account the record of performance under the CRA of each applicant bank, and, for applications under section 3 of the Bank Holding Company Act, each subsidiary bank of an applicant bank holding company, and each proposed subsidiary bank, in considering any application—

(1) By a state member bank for the establishment of a domestic branch or other facility that would be authorized to receive deposits;

(2) By a state member bank for the relocation of a domestic branch;

(3) For merger, consolidation, acquisition of assets, or assumption of liabilities if the acquiring, assuming, or resulting bank is to be a state member;

(4) To become a bank holding company; and

(5) By a bank holding company to acquire ownership or control of shares or assets of a bank, or to merge or consolidate with any other bank holding company.

(b) In the Board's consideration of the CRA records under paragraph (a) of this section, the CRA rating assigned to a bank is an important, and often controlling, factor. However, the rating is not conclusive evidence of performance.

(1) Absent other evidence on performance, CRA ratings generally affect applications as follows:

(i) An "outstanding" rating generally will result in a finding that the CRA aspect of the application is consistent with approval of the application and will receive extra weight in reviewing the application.

(ii) A "satisfactory" rating generally will result in a finding that the CRA aspect of the application is consistent with approval of the application.

(iii) A "needs to improve" rating generally will be an adverse factor in the CRA aspect of the application, and absent demonstrated improvement in the bank's CRA performance or other countervailing factors, generally will result in denial or conditional approval of the application.

(iv) A "substantial noncompliance" rating generally will be so adverse a finding on the CRA aspect of the

application as to result in denial of the application.

(2) The CRA aspect of an application by a bank holding company under paragraph (a)(4) or (a)(5) of this section will be determined by weighing the CRA ratings assigned to each of the individual banks involved in the proposal to determine the weight that will be given to the CRA performance record in accordance with paragraph (b)(1) of this section.

§ 228.18 Transition rules.

(a) *Data collection.* The data collection and reporting requirements of § 228.13 will go into effect July 1, 1994. Data collected from July 1, 1994 to year end must be reported to the Board no later than January 31, 1995. Thereafter banks will collect data on an annual basis and the data shall be reported no later than January 31 of the following year.

(b) *Assessment standards.* Evaluation under the new standards is mandatory after July 1, 1995, except that, until April 1, 1996, for good cause, an institution may request the Board to evaluate it under the standards in place prior to [effective date of final regulation]. During the time period from April 1, 1995 until July 1, 1995, a bank may, at its option, choose to be evaluated under the new standards or under the standards in place prior to [effective date of final regulation].

(c) *Strategic plan.* If a bank elects to be evaluated under an approved strategic plan during the transition period, a bank may submit a strategic plan anytime after [effective date of final regulation].

(d) *Applications.* If the first rating a bank receives under the new standards (whether that rating is given during the transition period or after the new standards become effective) is more than one rating category below the last rating the bank received prior to [effective date of final regulation] the Board will not disapprove any corporate application or take any other enforcement action against the bank based on that lower rating provided that the Board has determined that the drop in the bank's rating occurred despite the bank's good faith efforts to perform at least satisfactorily under the new standards.

4. Appendix A to part 228 is added as set forth in the common preamble.

Appendix A to Part 228—CRA Loan Data Format

Dated: December 13, 1993.

By order of the Board of Governors of the Federal Reserve System.

William W. Wiles,
Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Chapter III**

For the reasons outlined in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend 12 CFR chapter III as set forth below:

5. Part 345 is revised to read as follows:

PART 345—COMMUNITY REINVESTMENT ACT REGULATIONS Sec.

- 345.1 Authority.
- 345.2 Community reinvestment obligation.
- 345.3 Purposes.
- 345.4 Scope.
- 345.5 Definitions.
- 345.6 Assessment standards—summary.
- 345.7 Lending test.
- 345.8 Investment test.
- 345.9 Service test.
- 345.10 Composite ratings.
- 345.11 Alternative assessment methods.
- 345.12 Service area—delineation.
- 345.13 Loan data—collection, reporting, and disclosure.
- 345.14 Public file and disclosure.
- 345.15 Public notice by banks.
- 345.16 Publication of planned examination schedule.
- 345.17 Effect of ratings—corporate applications.
- 345.18 Transition rules.

Appendix A to Part 345—CRA Loan Data Format

Authority: 12 U.S.C. 1815, 1816, 1818, 1819, 1828(c)–(d), 2901–2907, and 3104.

§ 345.1 Authority.

The authority for this part is 12 U.S.C. 1815, 1816, 1818, 1819, 1828(c)–(d), 2901–2907, and 3104.

§ 345.2 Community reinvestment obligation.

Insured State nonmember banks have a continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations.

§ 345.3 Purposes.

The purposes of this part are to implement the community reinvestment obligation of insured State nonmember banks; to explain how the Federal Deposit Insurance Corporation (FDIC) assesses the performance of insured State nonmember banks in satisfying the community reinvestment obligation;

and to describe how that performance is taken into account in certain corporate applications.

§ 345.4 Scope.

(a) *General.* This part applies to all insured State nonmember banks that are in the business of extending credit to the public, including wholesale and limited-purpose banks.

(b) *Banks not engaged in lending activities.* This part does not apply to insured State nonmember banks that engage solely in the correspondent banking business, trust company business, or the business of acting as a clearing agent. Such institutions, although they are chartered as banks, do not perform commercial or retail banking services and do not extend credit to the public for their own account.

(c) *Insured State branches.* This part does apply to insured State branches, which are branches of a foreign bank established and operating under the laws of any State. References in this part to "main office" mean, in the case of insured State branches, the principal branch within the United States. The "service area" of an insured State branch refers to the community or communities located within the United States served by the branch as described in § 345.12. Similarly, the phrase "office or group of offices" refers to insured branches located within the United States.

§ 345.5 Definitions.

For purposes of this part, the following definitions apply:

(a) *Remote Service Facilities (RSF)* means an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received, checks paid, or money lent.

(b) *Branches* means staffed banking facilities (shared or unshared) with a fixed site at which deposits are received or checks paid or money lent, including mini-branches in grocery stores or branches operated in conjunction with any other local businesses, churches, or other non-profit organizations.

(c) *Consumer loans* means closed-end loans extended to a natural person primarily for personal, family, or household purposes, but does not include home mortgage loans as defined in paragraph (e) of this section, credit card loans, or motor vehicle loans.

(d) *Geographies* means census tracts or block numbering areas.

(e) *Home mortgage loans* means closed-end loans that are mortgage loans as defined in section 303(1) of the Home Mortgage Disclosure Act (HMDA) (12

U.S.C. 2802(1)), and implementing regulations.

(f) *Illegal discrimination* means discrimination on a prohibited basis as set forth in the Equal Credit Opportunity Act, 15 U.S.C. 1691 through 1691f, or the Fair Housing Act, 42 U.S.C. 3601 through 3619.

(g) *Indirect loans* means loans made indirectly by a bank through participation in a lending consortium in which lenders pool their resources, by subsidiaries of the bank, by non-chartered affiliates funded by the bank, or by lawful investments in or with community development and affordable housing lenders, women-owned or minority-owned financial institutions, low-income credit unions, and others that lead to low- and moderate-income geographies and individuals.

(h) *Loans or investments benefiting low- and moderate-income geographies or persons* means loans or investments where the proceeds are provided to, invested in, used by or otherwise directly benefit—

(1) Persons that reside in low- or moderate-income geographies or have low or moderate incomes;

(2) Businesses located in low- or moderate-income geographies or employing mostly persons residing in such geographies;

(3) Non-profit organizations located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies; or

(4) Construction or renovation of facilities located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies.

(i) *Low- and moderate-income geographies* means geographies where the median family income is less than 80% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) less than 80% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(1) *Low-income geographies* means geographies where the median family income is less than 50% of the median family income for the MSA or (in the case of geographies outside a MSA) less than 50% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(2) *Moderate-income geographies* means geographies where the median family income is at least 50% and less than 80% of the median family income for the MSA or (in the case of geographies outside a MSA) at least 50% and less than 80% of the non-metropolitan state wide median family

income for the state in which the geography is located.

(j) *Reportable loans* means home mortgage loans, consumer loans, and loans to small businesses and small farms.

(k) *Retail banks* means insured State nonmember banks that are in the business of extending credit to the public and that make a significant amount of reportable loans.

(l) *Small banks* means—

(1) Independent insured State nonmember banks with total assets of less than \$250 million; or

(2) Insured State nonmember banks with total assets of less than \$250 million that are subsidiaries of a holding company with total banking and thrift assets of less than \$250 million.

(m) *Small businesses* means private for-profit organizations that had for the calendar or fiscal year preceding the making of the loan—

(1) Average annual gross receipts of less than \$10 million for a concern providing services; or

(2) Up to 500 employees for a manufacturing concern.

(n) *Small farms* means private organizations engaged in farming operations with average annual gross receipts of less than \$500,000 for the calendar or fiscal year preceding the making of the loan.

(o) *Wholesale and limited-purpose banks* means insured State nonmember banks that are in the business of extending credit to the public but make no significant amount of reportable loans.

§ 345.6 Assessment standards—summary.

(a) Except for banks assessed under the special standards of § 345.11, the FDIC assesses a bank's CRA performance as described in this section. The FDIC reviews, among other things, the bank's CRA public file and any signed, written comments about the bank's CRA performance submitted to the bank or the FDIC. In assessing a bank's CRA performance, the FDIC considers whether the bank is helping to meet the credit needs of its entire community. In examinations, however, the FDIC pays particular attention to the bank's record of helping to meet the credit needs in low- and moderate-income geographies. That record is primarily evaluated using three measures: the Lending Test (described in § 345.7), the Investment Test (described in § 345.8) and the Service Test (described in § 345.9). Based on these separate assessments, the FDIC assigns the bank one of four overall composite ratings as described in § 345.10. The four composite ratings are

Outstanding, Satisfactory, Needs to Improve, and Substantial Noncompliance.

(b) The composite ratings reflect the extent of compliance or noncompliance with the community reinvestment obligations described in § 345.2. A bank that receives a composite rating of Substantial Noncompliance shall be subject to enforcement actions pursuant to 12 U.S.C. 1818.

(c) This part and the CRA do not require any bank to make loans or investments that are expected to result in losses or are otherwise inconsistent with safe and sound operations. However, banks are permitted and encouraged to develop and apply flexible underwriting standards (that are consistent with safe and sound operations) for loans that benefit low- and moderate-income geographies or individuals.

§ 345.7 Lending test.

(a) *Summary.* The Lending Test evaluates primarily whether a retail bank is making loans in low- and moderate-income geographies as well as to wealthier geographies. The test examines direct lending by the bank itself and, if the bank elects, indirect lending to the extent permitted by this part.

(b) *Standards.* The FDIC rates a bank's lending performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the FDIC presumes a bank is lending in an outstanding fashion if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area significantly exceeds its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in the vast majority of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a substantial percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies from its lending).

(2) *High satisfactory.* Subject to rebuttal, the FDIC presumes an institution is lending in a high satisfactory fashion if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market

share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in most of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a very significant percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies from its lending).

(3) *Low satisfactory.* Subject to rebuttal, the FDIC presumes a bank is lending in a low satisfactory fashion if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in many of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a significant percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies from its lending).

(4) *Needs to improve.*—Subject to rebuttal, the FDIC presumes a bank needs to improve its record under the Lending Test if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is less than, and not roughly comparable to, its market share of reportable loans in the remainder of its service area; or

(ii) It has made reportable loans in only a few of the low- and moderate-income geographies in its service area, and reportable loans to low- and moderate-income geographies in its service area represent an insignificant percentage of its reportable loans in its service area.

(5) *Substantial noncompliance.* Subject to rebuttal, the FDIC presumes a bank is in substantial noncompliance with the Lending Test if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is significantly less than its market share of reportable loans in the remainder of its service area; and

(ii) It has made very few, if any, reportable loans in the low- and moderate-income geographies in its service area.

(c) *Method of computation*—(1)

General. For purposes of the Lending Test, the FDIC, rather than the bank, is responsible for making the computations. The FDIC bases such computations upon the bank's reported loan data required under § 345.13 and the aggregate reported loan data supplied by the Federal financial supervisory agencies. In making lending test computations, the FDIC measures market share, amount of loans, and percentage using both volume of loans and number of loans.

(2) *Market share.* The FDIC computes market share for volume and number of loans for each type of reportable loans: home mortgage loans, consumer loans, and small business and farm loans. The FDIC awards an overall market share performance rating after weighing each lending category based on such factors as the needs of the community being served, the bank's capabilities and business plans, and the degree to which the bank's performance with respect to one of the loan categories, in fact, balances or compensates for its performance under another category.

(d) *Adjustments.* (1) The FDIC may increase a bank's lending rating if the bank participates in a program for giving further reviews to loan applications that would otherwise be denied. More credit will be given for such a program if it is done in conjunction with a community organization in such a way that the organization either participates in the review or offers applications from low- and moderate-income individuals that the bank will consider for credit. The FDIC may also increase the rating if the bank has made a substantial amount of loans requiring creative or innovative underwriting (while maintaining a safe and sound quality) or loans for which there is particular need, such as loans for multifamily housing construction and rehabilitation, loans to start-ups, very small businesses or community development organizations or facilities and loans to very low-income individuals and areas. The FDIC will also consider favorably in reaching a rating loans made to third parties, such as community development organizations and intermediaries, that make loans or facilitate lending in low- and moderate-income geographies, even if the loans by the bank are not reportable under this part, are not made to third parties in the bank's service area, or are made to third parties that serve service areas other than the bank's.

(2) In exceptional cases, the FDIC may reduce a rating achieved under this section if it concludes that the quantitative measures in this section fail

to reflect the bank's actual record of lending to low- or moderate-income individuals or geographies.

(e) *Indirect lending.* (1) If the bank elects, the FDIC will attribute to a bank its reported attributable indirect loans.

(2) In the usual case, the indirect loans attributable to a bank equal the bank's percentage share (based on the level of the bank's investment or participation) of each loan made through the entity in which the bank has invested or participated.

(3) At the option of all investing or participating institutions, an alternative method of attributing loans among the investing or participating institutions may be established. In no case, however:

(i) May the indirect loans attributed to any bank exceed its percentage share of the total loans (measured in both number and volume) made directly by the lending entity in which the institutions invested or participated;

(ii) May the investors or participants claim, in the aggregate, indirect loans (measured in both number and volume) in excess of the loans actually made in any geography by the lending entity in which they invested or participated; or

(iii) May any bank be assigned a disproportionate share of all loans (measured in both number and volume) made in low- and moderate-income geographies by a lending entity in which the institutions invested or participated.

(4) If a bank elects, indirect loans attributed to a bank under this paragraph (e) may be included in "reportable loans" for purposes of the Lending Test if a bank reports them under § 345.13.

(f) *Application to wholesale and limited-purpose banks.* The Lending Test of this section does not apply to wholesale or limited-purpose banks. In evaluating the record of wholesale and limited-purpose banks in satisfying their community reinvestment obligation, the FDIC uses the Investment Test in § 345.8 instead of the standards of paragraph (b) of this section. For purposes of assigning a composite rating as described in § 345.10, the FDIC substitutes a wholesale or limited-purpose bank's rating under the Investment Test for a rating under the Lending Test.

(g) *Rebutting presumptions.* A bank can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the FDIC that the quantitative measures in this section do not accurately present its lending performance because, among other reasons—

(1) The quantitative measures of this section do not reflect the bank's

significant amount of loans benefiting low- and moderate-income geographies or persons;

(2) Other quantitative measures of the bank's lending performance demonstrate a higher level than that reflected by the measures under this section;

(3) Peculiarities in the demographics of the bank's service area exist that significantly distort the quantitative measures of this section;

(4) Economic or legal limitations peculiar to the bank or its service area or unusual general economic conditions have affected its performance and ought to be considered; or

(5) The bank's performance as measured by the market share component of the Lending Test does not reflect its overall lending performance because of the extraordinarily high level of performance, in the aggregate, by lenders in the bank's service area.

§ 345.8 Investment test.

(a) *Summary.* The Investment Test evaluates banks on the amount of their investments benefiting low- and moderate-income geographies or persons.

(b) *Standards.* The FDIC rates a bank's investment performance under the following rebuttable presumptions:

(1) *Outstanding.* Subject to rebuttal, the FDIC presumes a bank is providing qualified investments in an outstanding fashion if the bank has made such investments in an amount that is substantial as compared to its capital.

(2) *High satisfactory.* Subject to rebuttal, the FDIC presumes a bank is providing qualified investments in a high satisfactory fashion if the bank has made such investments in an amount that is very significant as compared to its capital.

(3) *Low satisfactory.* Subject to rebuttal, the FDIC presumes a bank is providing qualified investments in a low satisfactory fashion if the bank has made such investments in an amount that is significant as compared to its capital.

(4) *Needs to Improve.* Subject to rebuttal, the FDIC presumes a bank needs to improve its record of providing qualified investments if the bank has made such investments in an amount that is insignificant as compared to its capital.

(5) *Substantial noncompliance.* Subject to rebuttal, the FDIC presumes a bank is in substantial noncompliance with the Investment Test if the bank has devoted very little, if any, capital to qualified investments.

(c) *Qualified investments.* Qualified investments are lawful investments that

demonstrably benefit low- and moderate-income geographies or persons in the bank's service area. Qualified investments may include investments:

(1) In support of affordable housing, small business, consumer, and other economic development initiatives;

(2) In community development banks, community development corporations, community development projects, small business investment corporations, minority small business investment corporations and minority- and women-owned financial institutions and other community development financial intermediaries;

(3) In consortia or other structures serving low- and moderate-income individuals and neighborhoods and poor rural areas;

(4) In state and local government agency housing bonds or state and local government revenue bonds specifically aimed at helping low- and moderate-income communities and individuals.

(d) *Capital.* For purposes of the Investment Test, the FDIC will evaluate the amount of qualified investments against the amount of the bank's risk-based capital.

(e) *Benefit to service area.* In order to be eligible as a qualified investment under paragraph (c) of this section, the activity or entity supported by an investment need not solely benefit the bank's service area. However, the activity or entity supported by the investment must significantly benefit low- and moderate-income geographies or persons in the bank's service area.

(f) *Exclusion of indirect loans.* Investments that a bank has elected to report as indirect lending under the Lending Test are not counted as qualified investments under this Test.

(g) *Grants.* Grants that would constitute qualified investments were they in the form of investments will be treated as qualified investments for purposes of the Investment Test. A bank may also donate, sell on favorable terms, or make available on a rent-free basis any branch which is located in a predominately minority neighborhood to a minority depository institution or women's depository institution as defined in 12 U.S.C. 2907.

(h) *Application to wholesale and limited purpose banks.* For purposes of determining qualified investments under paragraph (c) of this section, the service area of wholesale and limited purpose banks is defined to include all low- and moderate-income geographies or persons within the United States and its territories. Loans by wholesale and limited purpose banks that would constitute qualified investments were

they in the form of investments will be treated as qualified investments for the purposes of the Investment Test.

(i) *Adjustments to investment test.* The FDIC may adjust a bank's rating under the Investment Test. Adjustments may increase or, in exceptional cases, decrease the rating. In making these adjustments the FDIC considers whether:

(1) The bank's qualified investments are particularly innovative or meet a special need, or if the bank's activities in connection with its qualified investments have been particularly complex, innovative or intensive for a bank of its size, or involve innovative partnerships with community organizations (examples include helping to establish an entity to conduct community development activities or providing significant service or assistance in support of a qualified investment); or

(2) The bank has made a large amount of investments that would be qualified investments but for the fact that they fail to benefit the bank's service area as required by paragraph (e) of this section, provided the bank has not neglected investments that benefit its service area.

§ 345.9 Service test.

(a) *Summary.* The Service Test evaluates the accessibility of a retail bank's branches and the extent to which any bank provides other services that enhance credit availability. The Service Test does not require a bank to expand the size of its branching network or to operate facilities at a loss. Appropriate consideration is given to the limitations faced by banks with a small number of branches. The FDIC evaluates retail banks with multiple branches under the Service Test primarily on the extent to which they offer branches. The FDIC evaluates wholesale and limited-purpose banks on the extent to which they provide other services that enhance credit availability.

(b) *Standards for retail banks.* The FDIC rates a retail bank's service performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the FDIC presumes a bank is providing service in an outstanding fashion if a substantial percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(2) *High satisfactory.* Subject to rebuttal, the FDIC presumes a bank is providing service in a high satisfactory fashion if a very significant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(3) *Low satisfactory.* Subject to rebuttal, the FDIC presumes a bank is providing service in a low satisfactory fashion if a significant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(4) *Needs to improve.* Subject to rebuttal, the FDIC presumes a bank needs to improve its record of providing service if an insignificant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(5) *Substantial noncompliance.* Subject to rebuttal, the FDIC presumes a bank is in substantial noncompliance with the Service Test if very few, if any, of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(c) *Adjustments for retail banks.* If necessary, the FDIC adjusts a retail bank's rating to reflect more accurately the service provided to low- and moderate-income geographies and individuals.

(1) *Adjustment to reflect more accurately branch service.* The FDIC may adjust a bank's record upward or downward to reflect more accurately its branch service to low- or moderate-income geographies or individuals. Downward adjustments will occur only in exceptional cases. In determining the appropriateness and degree of any adjustment, the FDIC may consider the bank's record of opening and closing branches. The FDIC may also consider whether branches in or readily accessible to low- and moderate-income geographies actually serve low- and moderate-income individuals and whether branches not located in or readily accessible to such geographies are nonetheless serving low- and moderate-income individuals. The FDIC may also take into account significant differences in the quantity, quality or types of services offered to low- or moderate-income individuals or geographies and similar considerations.

(2) *Adjustment to reflect other services that promote credit availability.* The FDIC may adjust a bank's rating upward to reflect a strong record of offering or supporting services that promote credit availability for low- and moderate-income geographies or individuals. These services include credit counseling, low-cost check cashing, "lifeline" checking accounts, financial planning, home ownership counseling, loan packaging assisting small and minority businesses, partnerships with community-based organizations to promote credit-related services, extensive provision of RSFs or other non-branch delivery systems that

are particularly accessible and convenient to low- and moderate-income geographies or individuals, and similar programs.

(d) *Application to wholesale and limited-purpose banks.* The FDIC rates a wholesale or limited-purpose bank's service performance under the following rebuttable presumptions:

(1) *Outstanding.* Subject to rebuttal, the FDIC presumes a bank is providing service in an outstanding fashion if it is providing a substantial amount of the services described in paragraph (c)(2) of this section or providing substantial support for organizations that furnish such services.

(2) *High satisfactory.* Subject to rebuttal, the FDIC presumes a bank is providing service in a high satisfactory fashion if it is providing a very significant amount of the services described in paragraph (c)(2) of this section or providing very significant support for organizations that furnish such services.

(3) *Low satisfactory.* Subject to rebuttal, the FDIC presumes a bank is providing service in a low satisfactory fashion if it is providing a significant amount of the services described in paragraph (c)(2) of this section or providing significant support for organizations that furnish such services.

(4) *Needs to improve.* Subject to rebuttal, the FDIC presumes a bank needs to improve its record of providing service if it is providing an insignificant amount of the services described in paragraph (c)(2) of this section or providing insignificant support for organizations that furnish such services.

(5) *Substantial noncompliance.* Subject to rebuttal, the FDIC presumes a bank is in substantial noncompliance with the Service Test if it provides very few, if any, services described in paragraph (c)(2) of this section or very little, if any, support for organizations that furnish such services.

(e) *Rebutting presumptions.* A Bank can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the FDIC that the quantitative measures in this section do not accurately represent its service performance because, among other reasons—

(1) The quantitative measures of this section do not reflect the bank's significant degree of services that promote credit availability to low- and moderate-income geographies or persons;

(2) Peculiarities in the demographics of the bank's service area exist that significantly distort the quantitative measures of this section; or

(3) Limitations imposed by the bank's financial condition, economic or legal limitations on branch operation or location, or similar circumstances have affected its performance and ought to be considered.

§ 345.10 Composite ratings.

(a) *Composite rating standards.* FDIC assigns composite ratings as follows:

(1) *Base rating.* For retail banks, the bank's rating under the Lending Test forms the basis for its composite rating. For wholesale or limited-purpose banks, the bank's rating under the Investment Test serves as the basis for the composite rating. The base rating under this paragraph is adjusted as described in paragraphs (a)(2) and (a)(3) of this section.

(2) *Effect of investment rating.* For retail banks, the base rating is increased by two levels if the bank has an outstanding rating in the Investment Test or by one level if the bank has a high satisfactory rating in the Investment Test.

(3) *Effect of service rating.* The base rating is increased by one level if the bank has an outstanding rating in the Service Test and is decreased by one level if the bank has a rating of substantial non-compliance in the Service Test.

(4) *Final composite rating.* Subject to paragraph (b) of this section, the FDIC converts the rating resulting from paragraphs (a)(1) through (a)(3) of this section into a final composite rating as described in this paragraph. High satisfactory and low satisfactory ratings are both scored as satisfactory in the final composite rating. A bank that would otherwise receive a composite rating of needs to improve will receive a final composite rating of substantial noncompliance if the bank received no better than a needs to improve rating on both of its last two examinations.

(b) *Effect of discrimination.* Evidence that a bank has engaged in illegal discrimination may affect the bank's CRA rating. Notwithstanding paragraph (a) of this section and subject to rebuttal, the FDIC assigns a bank a final composite rating lower than satisfactory if the bank has—

(1) Engaged in a pattern or practice of illegal discrimination that it has not corrected fully; or

(2) Committed an isolated act of illegal discrimination of which it has knowledge and that it has not corrected fully or is not in the process of correcting fully.

(c) *Multiple service areas.* Where a bank operates in more than one service area, the FDIC conducts Lending, Investment and Service tests in a sample

of all of the service areas in which a bank operates. The FDIC assigns separate composite CRA ratings to the bank's performance in each of the service areas studied. A list of the service areas in which the bank's CRA performance was examined, along with the rating assigned to the bank's CRA record in each of the service areas, shall be included in the bank's public performance evaluation. The overall rating for the bank reflects the performance of the bank in the service areas studied.

§ 345.11 Alternative assessment methods.

(a) *Small bank assessment standards.* A small bank (as defined in § 345.5(l)) may choose to have the FDIC assess its CRA performance under this section rather than the general standards described in §§ 345.6 through 345.10.

(1) The FDIC presumes a small bank's overall CRA performance is satisfactory if the bank:

(i) Has a reasonable loan-to-deposit ratio (a ratio of 60 percent, adjusted for seasonal variation, is presumed to be reasonable) given its size, its financial condition, and the credit needs in its service area;

(ii) Makes the majority of its loans in its service area;

(iii) Has a good loan mix (i.e., makes, to the extent permitted by law and regulation, a variety of loans to customers across economic levels);

(iv) Has no legitimate, bona-fide complaints from community members;

(v) Has not engaged in a pattern or practice of illegal discrimination that it has not corrected fully; and has not committed isolated acts of illegal discrimination, of which it has knowledge, that it has not corrected fully or is not in the process of correcting fully; and

(vi) In the case of a bank already subject to reporting home mortgage lending data under HMDA, has a reasonable geographic distribution of such loans.

(2) A small bank that meets each of the standards for a satisfactory rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of outstanding. In assessing whether a small bank's CRA record is outstanding, the FDIC will consider the extent to which the bank's loan-to-deposit ratio, its lending to its service area, and its loan mix exceed the standards for a satisfactory rating. In addition, at the option of the bank, the FDIC will evaluate:

(i) Its record of making qualified investments (as described in § 345.8(c)); and

(ii) Its record of providing branches, RSFs, and other services that enhance credit availability or in other ways meet the convenience and needs of low- and moderate-income persons in its service area.

(3) A small bank that fails to meet or exceed all of the standards for a satisfactory rating under this paragraph is not presumed to be performing in a less than satisfactory manner. Rather, for those banks, the FDIC conducts a more extensive examination of the bank's loan-to-deposit record, its record of lending to its local community, and its loan mix. The FDIC will also contact members of the community, particularly in response to complaints about the bank, and review the findings of its most recent fair lending examination. In addition, at the option of the bank, the FDIC will assess:

(i) Its record of making qualified investments (as described in § 345.8(c)); and

(ii) Its record of providing branches, RSFs, and other services that enhance credit availability or in other ways serve the convenience and needs of low- and moderate-income persons in its service area.

(4) *Multiple service areas.* If a small bank operates in more than one service area, the FDIC evaluates the bank's performance in all of those service areas.

(b) *Strategic plan assessment.* (1) As an alternative to being rated after the fact under the lending, service and investment tests or the small bank assessment method, a bank may submit to the FDIC for approval a strategic plan detailing how the bank proposes to meet its CRA obligation.

(i) The plan must be submitted at least three months prior to the proposed effective date of the plan so that the FDIC has sufficient time to review the plan and to determine whether to approve it.

(ii) A bank submitting a proposed plan for approval must publish notice in a newspaper of general circulation in each of its service areas stating that a plan has been submitted to the FDIC for review, that copies of the plan are available for review at offices of the bank, and that comments on the proposed plan may be sent to the FDIC in accord with § 303.6 of this chapter.

(iii) The FDIC assesses every plan under the standards of this part and will not approve a plan unless it provides measurable goals against which subsequent performance can be evaluated and the proposed performance is at least overall satisfactory under the standards of this part.

(iv) No plan may have a term that exceeds two years. Further, during the term of a plan, the bank may petition the FDIC to approve an amendment to the plan on grounds that a material change in circumstances has made the plan no longer appropriate.

(2) The FDIC will assess the performance of a bank operating under an approved plan to determine if the bank has met or exceeded the plan goals. However, if the bank fails to meet or exceed the preponderance of the measurable goals set forth in the plan, its performance will be evaluated under the lending, service and investment tests or the small bank assessment method, as applicable.

§ 345.12 Service area—delineation.

(a) The effective lending territory of a retail bank defines the bank's service area. The effective lending territory is that area around each office or group of offices where the preponderance of direct reportable loans made through the office or offices are located.

(b) Subject to rebuttal, a bank's service area is presumed to be acceptable if the area is broad enough to include low- and moderate-income geographies and does not arbitrarily exclude low- and moderate-income geographies.

(c) A bank can show that its service area is acceptable despite its failure to satisfy the criteria of paragraph (b) of this section by clearly demonstrating to the satisfaction of the FDIC that the criteria of paragraph (b) of this section are inappropriate because, for example, there are no low- or moderate-income geographies within any reasonable distance given the size and financial condition of the bank.

(d) The FDIC can reject as unacceptable a service area meeting the criteria of paragraph (b) of this section if the FDIC finds that the service area does not accurately reflect the true effective lending territory of the bank or reflects past redlining or illegal discrimination by the bank.

(e) A bank shall delineate more than one service area when the geographies it serves extend substantially across state boundaries or extend substantially across boundaries of a Metropolitan Statistical Area.

(f) A bank whose business predominantly consists of serving persons who are active duty or retired military personnel or their dependents and who are located outside its local community or communities may delineate a "military community" for those customers as a service area.

(g) A wholesale or limited-purpose bank need not delineate a service area.

(h) A bank shall compile and maintain a list of all the geographies within its service area or areas and a map of each service area showing the geographies contained therein.

§ 345.13 Loan data—collection, reporting, and disclosure.

(a) Every bank, except small banks electing the small bank assessment method, shall collect and maintain the following data on its government insured and other reportable loans: number of written applications, number of application denials, number and amount of approvals, number and amount of loans purchased, and number and amount of indirect loans the bank elects to have evaluated using the Lending Test. All information is to be provided by the geography where the loan is located.

(1) A bank choosing to be rated under the strategic plan assessment described in § 345.11(b) is not relieved from its obligation to report the data as required by this section.

(2) The information required under this section shall be collected:

(i) Beginning July 1, 1994, for the remaining six months of 1994. A summary of the bank's data for the six months shall be submitted to FDIC by January 31, 1995.

(ii) Beginning January 1, 1995, on an annual basis, a summary of the bank's data collected under this section shall be submitted to FDIC by January 31 of the following year. The summary data shall be submitted in the format prescribed in appendix A of this part.

(3) Small business loan data shall be collected, reported, and disclosed in the summary format described in paragraph (a) of this section for the following categories: small businesses with average annual gross receipts of less than \$250,000, those with average annual gross receipts of \$250,000 or more and less than \$1 million; those with average annual gross receipts of \$1 million or more and less than \$10 million; and manufacturing businesses with average annual gross receipts of \$10 million or more and less than 500 employees.

(4) Home mortgage loan data shall be collected, reported, and disclosed in the summary format described in paragraph (a) of this section for the following categories: 1-4 family home purchase, 1-4 family home improvement, 1-4 family refinancings, and multi-family loans. (b) The FDIC will make summary data collected pursuant to this section available to the public and to the banks. The data will be used by the FDIC to apply the Lending Test under § 345.7.

(c) For purposes of this section, a loan is located in a geography as follows:

(1) Consumer loans are located in the geography where the borrower resides.

(2) Loans secured by real estate are located in the geography where the relevant real estate is located.

(3) Small business loans are located in the geography where the headquarters or principal office of the business is located.

(4) Small farm loans are located in the geography where the farm property is located.

(d) A bank is not required to report under this section indirect loans unless the bank elects to have the indirect loans attributed to it as described in § 345.7(e) for purposes of the Lending Test. If a bank elects to report its indirect loans, it shall report all attributable indirect loans outside low- or moderate-income geographies as well as loans inside such geographies.

§ 345.14 Public file and disclosure.

(a) Banks shall maintain files that are readily available for public inspection containing the information required by this section.

(b) Each bank shall include in its public file the following information—

(1) All signed, written comments received from the public for the current year and past two calendar years that specifically relate to the bank's performance in helping to meet the credit needs of its community or communities, and any response to the comments by the bank;

(2) A copy of the public section of bank's most recent CRA Performance Evaluation prepared by the FDIC. The bank shall place this copy in the public file within 30 business days after its receipt from the FDIC; and

(3) A list of the bank's service areas and the geographies within each service area and a map of each service area showing the geographies contained therein.

(c) A bank that is not a small bank shall include in its public file the lending data the bank has reported to the FDIC under § 345.13 for the current and past two calendar years.

(d) A small bank shall include in its public file the bank's Loan-to-Deposit ratio computed at the end of the most recent calendar year.

(e) A bank that has been approved to be assessed under a strategic plan as described in § 345.11(b) shall include in its public file a copy of that plan.

(f) Each bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet community credit needs.

(g) A bank shall maintain its public file or required portions of the file at the following offices—

(1) Main offices shall have a copy of the complete public file; and

(2) Branches shall have copies of all materials in the public file relating to the service area in which the branch is located.

(h) A bank shall provide copies of the information in the public file to members of the public upon request. A bank may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

§ 345.15 Public notice by banks.

A bank shall provide, in the public lobby of its main office and each branch, the public notice set forth in this section. Bracketed material shall be used only by banks having more than one service area. The last two sentences shall be included only if the bank is a subsidiary of a holding company and the last sentence only if the company is not prevented by statute from acquiring additional banks.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the FDIC evaluates and enforces our compliance with our obligation to help meet the credit needs of this community consistent with safe and sound operations. The FDIC also takes our CRA performance into account when the FDIC decides on certain applications submitted by us. Your involvement is encouraged. You should know that:

You may look at and obtain in this office information on our performance in this community. This information includes a file of all signed, written comments received by us, any responses we have made to the comments, evaluations by the FDIC of our CRA performance, and data on the loans we have made in this community during the past two years. (Current CRA information on our performance in other communities served by us is available at our main office, located at _____.)

You may send signed, written comments about our CRA performance in helping to meet community credit needs to (title and address of bank official) and to the FDIC Regional Director (address). Your letter, together with any response by us, may be made public.

You may ask the FDIC to look at any comments received by the Regional Director. You also may request from the Regional Director an announcement of our applications covered by the CRA filed with the FDIC. We are a subsidiary of (name of holding company), a bank holding company. You may request from the Federal Reserve Bank of (city, address) an announcement of applications covered by the CRA filed by bank holding companies.

§ 345.16 Publication of planned examination schedule.

The FDIC will publish at least 30 days in advance of the beginning of each calendar quarter a list of the banks that are scheduled for CRA examinations in that quarter. Any member of the public may submit comments to the FDIC regarding the CRA performance of any bank whose name appears on the list.

§ 345.17 Effect of ratings—corporate applications.

(a) The FDIC takes into account a bank's record of performance in meeting its community reinvestment obligation in considering applications for approval of—

(1) The establishment of a domestic branch or other facility with the ability to accept deposits;

(2) The relocation of a bank's main office, a branch office or other facility with the ability to accept deposits;

(3) The merger, consolidation, acquisition of assets, or assumption of liabilities; and

(4) Deposit insurance for an operating non-insured financial institution.

(b) A newly chartered State nonmember bank shall submit a description of its proposed CRA performance when the application for deposit insurance is made. In considering the application, the FDIC takes into account the bank's proposed CRA performance.

(c) In considering the effect of CRA performance on a corporate application, the FDIC will take into account any views expressed by State or Federal financial supervisory agencies or other interested parties, which are submitted in accordance with the FDIC's procedures set forth in § 345.16 or part 303 of this chapter.

(d) In the FDIC's consideration of the effect of a bank's CRA record on a corporate application, the CRA rating assigned to a bank is an important, and often controlling, factor. However, the rating is not conclusive evidence of performance. Absent other evidence on performance, CRA ratings generally affect corporate applications as follows:

(1) An "outstanding" rating generally will result in a finding that the CRA aspect of the application is consistent with approval of the application and will receive extra weight in the FDIC's review of the application.

(2) A "satisfactory" rating generally will result in a finding that the bank's CRA performance is consistent with approval of the application.

(3) A "needs to improve" rating generally will be an adverse factor in the CRA aspect of the application, and absent demonstrated improvement in

the bank's CRA performance or other countervailing factors, generally will result in denial or conditional approval of the application.

(4) A "substantial noncompliance" rating generally will be so adverse a finding on the CRA aspect of the application as to result in denial of the application.

§ 345.18 Transition rules.

(a) *Data collection.* The data collection and reporting requirements of § 345.13 will go into effect July 1, 1994. Data collected from July 1, 1994 to year end must be reported to the FDIC no later than January 31, 1995. Thereafter banks will collect data on an annual basis and the data shall be reported no later than January 31 of the following year.

(b) *Assessment standards.* Evaluation under the new standards is mandatory after July 1, 1995, except that, until April 1, 1996, for good cause, an institution may request the FDIC to evaluate it under the standards in place prior to [effective date of final regulation]. During the time period from April 1, 1995 until July 1, 1995, a bank may, at its option, choose to be evaluated under the new standards or under the standards in place prior to [effective date of final regulation].

(c) *Strategic plan.* If a bank elects to be evaluated under an approved strategic plan during the transition period, a bank may submit a strategic plan anytime after [effective date of final regulation].

(d) *Corporate applications.* If the first rating a bank receives under the new standards (whether that rating is given during the transition period or after the new standards become effective) is more than one rating category below the last rating the bank received prior to [effective date of final regulation], the FDIC will not disapprove any corporate application or take any other enforcement action against the bank based on that lower rating if the FDIC has determined that the drop in the bank's rating occurred despite the bank's good faith efforts to perform at least satisfactorily under the new standards.

6. Appendix A to part 345 is added as set forth in the common preamble.

Appendix A to Part 345—CRA Loan Data Format

By Order of the Board of Directors, dated at Washington, DC, this 9th day of December 1993.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.

OFFICE OF THRIFT SUPERVISION

12 CFR Chapter V

For the reasons outlined in the preamble, the Office of Thrift Supervision hereby proposes to amend 12 CFR chapter V as set forth below:

7. Part 563e is revised to read as follows:

PART 563e—COMMUNITY REINVESTMENT ACT

- Sec.
- 563e.1 Authority.
 - 563e.2 Community reinvestment obligation.
 - 563e.3 Purposes.
 - 563e.4 Scope.
 - 563e.5 Definitions.
 - 563e.6 Assessment standards—summary.
 - 563e.7 Lending Test.
 - 563e.8 Investment Test.
 - 563e.9 Service Test.
 - 563e.10 Composite ratings.
 - 563e.11 Alternative assessment methods.
 - 563e.12 Service area—delineation.
 - 563e.13 Loan data—collection, reporting and disclosure.
 - 563e.14 Public file and disclosure.
 - 563e.15 Public notice by savings associations.
 - 563e.16 Publication of planned examination schedule.
 - 563e.17 Effect of ratings—corporate applications.
 - 563e.18 Transition rules.

Appendix A to Part 563e—CRA Loan Data Format

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1818, 1828(c), and 2901 through 2907.

§ 563e.1 Authority.

The provisions of this part are issued under the Community Reinvestment Act of 1977 (CRA), as amended (12 U.S.C. 2901 *et seq.*); section 5, as amended, and sections 3, 4, and 10, as added, of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462a, 1463, 1464, and 1467a); and sections 4, 6, 8 and 18(c), as amended of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1818, 1828(c)).

§ 563e.2 Community reinvestment obligation.

Savings associations have a continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations.

§ 563e.3 Purposes.

The purposes of this part are to implement the community reinvestment obligation of savings associations; to explain how the Office of Thrift Supervision (OTS) assesses the performance of savings associations in satisfying the community reinvestment obligation; and to describe how that performance is taken into account in certain corporate applications.

§ 563e.4 Scope.

This part applies to all savings associations as defined in § 561.43 of this subchapter.

§ 563e.5 Definitions.

For purposes of this part, the following definitions apply:

(a) *Automated Teller Machines (ATMs)* means immobile, automated, unstaffed facilities at which deposits are received, checks paid, or money lent.

(b) *Branches* means staffed facilities (shared or unshared) with a fixed site at which deposits are received or checks paid or money lent, including mini-branches in grocery stores or branches operated in conjunction with any other local businesses, churches, or other non-profit organizations.

(c) *Consumer loans* means closed-end loans extended to a natural person primarily for personal, family, or household purposes, but does not include home mortgage loans as defined in paragraph (e) of this section, credit card loans, or motor vehicle loans.

(d) *Geographies* means census tracts or block numbering areas.

(e) *Home mortgage loans* means closed-end loans that are mortgage loans as defined in section 303(1) of the Home Mortgage Disclosure Act (12 U.S.C. 2802(1), hereinafter referred to as HMDA) and implementing regulations.

(f) *Illegal discrimination* means discrimination on a prohibited basis as set forth in the Equal Credit Opportunity Act, 15 U.S.C. 1691 through 1691f, the Fair Housing Act, 42 U.S.C. 3601 through 3619, and OTS nondiscrimination regulations (12 CFR part 528).

(g) *Indirect loans* means loans made indirectly by a savings association through participation in a lending consortium in which lenders pool their resources, by subsidiaries of the savings association, by non-chartered affiliates funded by the savings association, or by lawful investments in or with community development and affordable housing lenders, women-owned or minority-owned financial institutions, low-income credit unions, and others that lend to low- and moderate-income geographies and individuals.

(h) *Loans or investments benefitting low- and moderate-income geographies or persons* means loans or investments where the proceeds are provided to, invested in, used by or otherwise directly benefit—

(1) Persons that reside in low- or moderate-income geographies or have low or moderate incomes;

(2) Businesses located in low- or moderate-income geographies or employing mostly persons residing in such geographies;

(3) Non-profit organizations located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies; or

(4) Construction or renovation of facilities located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies.

(i) *Low- and moderate-income geographies* means geographies where the median family income is less than 80% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) less than 80% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(1) *Low-income geographies* means geographies where the median family income is less than 50% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) less than 50% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(2) *Moderate-income geographies* means geographies where the median family income is at least 50% and less than 80% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) at least 50% and less than 80% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(j) *Reportable loans* means home mortgage loans, consumer loans, and loans to small businesses and small farms.

(k) *Small savings associations* means—

(1) Independent savings associations with total assets of less than \$250 million; or

(2) Savings associations with total assets of less than \$250 million that are subsidiaries of a holding company with total banking and thrift assets of less than \$250 million.

(l) *Small businesses* means private for-profit organizations that had for the calendar or fiscal year preceding the making of the loan—

(1) Average annual gross receipts of less than \$10 million for a concern providing services; or

(2) Up to 500 employees for a manufacturing concern.

(m) *Small farms* means private organizations engaged in farming operations with average annual gross receipts of less than \$500,000 for the calendar or fiscal year preceding the making of the loan.

§ 563e.6 Assessment standards—summary.

(a) Except for savings associations assessed under the special standards of § 563e.11, the OTS assesses a savings association's CRA performance as described in this section. The OTS reviews, among other things, the savings association's CRA public file and any signed, written comments about the savings association's CRA performance submitted to the savings association or the OTS. In assessing a savings association's CRA performance, the OTS considers whether the savings association is helping to meet the credit needs of its entire community. In examinations, however, the OTS pays particular attention to the savings association's record of helping to meet the credit needs in low- and moderate-income geographies. That record is primarily evaluated using three measures: the Lending Test (described in § 563e.7), the Investment Test (described in § 563e.8) and the Service Test (described in § 563e.9). Based on these separate assessments, the OTS assigns the savings association one of four overall composite ratings as described in § 563e.10. The four composite ratings are Outstanding, Satisfactory, Needs to Improve, and Substantial Noncompliance.

(b) The composite ratings reflect the extent of compliance or noncompliance with the community reinvestment obligation described in § 563e.2. A savings association that receives a composite rating of Substantial Noncompliance shall be subject to enforcement actions pursuant to 12 U.S.C. 1818.

(c) This part and the CRA do not require any savings association to make loans or investments that are expected to result in losses or are otherwise inconsistent with safe and sound operations. However, savings associations are permitted and encouraged to develop and apply flexible underwriting standards (that are consistent with safe and sound operations) for loans that benefit low- and moderate-income geographies or individuals.

§ 563e.7 Lending test.

(a) *Summary.* The Lending Test evaluates primarily whether a savings association is making loans in low- and moderate-income geographies as well as to wealthier geographies. The test examines direct lending by the savings association itself and, if the savings association elects, indirect lending to the extent permitted by this part.

(b) *Standards.* The OTS rates a savings association's lending performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the OTS presumes a savings association is lending in an outstanding fashion if—

(i) The savings association's market share of reportable loans in low- and moderate-income geographies in its service area significantly exceeds its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in the vast majority of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a substantial percentage of its reportable loans in its service area (provided that the savings association does not unreasonably exclude low- and moderate-income geographies from its lending).

(2) *High satisfactory.* Subject to rebuttal, the OTS presumes a savings association is lending in a high satisfactory fashion if—

(i) The savings association's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in most of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a very significant percentage of its reportable loans in its service area (provided that the savings association does not unreasonably exclude low- and moderate-income geographies from its lending).

(3) *Low satisfactory.* Subject to rebuttal, the OTS presumes a savings association is lending in a low satisfactory fashion if—

(i) The savings association's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market share of

reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in many of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a significant percentage of its reportable loans in its service area (provided that the savings association does not unreasonably exclude low- and moderate-income geographies from its lending).

(4) *Needs to improve.* Subject to rebuttal, the OTS presumes a savings association needs to improve its record under the Lending Test if—

(i) The savings association's market share of reportable loans in low- and moderate-income geographies in its service area is less than, and not roughly comparable to, its market share of reportable loans in the remainder of its service area; or

(ii) It has made reportable loans in only a few of the low- and moderate-income geographies in its service area, and reportable loans to low- and moderate-income geographies in its service area represent an insignificant percentage of its reportable loans in its service area.

(5) *Substantial noncompliance.* Subject to rebuttal, the OTS presumes a savings association is in substantial noncompliance with the Lending Test if—

(i) The savings association's market share of reportable loans in low- and moderate-income geographies in its service area is significantly less than its market share of reportable loans in the remainder of its service area; and

(ii) It has made very few, if any, reportable loans in the low- and moderate-income geographies in its service area.

(c) *Method of computation—(1) General.* For purposes of the Lending Test, the OTS, rather than the savings association, is responsible for making the computations. The OTS bases such computations upon the savings association's reported loan data required under § 563e.13 and the aggregate reported loan data supplied by the Federal financial supervisory agencies. In making lending test computations, the OTS measures market share, amount of loans, and percentage using both volume of loans and number of loans.

(2) *Market share.* The OTS computes market share for volume and number of loans for each type of reportable loans: Home mortgage loans, consumer loans, and small business and farm loans. The OTS awards an overall market share

performance rating after weighing each lending category based on such factors as the needs of the community being served, the savings association's capabilities and business plans, and the degree to which the savings association's performance with respect to one of the loan categories, in fact, balances or compensates for its performance under another category.

(d) *Adjustments.* (1) The OTS may increase a savings association's lending rating if the savings association participates in a program for giving further reviews to loan applications that would otherwise be denied. More credit will be given for such a program if it is done in conjunction with a community organization in such a way that the organization either participates in the review or offers applications from low- and moderate-income individuals that the savings association will consider for credit. The OTS may also increase the rating if the savings association has made a substantial amount of loans requiring creative or innovative underwriting (while maintaining a safe and sound quality) or loans for which there is particular need, such as loans for multifamily housing construction and rehabilitation, loans to start-ups, very small businesses or community development organizations or facilities and loans to very low-income individuals and areas. The OTS will also consider favorably in reaching a rating loans made to third parties, such as community development organizations and intermediaries, that make loans or facilitate lending in low- and moderate-income geographies, even if the loans by the savings association are not reportable under this part, are not made to third parties in the savings association's service area, or are made to third parties that serve service areas other than the savings association's.

(2) In exceptional cases, the OTS may reduce a rating achieved under this section if it concludes that the quantitative measures in this section fail to reflect the savings association's actual record of lending to low- or moderate-income geographies.

(e) *Indirect lending.* (1) If the savings association elects, the OTS will attribute to a savings association its reported attributable indirect loans.

(2) In the usual case, the indirect loans attributable to a savings association equal the savings association's percentage share (based on the level of the savings association's investment or participation) of each loan made through the entity in which the savings association has invested or participated.

(3) At the option of all investing or participating savings associations, an alternative method of attributing loans among the investing or participating savings associations may be established. In no case, however:

(i) May the indirect loans attributed to any savings association exceed its percentage share of the total loans (measured in both number and volume) made directly by the lending entity in which the savings association invested or participated;

(ii) May the investors or participants claim, in the aggregate, indirect loans (measured in both number and volume) in excess of the loans actually made in any geography by the lending entity in which they invested or participated; or

(iii) May any savings association be assigned a disproportionate share of all loans (measured in both number and volume) made in low- and moderate-income geographies by a lending entity in which the savings association invested or participated.

(4) If a savings association elects, indirect loans attributed to a savings association under this paragraph (e) may be included in "reportable loans" for purposes of the Lending Test if a savings association reports them under § 563e.13.

(f) *Rebutting presumptions.* A savings association can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the OTS that the quantitative measures in this section do not accurately present its lending performance because, among other reasons—

(1) The quantitative measures of this section do not reflect the savings association's significant amount of loans benefiting low- and moderate-income geographies or persons;

(2) Other quantitative measures of the savings association's lending performance demonstrate a higher level than that reflected by the measures under this section;

(3) Peculiarities in the demographics of the savings association's service area exist that significantly distort the quantitative measures of this section;

(4) Economic or legal limitations peculiar to the savings association or its service area or unusual general economic conditions have affected its performance and ought to be considered; or

(5) The savings association's performance as measured by the market share component of the Lending Test does not reflect its overall lending performance because of the extraordinarily high level of performance, in the aggregate, by

lenders in the savings association's service area.

§ 563e.8 Investment test.

(a) *Summary.* The Investment Test evaluates savings associations on the amount of their investments benefiting low- and moderate-income geographies or persons.

(b) *Standards.* The OTS rates a savings association's investment performance under the following rebuttable presumptions:

(1) *Outstanding.* Subject to rebuttal, the OTS presumes a savings association is providing qualified investments in an outstanding fashion if the savings association has made such investments in an amount that is substantial as compared to its capital.

(2) *High satisfactory.* Subject to rebuttal, the OTS presumes a savings association is providing qualified investments in a high satisfactory fashion if the savings association has made such investments in an amount that is very significant as compared to its capital.

(3) *Low satisfactory.* Subject to rebuttal, the OTS presumes a savings association is providing qualified investments in a low satisfactory fashion if the savings association has made such investments in an amount that is significant as compared to its capital.

(4) *Needs to improve.* Subject to rebuttal, the OTS presumes a savings association needs to improve its record of providing qualified investments if the savings association has made such investments in an amount that is insignificant as compared to its capital.

(5) *Substantial noncompliance.* Subject to rebuttal, the OTS presumes a savings association is in substantial noncompliance with the Investment Test if the savings association has devoted very little, if any, capital to qualified investments.

(c) *Qualified investments.* Qualified investments are lawful investments that demonstrably benefit low- and moderate-income geographies or persons in the savings association's service area. Qualified investments may include investments:

(1) In support of affordable housing, small business, consumer, and other economic development initiatives;

(2) In community development banks, community development corporations, community development projects, small business investment corporations, minority small business investment corporations and minority- and women-owned financial institutions and other community development financial intermediaries;

(3) In consortia or other structures serving low- and moderate-income individuals and neighborhoods and poor rural areas;

(4) In state and local government agency housing bonds or state and local government revenue bonds specifically aimed at helping low- and moderate-income communities and individuals.

(d) *Capital.* For purposes of the Investment Test, the OTS will evaluate the amount of qualified investments against the amount of the savings association's total risk-based capital.

(e) *Benefit to service area.* In order to be eligible as a qualified investment under paragraph (c) of this section, the activity or entity supported by an investment need not solely benefit the savings association's service area. However, the activity or entity supported by the investment must significantly benefit low- and moderate-income geographies or persons in the savings association's service area.

(f) *Exclusion of indirect loans.* Investments that a savings association has elected to report as indirect lending under the Lending Test are not counted as qualified investments under this Test.

(g) *Grants.* Grants that would constitute qualified investments were they in the form of investments will be treated as qualified investments for purposes of the Investment Test. A savings association may also donate, sell on favorable terms, or make available on a rent-free basis any branch which is located in a predominately minority neighborhood to a minority depository institution or women's depository institution as defined in 12 U.S.C. 2907.

(h) *Adjustments to Investment Test.* The OTS may adjust a savings association's rating under the Investment Test. Adjustments may increase or, in exceptional cases, decrease the rating. In making these adjustments the OTS considers whether:

(1) The savings association's qualified investments are particularly innovative or meet a special need, or if the savings association's activities in connection with its qualified investments have been particularly complex, innovative or intensive for a savings association of its size, or involve innovative partnerships with community organizations (examples include helping to establish an entity to conduct community development activities or providing significant service or assistance in support of a qualified investment); or

(2) The savings association has made a large amount of investments that would be qualified investments but for the fact that they fail to benefit the savings association's service area as required by paragraph (e) of this section,

provided the savings association has not neglected investments that benefit its service area.

§ 563e.9 Service test.

(a) *Summary.* The Service Test evaluates the accessibility of a savings association's branches and the extent to which any savings association provides other services that enhance credit availability. The Service Test does not require a savings association to expand the size of its branching network or to operate facilities at a loss. Appropriate consideration is given to the limitations faced by savings associations with a small number of branches. The OTS evaluates savings associations with multiple branches under the Service Test primarily on the extent to which they offer branches.

(b) *Standards for savings associations.* The OTS rates a savings association's service performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the OTS presumes a savings association is providing service in an outstanding fashion if a substantial percentage of the savings association's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(2) *High satisfactory.* Subject to rebuttal, the OTS presumes a savings association is providing service in a high satisfactory fashion if a very significant percentage of the savings association's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(3) *Low satisfactory.* Subject to rebuttal, the OTS presumes a savings association is providing service in a low satisfactory fashion if a significant percentage of the savings association's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(4) *Needs to improve.* Subject to rebuttal, the OTS presumes a savings association needs to improve its record of providing service if an insignificant percentage of the savings association's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(5) *Substantial noncompliance.* Subject to rebuttal, the OTS presumes a savings association is in substantial noncompliance with the Service Test if very few, if any, of the savings association's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(c) *Adjustments.* If necessary, the OTS adjusts a savings association's rating to reflect more accurately the service

provided to low- and moderate-income geographies and individuals.

(1) *Adjustment to reflect more accurately branch service.* The OTS may adjust a savings association's record upward or downward to reflect more accurately its branch service to low- or moderate-income geographies or individuals. Downward adjustments will occur only in exceptional cases. In determining the appropriateness and degree of any adjustment, the OTS may consider the savings association's record of opening and closing branches. The OTS may also consider whether branches in or readily accessible to low- and moderate-income geographies actually serve low- and moderate-income individuals and whether branches not located in or readily accessible to such geographies are nonetheless serving low- and moderate-income individuals. The OTS may also take into account significant differences in the quantity, quality or types of services offered to low- or moderate-income individuals or geographies and similar considerations.

(2) *Adjustment to reflect other services that promote credit availability.* The OTS may adjust a savings association's rating upward to reflect a strong record of offering or supporting services that promote credit availability for low- and moderate-income geographies or individuals. These services include credit counseling, low-cost check cashing, "lifeline" checking accounts, financial planning, home ownership counseling, loan packaging assisting small and minority businesses, partnerships with community-based organizations to promote credit-related services, extensive provision of ATMs or other non-branch delivery systems that are particularly accessible and convenient to low- and moderate-income geographies or individuals, and similar programs.

(d) *Rebutting presumptions.* A savings association can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the OTS that the quantitative measures in this section do not accurately represent its service performance because, among other reasons—

(1) The quantitative measures of this section do not reflect the savings association's significant degree of services that promote credit availability to low- and moderate-income geographies or persons;

(2) Peculiarities in the demographics of the savings association's service area exist that significantly distort the quantitative measures of this section; or

(3) Limitations imposed by the savings association's financial

condition, economic or legal limitations on branch operation or location, or similar circumstances have affected its performance and ought to be considered.

§ 563a.10 Composite ratings.

(a) *Composite rating standards.* OTS assigns composite ratings as follows:

(1) *Base rating.* For savings associations, the savings association's rating under the Lending Test forms the basis for its composite rating. The base rating under this paragraph is adjusted as described in paragraphs (a)(2) and (a)(3) of this section.

(2) *Effect of investment rating.* For savings associations, the base rating is increased by two levels if the savings association has an outstanding rating in the Investment Test or by one level if the savings association has a high satisfactory rating in the Investment Test.

(3) *Effect of service rating.* The base rating is increased by one level if the savings association has an outstanding rating in the Service Test and is decreased by one level if the savings association has a rating of substantial non-compliance in the Service Test.

(4) *Final composite rating.* Subject to paragraph (b) of this section, the OTS converts the rating resulting from paragraphs (a)(1) through (a)(3) of this section into a final composite rating as described in this paragraph (a)(4). High satisfactory and low satisfactory ratings are both scored as satisfactory in the final composite rating. A savings association that would otherwise receive a composite rating of needs to improve will receive a final composite rating of substantial non-compliance if the savings association received no better than a needs to improve rating on both of its last two examinations.

(b) *Effect of discrimination.* Evidence that a savings association has engaged in illegal lending discrimination may affect the savings association's CRA rating. Notwithstanding paragraph (a) of this section and subject to rebuttal, the OTS assigns a savings association a final composite rating lower than satisfactory if the savings association has—

(1) Engaged in a pattern or practice of illegal discrimination that it has not corrected fully; or

(2) Committed an isolated act of illegal discrimination of which it has knowledge and that it has not corrected fully or is not in the process of correcting fully.

(c) *Multiple service areas.* Where a savings association operates in more than one service area, the OTS conducts Lending, Investment and Service tests in a sample of all of the service areas in

which a savings association operates. The OTS assigns separate composite CRA ratings to the savings association's performance in each of the service areas studied. A list of the service areas in which the savings association's CRA performance was examined, along with the rating assigned to the savings association's CRA record in each of the service areas, shall be included in the savings association's public performance evaluation. The overall rating for the savings association reflects the performance of the savings association in the service areas studied.

§ 563a.11 Alternative assessment methods.

(a) *Small savings association assessment standards.* A small savings association (as defined in § 563e.5(k)) may choose to have the OTS assess its CRA performance under this section rather than the general standards described in §§ 563e.6 through 563e.10.

(1) The OTS presumes a small savings association's overall CRA performance is satisfactory if the savings association:

(i) Has a reasonable loan-to-deposit ratio (a ratio of 60 percent, adjusted for seasonal variation, is presumed to be reasonable) given its size, its financial condition, and the credit needs in its service area;

(ii) Makes the majority of its loans in its service area;

(iii) Has a good loan mix (i.e., makes, to the extent permitted by law and regulation, a variety of loans to customers across economic levels);

(iv) Has no legitimate, bona-fide complaints from community members;

(v) Has not engaged in a pattern or practice of illegal discrimination that it has not corrected fully; and has not committed isolated acts of illegal discrimination, of which it has knowledge, that it has not corrected fully or is not in the process of correcting fully; and

(vi) In the case of a savings association already subject to reporting home mortgage lending data under HMDA, 12 U.S.C. 2801 et seq., has a reasonable geographic distribution of such loans.

(2) A small savings association that meets each of the standards for a satisfactory rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of outstanding. In assessing whether a small savings association's CRA record is outstanding, the OTS will consider the extent to which the savings association's loan-to-deposit ratio, its lending to its service area, and its loan mix exceed the standards for a satisfactory rating. In

addition, at the option of the savings association, the OTS will evaluate:

(i) Its record of making qualified investments (as described in § 563e.8(c)); and

(ii) Its record of providing branches, ATMs, and other services that enhance credit availability or in other ways meet the convenience and needs of low- and moderate-income persons in its service area.

(3) A small savings association that fails to meet or exceed all of the standards for a satisfactory rating under this paragraph is not presumed to be performing in a less than satisfactory manner. Rather, for those savings associations, the OTS conducts a more extensive examination of the savings association's loan-to-deposit record, its record of lending to its local community, and its loan mix. The OTS will also contact members of the community, particularly in response to complaints about the savings association, and review the findings of its most recent fair lending examination. In addition, at the option of the savings association, the OTS will assess:

(i) Its record of making qualified investments (as described in § 563e.8(c)); and

(ii) Its record of providing branches, ATMs, and other services that enhance credit availability or in other ways serve the convenience and needs of low- and moderate-income persons in its service area.

(4) *Multiple service areas.* If a small savings association operates in more than one service area, the OTS evaluates the savings association's performance in all of those service areas.

(b) *Strategic plan assessment.* (1) As an alternative to being rated after the fact under the lending, service and investment tests or the small savings association assessment method, a savings association may submit to the OTS for approval a strategic plan detailing how the savings association proposes to meet its CRA obligation.

(i) The plan must be submitted at least 3 months prior to the proposed effective date of the plan so that the OTS has sufficient time to review the plan and to determine whether to approve it.

(ii) A savings association submitting a proposed plan for approval must publish notice in a newspaper of general circulation in each of its service areas stating that a plan has been submitted to the OTS for review, that copies of the plan are available for review at offices of the savings association, and that comments on the proposed plan may be sent to the appropriate Regional Director.

(iii) The OTS assesses every plan under the standards of this part and will not approve a plan unless it provides measurable goals against which subsequent performance can be evaluated, and the proposed performance is at least overall satisfactory under the standards of this part.

(iv) No plan may have a term that exceeds two years. Further, during the term of a plan, the savings association may petition the OTS to approve an amendment to the plan on grounds that a material change in circumstances has made the plan no longer appropriate.

(2) The OTS will assess the performance of a savings association operating under an approved plan to determine if the savings association has met or exceeded the plan goals. However, if the savings association fails to meet or exceed the preponderance of the measurable goals set forth in the plan, its performance will be evaluated under the lending, service and investment tests or the small savings association assessment method as applicable.

§ 563e.12 Service area—delineation.

(a) The effective lending territory of a savings association defines the savings association's service area. The effective lending territory is that area around each office or group of offices where the preponderance of direct reportable loans made through the office or offices are located.

(b) Subject to rebuttal, a savings association's service area is presumed to be acceptable if the area is broad enough to include low- and moderate-income geographies and does not arbitrarily exclude low- and moderate-income geographies.

(c) A savings association can show that its service area is acceptable despite its failure to satisfy the criteria of paragraph (b) of this section by clearly demonstrating to the satisfaction of the OTS that the criteria of paragraph (b) of this section are inappropriate because, for example, there are no low- or moderate-income geographies within any reasonable distance given the size and financial condition of the savings association.

(d) The OTS can reject as unacceptable a service area meeting the criteria of paragraph (b) of this section if the OTS finds that the service area does not accurately reflect the true effective lending territory of the savings association or reflects past redlining or illegal discrimination by the savings association.

(e) A savings association shall delineate more than one service area

when the geographies it serves extend substantially across state boundaries, or extend substantially across boundaries of a Metropolitan Statistical Area.

(f) A savings association whose business predominantly consists of serving persons who are active duty or retired military personnel or their dependents and who are located outside its local community or communities may delineate a "military community" for those customers as a service area.

(g) A savings association shall compile and maintain a list of all the geographies within its service area or areas and a map of each service area showing the geographies contained therein.

§ 563e.13 Loan data—collection, reporting, and disclosure.

(a) Every savings association, except small savings associations electing the small savings association assessment method, shall collect and maintain the following data on its government insured and other reportable loans: number of written applications, number of application denials, number and amount of approvals, number and amount of loans purchased, and number and amount of indirect loans the savings association elects to have evaluated using the lending test. All information is to be provided by the geography where the loan is located.

(1) A savings association choosing to be rated under the strategic plan assessment described in § 563e.11(b) is not relieved from its obligation to report the data as required by this section.

(2) The information required under this section shall be collected:

(i) Beginning July 1, 1994, for the remaining six months of 1994. A summary of the savings association's data for the six months shall be submitted to OTS by January 31, 1995.

(ii) Beginning January 1, 1995, on an annual basis, a summary of the savings association's data collected under this section shall be submitted to OTS by January 31 of the following year. The summary data shall be submitted in the format prescribed in appendix A of this part.

(3) Small business loan data shall be collected, reported, and disclosed in the summary format described in this paragraph (a) for the following categories: small businesses with average annual gross receipts of less than \$250,000, those with average annual gross receipts of \$250,000 or more and less than \$1 million; those with average annual gross receipts of \$1 million or more and less than \$10 million; and manufacturing businesses with average annual gross receipts of

\$10 million or more and less than 500 employees.

(4) Home mortgage loan data shall be collected, reported, and disclosed in the summary format described in this paragraph (a) for the following categories: 1-4 family home purchase, 1-4 family home improvement, 1-4 family refinancings, and multi-family loans.

(b) The OTS will make summary data collected pursuant to this section available to the public and to the savings associations. The data will be used by the OTS to apply the Lending Test under § 563e.7.

(c) For purposes of this section, a loan is located in a geography as follows:

(1) Consumer loans are located in the geography where the borrower resides.

(2) Loans secured by real estate are located in the geography where the relevant real estate is located.

(3) Small business loans are located in the geography where the headquarters or principal office of the business is located.

(4) Small farm loans are located in the geography where the farm property is located. (d) A savings association is not required to report under this section indirect loans unless the savings association elects to have the indirect loans attributed to it as described in § 563e.7(e) for purposes of the Lending Test. If a savings association elects to report its indirect loans, it shall report all attributable indirect loans outside low- or moderate-income geographies as well as loans inside such geographies.

§ 563e.14 Public file and disclosure.

(a) Savings associations shall maintain files that are readily available for public inspection containing the information required by this section.

(b) Each savings association shall include in its public file the following information—

(1) All signed, written comments received from the public for the current year and past two calendar years that specifically relate to the savings association's performance in helping to meet the credit needs of its community or communities, and any response to the comments by the savings association;

(2) A copy of the public section of the savings association's most recent CRA Performance Evaluation prepared by the OTS. The savings association shall place this copy in the public file within 30 business days after its receipt from the OTS; and

(3) A list of the savings association's service areas and the geographies within each service area and a map of each service area showing the geographies contained therein.

(c) A savings association that is not a small savings association shall include in its public file the lending data the savings association has reported to the OTS under § 563e.13 for the current and past two calendar years.

(d) A small savings association shall include in its public file the savings association's Loan-to-Deposit ratio computed at the end of the most recent calendar year.

(e) A savings association that has been approved to be assessed under a strategic plan as described in § 563e.11(b) shall include in its public file a copy of that plan.

(f) Each savings association that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet community credit needs.

(g) A savings association shall maintain its public file or required portions of the file at the following offices—

(1) Home offices shall have a copy of the complete public file; and

(2) Branches shall have copies of all materials in the public file relating to the service area in which the branch is located.

(h) A savings association shall provide copies of the information in the public file to members of the public upon request. A savings association may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

§ 563e.15 Public notice by savings associations.

A savings association shall provide, in the public lobby of its home office and each branch, the public notice set forth in this section. Bracketed material shall be used only by savings associations having more than one service area. The last two sentences shall be included only if the savings association is a subsidiary of a holding company and the last sentence only if the company is not prevented by statute from acquiring additional savings associations.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Office of Thrift Supervision (OTS) evaluates and enforces our compliance with our obligation to help meet the credit needs of this community consistent with safe and sound operations. The OTS also takes our CRA performance into account when deciding on certain applications submitted by us. Your involvement is encouraged. You should know that:

You may look at and obtain in this office information on our performance in this community. This information includes a file

of all signed, written comments received by us, any responses we have made to the comments, evaluations by the OTS of our CRA performance, and data on the loans we have made in this community during the past two years. (Current CRA information on our performance in other communities served by us is available at our home office, located at _____.)

You may send signed, written comments about our CRA performance in helping to meet community credit needs to (title and address of savings association official) and to the Regional Director (address). Your letter, together with any response by us, may be made public.

You may ask the Director of the OTS to look at any comments received by the Regional Director. You also may request from the Regional Director an announcement of our applications covered by the CRA filed with the OTS. We are a subsidiary of (name of holding company), a savings and loan holding company.

§ 563e.16 Publication of planned examination schedule.

The OTS will publish at least 30 days in advance of the beginning of each calendar quarter a list of the savings associations that are scheduled for CRA examinations in that quarter. Any member of the public may submit comments to the OTS regarding the CRA performance of any savings association whose name appears on the list.

§ 563e.17 Effect of ratings—corporate applications.

(a) The OTS takes into account the applicant's record of performance in considering applications for—

(1) Establishment of a domestic branch or other facility with the ability to accept deposits;

(2) Relocation of the home office or a branch office;

(3) Merger or consolidation with or the acquisition of assets or assumption of liabilities of a federally-insured depository institution; and

(4) A Federal thrift charter.

(b) An applicant for a Federal thrift charter (other than a federally-insured depository institution) shall submit a description of its proposed CRA performance when the application is made. In considering the application, the OTS takes into account the savings association's proposed CRA performance.

(c) In considering CRA performance in a corporate application, the OTS will take into account any views expressed by State or other Federal financial supervisory agencies or other interested parties, which are submitted in accordance with the applicable public comment procedures or § 563e.16.

(d) In the OTS's consideration of the savings association's CRA record in a corporate application, the CRA rating

assigned to a savings association is an important, and often controlling, factor. However, the rating is not conclusive evidence of performance. Absent other evidence on performance, CRA ratings generally affect corporate applications as follows:

(1) An "outstanding" rating generally will result in a finding that the CRA aspect of the application is consistent with approval of the application and will receive extra weight in reviewing the application.

(2) A "satisfactory" rating generally will result in a finding that the CRA aspect of the application is consistent with approval of the application.

(3) A "needs to improve" rating generally will be an adverse factor in the CRA aspect of the application, and, absent demonstrated improvement in the savings association's CRA performance or other countervailing factors, generally will result in denial or conditional approval of the application.

(4) A "substantial noncompliance" rating generally will be so adverse a finding on the CRA aspect of the application as to result in denial of the application.

§ 563e.18 Transition rules.

(a) *Data collection.* The data collection and reporting requirements of § 563e.13 will go into effect July 1, 1994. Data collected from July 1, 1994 to year end must be reported to the OTS no later than January 31, 1995. Thereafter savings associations will collect data on an annual basis and the data shall be reported no later than January 31 of the following year.

(b) *Assessment standards.* Evaluation under the new standards is mandatory after July 1, 1995, except that until April 1, 1996, for good cause, a savings association may request the OTS to evaluate it under the standards in place prior to (effective date of final regulation). During the time period from April 1, 1995 until July 1, 1995, a savings association may, at its option, choose to be evaluated under the new standards or under the standards in place prior to (effective date of final regulation).

(c) *Strategic plan.* If a savings association elects to be evaluated under an approved strategic plan during the transition period, a savings association may submit a strategic plan anytime after (effective date of final regulation).

(d) *Corporate applications.* If the first rating a savings association receives under the new standards (whether that rating is given during the transition period or after the new standards become effective) is more than one rating category below the last rating the

savings association received prior to (effective date of final regulation), the OTS will not disapprove any corporate application or take any other enforcement action against the savings association based on that lower rating if the OTS has determined that the drop in the savings association's rating occurred despite the savings

association's good faith efforts to perform at least satisfactorily under the new standards.

8. Appendix A to part 563e is added as set forth in the common preamble.

Appendix A to Part 563e—CRA Loan Data Format

Dated: December 6, 1993.

By the Office of Thrift Supervision.

John F. Downey,

Deputy Director for Regional Operations.

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BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

MEMO

DATE: December 7, 1993

TO: Board of Governors

FROM: Staff *[Signature]*

SUBJECT: Community Reinvestment Act Reform Project: Proposed
Amendments to Regulation BB

ACTION REQUESTED: Approval to publish for comment a proposal to adopt a new Regulation BB, which implements the Community Reinvestment Act.

SUMMARY

The Community Reinvestment Act (CRA) requires the federal financial supervisory agencies to encourage depository institutions to help meet the credit needs of their entire community, including low- and moderate-income areas. The agencies must assess this performance during examinations of the institutions they supervise, and consider those institutions' CRA records when processing applications for expansion. The law does not, however, specify how institutions are to satisfy their responsibilities.

In 1978 the Board and the other agencies adopted common regulations to implement the Act. To avoid directly allocating credit, these regulations focused in significant measure on factors which tended to be directed at the process (outreach,

* G. L. Garwood, G. Loney, G. Canner, S. Alvarez, J. Hodgetts

marketing, etc.) used by institutions to assess community credit needs and to respond to those needs with appropriate services.

Over the years, concerns have been raised that too much emphasis is being placed on paperwork and procedure (as opposed to results), that agency supervision is inconsistent, and that the burdens of compliance are excessive. In July 1993, the President asked the agencies to develop new CRA regulations and examination procedures to provide more objective, performance-based assessment standards that minimize compliance burden while improving performance. In accordance with the President's request, the agencies held public hearings across the country to gather information on the CRA and its enforcement to help them develop a revised approach.

As a result, the agencies have jointly prepared a proposed regulation designed to implement the CRA in a manner consistent with the President's request. The draft regulation would provide more direct guidance to banks on the nature and extent of their CRA responsibilities, and the means by which their obligations will be assessed and enforced. The proposed regulation seeks to emphasize performance, rather than process; provide greater predictability and promote consistency in examinations; and reduce the compliance burden on some institutions. Specifically, the proposal would (1) create a new numbers driven system for assessing CRA performance, which would include measurements for lending, services, and investments; (2) require institutions to collect additional data for small

businesses, small farm and certain consumer loans; (3) set out different evaluation standards and methods for small institutions to try to minimize burden; and (4) establish a new approach to enforcement that would subject institutions to full enforcement action based solely on the institution's CRA rating.

Although supporting the idea of publishing this proposal for public comment, the staff has a number of concerns and reservations about its elements. It will involve very extensive new data collection that will be costly for many institutions and the agencies. The quantitative evaluation system that is designed to substitute for the current judgmental evaluation is extremely complicated and seems likely to produce some anomalous results. The agencies' examiners will probably find it necessary to consider subjective factors to correct inequities in arriving at a rating. To avoid credit allocation and recognize local conditions, the quantitative measures are descriptive in nature (e.g., "substantial") rather than specific numerical amounts or ratios. Examiners will have to apply judgment as to the meaning of the terms, thus raising many of the same issues that prompted this review of CRA in the first place. The proposed small institution provision will relieve a high percent of banks from the more rigorous enforcement afforded larger institutions, and is very far reaching and perhaps excessive.

However, the agencies are committed to exploring the feasibility of a new approach and having a proposal out for

public comment will sharpen the debate over how best to proceed. Given the extent of the concerns about the current system and the commitment of the other agencies to airing this proposal for more formal comment, we recommend that the Board publish for comment conforming changes to its Regulation BB.

A common agency draft Federal register notice is found on page 45. A draft Federal Reserve Regulation is found on page 89.

DISCUSSION

I. Background

The Community Reinvestment Act was enacted into law in 1977, primarily to encourage depository institutions to lend in all areas of their communities, including low- and moderate-income areas. The purpose of the law is to require the financial supervisory agencies to use their supervisory authority to encourage institutions to help meet the credit needs of the local communities, consistent with safe and sound practices, but provides no guidance on how this is to be done. It does not explain how a financial institution's community is determined, how to measure credit needs, how to define low- and moderate-income communities, or what constitutes satisfactory compliance.

The joint regulations adopted by the four agencies in 1978 reflected several principles that thus far have guided the administration of the CRA--that the agencies should try to avoid the possibility of credit allocation, that institutions in

different communities can approach the CRA in a variety of ways, and, thus, that it is important to maintain maximum flexibility. To deal with the lack of standards in the law, the regulation set out 12 CRA performance factors the agencies would use to assess financial institutions' CRA records. (Attachment A)

The agencies regularly assess a bank's record of helping to meet local credit needs through examinations. This covers technical compliance with the regulation and a qualitative evaluation of an institution's performance.¹ The agencies have measured performance by using several factors including activities to ascertain the credit needs of the community; marketing activities to make the community aware of the credit services offered; the geographic distribution of credit; evidence of illegal credit practices; and the participation in community development programs.

Increased focus on CRA

In recent years CRA has gained considerable attention. Cutbacks in federal, state, and local government programs to promote economic development have shifted the focus to public/private partnerships as a source of funding. The potential of banks to play a bigger role in lending to low- and moderate-income areas has gained greater recognition as a result

¹ The present regulation imposes a few specific technical requirements. Institutions must formulate and adopt a public "CRA statement" delineating the communities they serve and setting out certain other information. Institutions must maintain a file of public written comments about the institution's CRA performance, and publicly display a CRA notice indicating the availability of the institution's CRA statement.

of the shift. In 1989 the Congress mandated that CRA evaluations be made public, thus highlighting the activities (or lack of them) by institutions. Over the years, community groups have learned to use the protest process to good advantage, and have been aggressive in raising CRA issues in times of substantial applications activity. The publication of more detailed HMDA data beginning in 1991 has raised questions about the evenhandedness of lending decisions and the service to poorer communities.

This increased interest in CRA has been accompanied by considerable criticism of the agencies' approach to its administration. The industry complains of too much emphasis on paperwork in a process-oriented evaluation system, and about the lack of clear standards. Small banks object to the burden of compliance, and argue that CRA is unnecessary given the natural orientation of community banks. Community groups allege that enforcement has been weak, citing the few applications denied on CRA grounds and the fact that about 90 percent of institutions receive a "satisfactory" or better examination rating.

Over the years the agencies have sought to deal with these issues by providing increasing guidance about compliance standards; downplaying paperwork requirements to clarify that results, not process, determine an institution's evaluation; instructing examiners to be sensitive to the special burdens on small institutions and improving enforcement techniques. Nevertheless, both institutions and community groups have

remained very vocal about their concerns, and the agencies have repeatedly been questioned on their records before congressional hearings.

President's request

Reacting to these concerns, in July 1993, President Clinton called for reform by the agencies. He asked them to develop more objective, performance-based assessment standards that minimize compliance burden while improving performance. He wanted these changes carried out through regulatory means, with a target date of January 1, 1994.

To assist in the drafting of a new CRA regulation, the agencies first held two private meetings, one with industry groups and the other with community groups, to provide participants an opportunity for a frank discussion of the problems. Next, they held a series of public meetings around the country to gather further information on how best to rework the regulation.² More than 250 witnesses (including bankers, local government officials, community and consumer groups, small business owners, and individuals) provided oral or written statements at the hearings. While numerous issues were raised, some common themes emerged.

Most commenters urged the agencies to adopt a CRA evaluation system that is more performance-based. Financial

² Public meetings were held in Washington, D.C., San Antonio, Los Angeles, Albuquerque, New York, Henderson (North Carolina), and Chicago between August 10 and September 22.

institutions expressed great frustration that it is impossible to know, in advance, what types and amounts of performance will produce a particular rating. Institutions and community representatives faulted the agencies for lack of consistency in the CRA reviews. Many witnesses, however, rejected the idea that a strict formula should be used on a national basis. Witnesses believed that such an approach could lead to the establishment of "ceilings" on lending activities aimed at low- and moderate-income areas, or could result in credit allocation.

Witnesses also noted that institutions may not be receiving enough credit for investment activities, such as investments in other community development lenders. Wholesale banks have suggested that such activities by them should be given great weight because of their unique business strategy and product offerings and their difficulty of complying with CRA through more traditional local retail lending.

Most community organizations and many local government officials pointed to a need to collect more data from institutions, similar to that collected for home mortgage-related loans under the Home Mortgage Disclosure Act. Witnesses noted that lack of data makes it extremely difficult for the public (and the agencies) objectively to evaluate an institution's entire performance. Community group witnesses urged the collection of data from institutions on their small business loans, in particular arguing the need to show geographic distribution. Some also wanted information about the race or

ethnicity of the borrower. Some witnesses believed that data should be collected on all consumer loans, including automobile, credit card, and personal loans. Other witnesses, particularly those representing small institutions, expressed concern about the burden of any new data collection requirements, and questioned whether the benefit of collecting the data would outweigh the costs. In general, small institutions criticized the costs imposed by the current law, and urged the agencies to reduce the documentation requirements.

Several witnesses, particularly from the industry, stated that the regulators needed to provide incentives for outstanding performance. Witnesses outside the industry, however, were generally opposed to the creation of a "safe harbor" from CRA protests based on ratings assigned by the regulatory agencies. Other witnesses urged the agencies to permit more public input into the evaluation process.

A number of witnesses believed that institutions should be able to develop "strategic plans" listing specific goals to meet CRA objectives. Under this approach, agencies would review plans of institutions and, if approved, the institution's CRA performance would later be measured against how well it achieved the goals set out in the plan.

Overall, almost all the witnesses called for change, although there were many differences regarding the specifics.

Consumer Advisory Council

In October, the Board's Consumer Advisory Council (CAC) discussed the CRA reform project. The Council identified thirteen points that it encouraged the Board to consider in evaluating changes to the CRA. Among other items, the Council recommended that institutions develop a CRA business plan against which the institution's performance could be measured, that a five-tiered rating system (rather than the current four-tiered system mandated by the statute) be developed, and that significant statistical imbalances in an institution's lending pattern should result in a less-than-satisfactory rating. (A complete list of the Council's recommendations is Attachment B.)

II. Proposed Regulation

Performance Standards

The agencies have long been concerned that any greater degree of specificity than is currently contained in the CRA regulations and policy statements would result in credit allocation, which the Act's legislative history clearly indicates was not contemplated by the law. But as indicated, both lenders and community advocates contend that the assessment efforts of the agencies has been too driven by concerns about process and documentation rather than results. Balancing these competing concerns has been the chief challenge of this reform effort.

This proposal attempts to address these concerns, and strike this balance, by focusing the agencies' assessment efforts on three critical elements of lenders' efforts to serve low- and moderate-income communities. Those elements are **lending, services, and investments**. However, in line with the CRA's primary focus, the base element of the assessment would be the lending factor. The service and investment tests would serve only to modify the assessment a retail lender received under the lending test.

Furthermore, the rating levels achieved by application of the three tests could be adjusted by the examiner to take account of certain other factors, such as the lender's loans to community development organizations that were not otherwise reflected in the data used to make the basic calculation. And the results of applying this test would only be presumptive, subject to rebuttal by the lender if it could show, for example, that the results obtained by application of the standard test was not truly reflective of its lending or did not adequately take into account particular demographic or economic factors in its market. Consequently, although this formulation seeks to move the CRA assessment system toward a more concrete standard, a great deal of examiner judgment would remain.

Lending test

Under this proposal, for the first time, the regulation would stipulate a lending performance standard as a baseline for the ultimate CRA rating. That standard would be **the degree to**

which the lender's share of reported loans made in low- and moderate-income areas of its service area compares, favorably or unfavorably, to its share of reported loans in the other parts of its service area. In other words, the agencies will expect a lender to achieve lending results in low- and moderate-income areas (measured by dollar volume or number of loans), when compared to its competitors, that equal or exceed the results it attains competitively in the other parts of its service area.³ Words, not numbers are used to define the various levels of performance--e.g. lending in low- and moderate-income areas that "significantly exceeds" the lender's share in the other parts of its service area qualifies for an "outstanding" rating.

In addition, the lender's overall pattern of lending will be reviewed to evaluate the distribution of its loans throughout the low- and moderate-income areas of its service area, or to evaluate the percentage of its loans that go to such areas. If, for example, the lender attains an outstanding level of performance on the first leg of the assessment (meaning it is lending significantly more, on a percentage basis, in the low- and moderate-income areas than it is in the other parts of its service areas) but fails to achieve a "good" distribution of its loans throughout the low- and moderate-income areas of its

³ The measurement of "market share" is actually a measurement of the comparative share of loans by those who must report under the scheme. Consequently, those who are not subject to CRA (e.g. consumer finance companies) or are below the threshold of reporting (e.g. independent banks under \$250 million assets) are not counted in the calculation except to the extent they already file HMDA data. This may mean that in some localities much of the "market" for some types of lending will not be counted.

community, or fails to make a significant percentage of its own loans in those parts of its service areas, its rating will be lowered to the appropriate level.

The lending test will be run separately for the major categories of reportable loans--small business, consumer and home mortgage. In addition, the tests will be made separately for the dollar volume and numbers of loans. A composite rating will be determined taking into account all these calculations. At the institution's option, credit will also be given on a proportionate basis for loans made by third parties in whom the lender invests. (See Attachment C for a visual representation of the scheme.)

Service test

Once a conclusion is reached under the lending test, the examiner will look at the service test. The service test focuses primarily on the degree to which the lender's branches are located in, or are "easily accessible" to, low- and moderate-income portions of the service areas. The proposal singles out branch location as a critical element because branches are an important gateway to the lender's credit and other services.

The proposal contains a fairly simple, but undefined, test for achieving a presumptive rating under the service test. A lender who has a "substantial percentage" of its branches in, or easily accessible to, low- and moderate-income areas will be given an "outstanding" rating, whereas a lender which has "very

few, if any" branches so located would receive a "substantial noncompliance" rating. There would be three levels of ratings, variously described, in between. Once a conclusion about the rating is reached by applying these descriptive terms to the lender's branch system, necessary adjustments can be made. For example, an adjustment may be made to reflect a conclusion that the branches, no matter where situated, do not truly serve low- and moderate-income areas, or to reflect the fact that the lender offers other services, such as low cost checking accounts or government check cashing. The examiner would make a judgment whether these factors are such as to warrant adjusting the service test rating either downward or upward, respectively.

An "outstanding" rating for the service test will justify an increase of one level in the base rating achieved by a retail lender under the lending test (or a wholesale or special purpose lender under the investment test), and a "substantial noncompliance" rating on the service test will justify a decrease in the base rating by one level. Any rating on the service test between "outstanding" and "substantial noncompliance" will have no effect on the overall rating. The system was constructed in this manner in order to assure that the lending rating maintains its primacy, but to allow for an adjustment of the overall rating to reflect particularly good or bad performance in the service area.

As is the case with the lending test, the various rating levels are defined descriptively, and not through the use

of hard and fast quantitative criteria. The rating is presumptive and subject to rebuttal. Once again, this leaves room for flexibility and the ability to make adjustments.

(See Attachment D for more detail on the scheme.)

Investment test

The third major leg of the assessment system is the investment test. Many lenders' primary business is not the type of retail lending that is the mainstay of CRA, yet they have been able to address their CRA responsibilities through investments in entities that do that sort of lending or that facilitate it by others. These third parties range from a wholly-owned community development corporation subsidiary of a bank to a multi-lender low-income housing lending consortium. These parties would include the mortgage or consumer finance subsidiary of a bank or a bank holding company if the financial institution chooses to organize itself to make mortgage or consumer loans in low- or moderate-income neighborhoods through such an entity. The purpose of this leg of the assessment system is to clearly indicate that activities of this type will be evaluated favorably in the examination process and can help raise the lender's overall rating.

In fact, for wholesale and special purpose banks (such as credit card banks) this test, rather than the lending test, will be the baseline rating for the organization. The rating was structured in this fashion to take account of the fact that these types of entities do not typically compete for local

business in the types of loans. Furthermore, for purposes of calculating this part of the rating, investments by wholesale and special purpose banks anywhere in the country would be considered favorably. This provision reflects the notion that such lenders typically have a larger geographic cast to their business and, therefore, cannot be said to have a local community in the usual sense.

To get investment credit, retail banks, however, must make at least some of their investments in entities that serve their local communities. Retail banks can also choose to have the loans made by the third parties in which they have made an investment counted toward the lending portion of their assessment, instead of toward a separate investment rating. The proposal contains provisions to avoid double counting of the loans in such cases, and for allocating the loans among various investors.

The rating for this leg of the assessment is based on a comparison of the amount of such investments to the lender's risk-based capital. For example, an "outstanding" rating will be given for a lender who has made such investments in an amount that is "substantial" when compared to its risk-based capital. A "substantial noncompliance" rating will be given if the lender has "devoted very little, if any, capital" to such investments. A retail lender that achieves an "outstanding" rating on the investment test will be given a two level increase in the rating it obtained under the lending test. A lender that achieves a

"high satisfactory" rating for its investments would be given a one level increase of the rating it achieved on the lending test. (See Attachment E.)

Composite rating

The overall rating for an institution will depend on a combination of many factors--performance on the lending test for each category of reportable loans, adjustments possible under the service and investment tests, and the possibility of judgmental overrides to any of the factors to take into account special aspects of the institution or its market. Moreover, this rating will be determined on a service area by service area basis for each locality visited by examiners as they sample the institution's performance.⁴ Each service area will be given a separate rating, and the examiners will also produce a composite rating for the institution as a whole. One public evaluation document will be produced for the entire institution reflecting each of the service areas the examination encompasses. (See Attachment F for a visual representation of this process.)

Data Collection

Perhaps the most significant new feature of this proposal is the requirement that lenders with more than \$250 million in assets (or that are subsidiaries of holding companies with more than \$250 million in bank or thrift assets) must

⁴ A "service area" is the effective lending territory where the preponderance of loans are made. It is expected to be broad enough to include low- and moderate-income areas and to not arbitrarily exclude low- and moderate areas. Many institutions will have multiple service areas.

collect, and report to their supervisory agency, summary data concerning the number and amount of mortgage, small business, and consumer loans (excluding motor vehicle, credit card and other types of open-end credit) and applications for such loans. The data would indicate the geographic location of the loans and applications (e.g., by census tract), the number of such loans made, and the dollar volume of the loans in each geographic area. The summary data would have to be reported to the supervisory agency by January 31 of the year following the year for which it is collected. The data thus collected would be used to compute the "market share" calculations for purposes of the lending test, discussed above. The data would also be disclosed to the public.

The data will include a number of features. For each category of loans (i.e., mortgages, small business, and consumer loans) the location of the loan or application must be specified. Small business loans will be divided into four levels--those to businesses with under \$250,000 in gross revenues, those with between \$250,000 and \$1 million, those with over \$1 million and under \$10 million, and, with respect to manufacturing concerns with fewer than 500 employees, at all levels of revenue including in excess of \$10 million. For each category of loans, the lender would be required to report, in addition to the location of the loan, the number and amount of loans made, the number and amount of loans purchased, the number of applications, and the number of denials. Unlike HMDA, no

data on the race, income or gender of individual applicants would be required.

Small lenders

This proposal would not exempt small lenders from a CRA assessment but will provide a streamlined review process. Banks and thrifts under \$250 million in assets (or that are subsidiaries of holding companies that have less than \$250 million of bank and thrift assets) would undergo a more limited review, and, perhaps most significantly, would not have to collect the lending data discussed in the preceding section.

This proposal would call for a presumptive rating of "satisfactory" for a small lender that (a) has a reasonable loan to deposit ratio (60 percent, taking into account seasonal variations, is presumed to be reasonable) given its size, its financial condition, and the credit needs of its community; (b) makes the majority of its loans in its service area; (c) has a "good" loan mix (i.e., makes loans of all types to customers across economic lines); (d) has no bona fide complaints from community members; and (e) since its last examination has not been involved in discriminatory lending conduct. Applying the 60 percent loan to deposit test, the \$250 million cut off would mean that approximately 52 percent of banks (about 4,430 institutions) would have the benefit of the small bank provisions.

The small institution may elect to try for a higher rating under the proposal, and would be given a closer review

for that purpose. In addition, small banks or thrifts that fail the basic test will be given a closer look, similar to the type of review given to larger banks, but less intrusive and without the data collection, to determine their rating. (See Attachment G.)

Under the proposal many smaller lenders will not be subjected to a full-scope CRA examination (although examiners will still have to conduct a review to determine whether some of the criteria are met), which should reduce their burden of addressing their responsibilities under this law. At the same time, the proposal is designed to assure that sufficient supervisory incentive remains for small lenders to continue to make the kinds of loans needed in their communities.

CRA plan

As an alternative to receiving a review of its performance under the general tests for lending, services, and investments, the proposal would allow the lender to opt to have its CRA program reviewed in advance by submitting it to its regulator for approval. The plan must have been offered for public comment. In order to receive approval, the plan must contain measurable performance factors that, if met, would garner at least a satisfactory rating if judged under the general tests for lending, services, and investments.

Performance under a plan would not relieve a lender from its responsibility to collect and report data on its lending. If the lender failed to meet the preponderance of measurable goals

in its plan, it would be evaluated under the general tests in the regulation. (See Attachment H.)

Enforcement

Currently, insured depository institutions that do not anticipate being involved in the expansion proposals may have felt some safety in providing limited attention to CRA performance because of uncertainties about whether poor ratings have any supervisory consequence outside of the regulatory application process. The proposal seeks to address this by defining a legal obligation that insured depository institutions must help meet the credit needs of the community and by establishing that low CRA performance ratings are a violation of the regulation. The proposal would, by regulation, deem institutions that receive a substantial noncompliance rating to be in violation of the law, and, therefore, subject to the full enforcement process. The proposal also would authorize enforcement agencies to subject institutions with a "needs to improve" rating to enforcement action.⁵

This new approach is based on the admonition in the Community Reinvestment Act that the agencies encourage all insured depository institutions to help meet the credit needs of the community. The new proposal would achieve this result by, in effect, requiring all insured depository institutions to achieve at least a satisfactory CRA performance rating.

⁵ Two ratings of "needs to improve" will trigger the enforcement mechanisms applicable to the "substantial noncompliance" category.

The proposal also stipulates with more specificity than current regulations how CRA ratings will be considered in the applications process. In particular, absent other information regarding CRA performance, the proposal states that an "outstanding" rating would be given extra weight in reviewing applications; a "satisfactory" rating would generally be consistent with approval of the proposal; a "needs to improve" rating would generally be an adverse factor and, absent demonstrated improvement in the bank's CRA performance or other countervailing factors, would result in denial or conditional approval of the application; and a "substantial noncompliance" rating generally would be so adverse a finding on the CRA aspect of the application as to result in denial of the application.

III. Major Issues

The proposed regulation, if implemented, would move the industry and the agencies in the direction of a more objective and data-based CRA evaluation in important ways. However, given the ground it attempts to cover, the proposal inevitably raises a number of important problems, the most critical of which are discussed below.

Assessment criteria

The structure of the assessment criteria causes a number of concerns. First, the market test, comparing the bank's market share in low- and moderate-income areas with its share in the other parts of its service area, though

conceptually straight-forward, causes a number of practical problems. For example, the so-called "market share" can be calculated only in reference to the loans made in the service area by other lenders that are required to report their loans. This will not include loans by non-depositories (e.g., consumer finance companies) or by small depositories (under \$250 million in assets) except to the extent they are already reporting HMDA data.⁶ In many cities, the percentage of banks who will be included in the comparison for other than home lending is low.⁷ This means that there is a considerable risk of anomalies arising from the calculation.

For example, a large reporting bank that operates in a town that otherwise only has small non-reporting banks and thrifts, will never be able to exceed its "market share" in the upper income areas in the low- and moderate-income areas because, by definition, its market share in the upper income areas and the low- and moderate-income areas are both 100 percent. Consequently, the only way this institution's efforts under the lending test can go beyond the satisfactory level is by the examiner overriding the scheme. It seems very likely that numerous such anomalies will arise in applying these tests,

⁶ Depository institutions with offices in MSAs that have more than \$10 million in assets, and mortgage companies that make more than 100 loans, must report HMDA data.

⁷ In a number of MSAs there will be four or fewer reporters--e.g. cities like Albany, GA., Albuquerque, N.M., Cheyenne, WY., Gainesville, FL., Green Bay, WI., Las Cruces, N.M., Mansfield, OH., Midland, TX., Owensboro, KY., and Rochester, MN.

requiring the examiners to adjust for them. The result may be heavy data collection and complex calculations that are sometimes misleading and may require the subjective judgment that is the source of the current CRA complaints.

Second, the test relies on comparing one institution's relative performance with others. Since the activities of all institutions are constantly changing, the test will have a fluid quality. If the goal is to allow institutions to know with some certainty how they will be evaluated, the "after the fact" nature of the scheme may not satisfy this objective very well. Moreover, the competitive evaluation approach may encourage attempts to "game" the system, for example, by large banks underpricing products to capture market share.

Third, as indicated by the attached diagrams of the rating process, it is extremely complicated. It seems highly likely that administering the system will require heavy staffing both within institutions and the agencies. Many interpretative issues will undoubtedly arise raising the prospect of the need for significant amounts of regulatory material.

Fourth, the calculations are entirely driven by geographic considerations, except to the extent they are overridden by examiner judgment, (for example, if the bank wishes to provide data on loans to low- and moderate-income individuals who do not reside in these areas.) Thus, loans to very well off borrowers in lower income census tracts (for example, to purchase luxury condominiums) will receive credit,

while lending to low-income individuals in higher income tracts will not be recognized in the basic scheme.

Fifth, the scheme will analyze each institution's performance within what may, in many cases, be its own unique "service area." This will require calculations of "market" percentages for various types of loans made by others whose service areas partially, but do not completely, overlap the service area. The scheme requires two calculations of market share (one for low/moderate areas and one for other areas) for comparison but may involve several independent markets that do not match. At the extreme, this means that the calculations either cannot be run or may produce a very unfair result.⁸

Sixth, the descriptions used to attempt to quantify the various levels of the rating system also require the examiner to use judgment in their application, since they are based on words.⁹ To avoid allocating credit, no specific numbers or other criteria have been used to describe the various rating levels. Consequently, this proposal may not adequately address the need for certainty and objectivity that caused this review to be undertaken in the first place. It is possible that the problem of trying to insure consistency will be even more

⁸ Assume, for example, that Bank A has 60 percent of the market share in its non-low/moderate area. Bank B likewise has a 60 percent share of a separate non-low/moderate area, but A and B share the same low/moderate income area. Obviously, both cannot even maintain their relative 60 percent share of this market and one must be downgraded.

⁹ Examples of key terms of measurement include "significantly exceeds," "vast majority," "substantial percentage," "roughly comparable," "significant amount," "very significant percentage," "insignificant amount," "significantly less," "very few," "readily accessible to low- and moderate-income geographic."

difficult under the new scheme. If this regulation retains a great deal of subjectivity and examiner judgment, a fair question could be raised whether the costs and burdens of putting the new data collection system in place are justified.

Finally, there are a host of other technical problems raised by the proposal. For example, since the investment test is measured against capital, well capitalized institutions may be penalized. Institutions that are less than satisfactory in lending may be able to "purchase" a satisfactory rating through investments. The service test may give accidental credit, for example, for branches in downtown commercial areas that happen to be in close proximity to low-income areas. It is not clear how a bank under \$250 million (or examiners) can know it "makes a majority of its loans in its service area...to customers across economic levels" without collecting data. These and many other problems are likely to surface in the comment process.

Costs and burdens of data collection

The large data collection effort is probably the necessary result of any attempt to make the CRA evaluation process more quantifiable. Absent data, it is difficult to envision an evaluation system that would deal directly with the concerns over lack of specificity and objectivity. However, this data collection effort will come at a very large cost, both to the lenders that have to report it, and to the agencies which will have to create a system for collecting and reporting the

data. The agencies will need to tabulate the lending done by each lender in its own particular service area, as well as the lending in overlapping service areas by those of its competitors that must also report. Collecting the data called for by this proposal will require covered lenders to put in place processes to collect and accurately report data on a huge volume of additional data.

Larger institutions (and small firms in larger organizations) must make available to the supervisory agencies and the public additional data on the geographic distribution of their residential, small business and consumer loan applications, denials, originations and purchases. To facilitate compliance, the supervisory agencies would collect the new data and prepare reports for each institution showing their record of lending in their community relative to a subset of their competitors.¹⁰

Nearly 3,400 institutions would be covered by the new requirements. This includes 1,409 large commercial banks, and 1,465 small commercial banks that are part of large organizations, and about 500 savings and loan associations.

While the regulation seeks to eliminate "unnecessary" paperwork burdens, much of the present documentation effort may be an integral part of the effective management of CRA

¹⁰ Covered institutions will have to disclose and report the specific census tracts, block number areas or counties that comprise their delineated community. Data for all reporting lenders who provide credit in these census tracts would be tabulated in order to calculate the institution's "market share."

compliance, even under the present regulation. To a significant extent, then, the new reporting may be a net addition for many institutions.

With regard to home lending, most large lenders are already required to collect such data under HMDA; however, many small institutions that would be covered by the data collection requirements are not now subject to HMDA. Among large independent commercial banks, 1,232 of the 1,409 covered lenders currently are subject to HMDA. Thus, 177 large independent banks would need to begin collecting home lending information. Among small commercial banks in large holding companies, 671 currently are covered by HMDA, 803 additional small firms would have to begin collecting data.

Although most covered lenders already collect the required data through their HMDA reporting efforts, all of them will have to incur costs to prepare new summary disclosure reports to convey this information to the public and the regulatory agencies in the prescribed manner. To prepare the new disclosure reports, lenders will have to develop computer software programs or buy such programs from third parties.

With regard to small business data, currently financial institutions make publicly available aggregate information on the number and dollar volume of their outstanding small business loans by size of loan on the Call Report. They do not disclose information about the geographic distribution or disposition of applications for such loans. They also do not report their

business loans by the characteristics of the small business (that is, by the size of the business measured in sales revenue and, for manufacturing firms, by both sales revenue and by number of employees.)¹¹ The proposed regulation will require larger organizations (including small banks and thrifts in larger holding companies) to collect and disclose all of this information.

The Survey of Terms of Bank Lending indicates that commercial banks in the aggregate extended 10.53 million small business loans (including small farm loans) during the period September 1992 through September 1993.¹² As noted, however, not all commercial banks are covered by the data collection provisions of the proposed regulation. If it is assumed that commercial banks who must report under the proposal extend roughly the same proportion of small business loans annually as they currently have outstanding, 6.1 million small business loans will be covered.¹³

¹¹ Small business reporting is required for four levels of businesses measured in gross sales, with the highest level taking into account numbers of employees of manufacturing concerns to whom loans are made.

¹² Because of the way commercial and industrial loan information are collected on the Survey of Terms of Bank Lending, individual draws under an existing line of credit are counted as separate loans.

¹³ Data from the Call Reports for commercial banks on outstanding business loans by size of loan indicates that larger institutions account for a significant share of all the small business lending done by banks. As of June 30, 1993, large commercial banks (including small banks and thrifts in large holding companies) had outstanding 69 percent of all the commercial and industrial loans and 59 percent of all the loans secured by nonfarm nonresidential properties under \$1 million in size. These larger institutions also accounted for about one-quarter of the farm loans under \$1 million.

The data collection provisions of the proposed regulation extend beyond loans and include data on applications, as well. No comprehensive information is available to determine the number of small business loan applications received by covered banks. However, a study of small business lending in the late 1980s found that 86 percent of all applications submitted by small businesses for commercial and industrial loans were approved.¹⁴ If this is representative, commercial banks would have to report information on a total of about 7.1 million small business loans annually.

The proposed regulation would require larger organizations to disclose information about the applications they receive and the loans they make, for some types of consumer loans.¹⁵ This requirement is new and will impose significant costs on covered lenders. The number of consumer loans that will be disclosed annually is unknown, but may be in the millions. As with other aspects of the proposal, an opportunity for "playing the system" is presented by the selection of some, but not all, consumer loans for use in the calculations.¹⁶

¹⁴ "Credit, Banks and Small Business: The United States" by William J. Dennis and William C. Dunkelberg, July 14, 1988, pp. 21-22.

¹⁵ For data collection purposes, consumer loans are those extended to individuals primarily for personal, family or household purposes other than home mortgages. Credit card loans, other unsecured open-end credit and motor vehicle loans are exempt from the disclosure requirements.

¹⁶ For example, the lending test includes closed-end personal loans but not open-end lines of credit even though these products may be close substitutes. Under the proposal, a lender would have an incentive to promote closed-end loans to consumers residing in low- and moderate-income neighborhoods and open-end lines of credit to consumers from higher income areas. In this way a lender could get a relatively high market share of closed-end loans in the lower income areas of its community compared to its overall share of these loans

It is very difficult to estimate the cost of the entire data reporting system. There is some indication that it could cost as much as three dollars per loan application to comply with the data collection requirements of the proposed regulation.¹⁷ Using this figure, it is estimated that in the aggregate annual compliance costs for covered commercial banks would be roughly \$21 million for the small business portion of the data collection alone.

The per-item cost for all the data does not take account of the one-time costs to develop the computer systems to collect and report the required information. And, of course, it does not include the agency costs. They currently run about \$4 million annually for HMDA and would probably be some multiple of this for the entire system.

The data collection is to go into effect on July 1, 1994. Given that the regulation is unlikely to be finalized until Spring, and institutions will need to set up appropriate collection and reporting procedures, this may be an unrealistic date and more lead time may be necessary.

in all other areas of its community and receive a high rating under this portion of the lending test.

¹⁷ This estimate is based on a study of the costs of compliance with HMDA adjusted for changes in consumer prices since that study was conducted. The data collection requirements of the proposed regulation are similar to the data reporting requirements of HMDA at the time the study was conducted. The study is old, however, and may not account for developments in automation. See: "Analysis of the Home Mortgage Disclosure Act Data from Three Standard Metropolitan Statistical Areas," JRB Associates, McLean, Virginia, November 1979.

Treatment of Small Lenders

This proposal does not exempt small lenders from CRA, but it seeks to reduce the compliance burdens for small commercial banks and savings institutions. Those that meet the tests (generally, those under \$250 million in assets with a 60 percent loan-to-deposit ratio) would be presumed to have a satisfactory rating. This would potentially cover about 52 percent of banks and a somewhat larger number of thrifts. Thus it removes a very high percentage of institutions from close supervision. The sheer numbers of banks and thrifts given this special, small bank, treatment may make this proposal unpalatable in a number of quarters, particularly to community groups. On the other hand, given the extensive data collection burden, some rather high cut off may be desirable. (See Attachment I for data for various possible small institution cuts for banks).

Conclusion

As indicated, the proposed system is very far reaching and represents a dramatic change in approach to CRA. The staff foresees many problems with its implementation but believes the Board should support its airing for public comment.

TWELVE CRA PERFORMANCE FACTORS

The federal supervisory agencies consider the following factors in assessing an institution's record of performance under the Community Reinvestment Act:

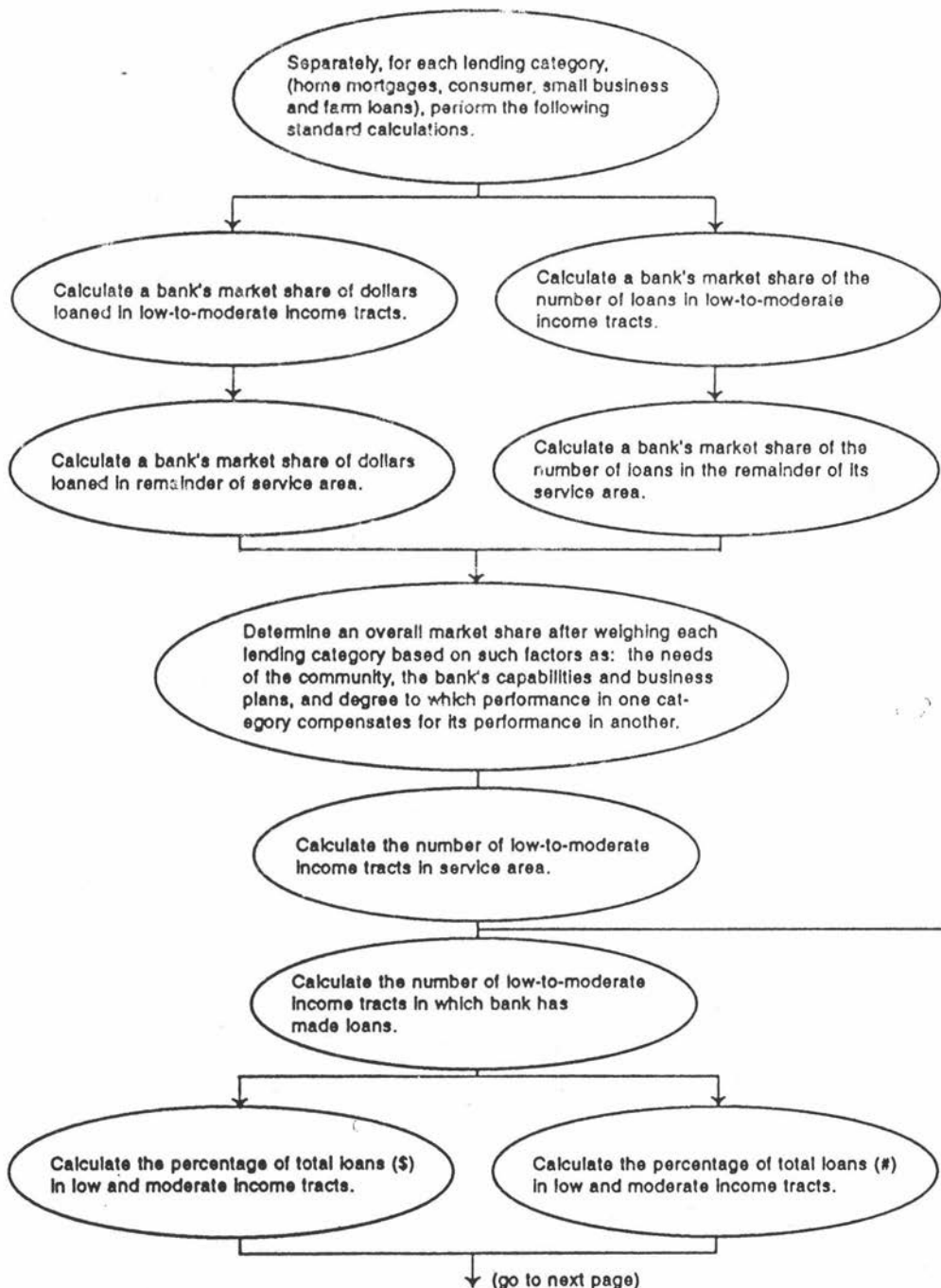
- Activities conducted by the institution to ascertain the credit needs of its community, including the extent of the institution's efforts to communicate with members, of its community regarding the credit services being provided by the institution
- The extent of the institution's marketing and special credit-related programs to make members of the community aware of the credit services offered by the institution
- The extent of participation by the institution's board of directors in formulating the institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act
- Any practices intended to discourage applications for types of credit set forth in the institution's CRA statement
- The geographic distribution of the institution's credit extensions, credit applications, and credit denials
- Evidence of prohibited discriminatory credit practices or other illegal credit practices
- The institution's record of opening and closing offices and providing services at offices
- The institution's participation, including investment, in local community development and redevelopment projects or programs
- The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business or small farm loans within its community, or the purchase of such loans originated in the community
- The institution's participation in government insured, guaranteed, or subsidized loan programs for housing, small businesses, or small farms
- The institution's ability to meet various community credit needs based on its financial condition and size, legal impediments, local economic conditions, and other factors
- Other factors that, in the supervisory agency's judgment, reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

ATTACHMENT B

Consumer Advisory Council Recommendations
on CRA Reform

- Evidence of willful discrimination should result in an automatic "substantial noncompliance" CRA rating.
- Significant statistical imbalances in institutional lending patterns should result in a less-than-satisfactory CRA rating.
- Banks should develop a CRA business plan with quantifiable performance measures against which their performance is measured by the regulators.
- Regulators will determine the value of the CRA plan, based in part on the amount of community outreach by the bank.
- CRA performance for specialty or wholesale banks should be based on the value of their targeted initiatives in low- and moderate-income and minority communities.
- CRA performance should be based on the "depth and breadth" of performance (on market share and variety of services offered).
- Regulators should meet regularly with community groups.
- Regulatory should provide advance public notice of CRA examinations.
- Regulators should provide feedback from community groups to the institutions.
- CRA public evaluations should be available at central data depositories, where Home Mortgage Disclosure Act data are currently available.
- Examiners from all four agencies should have common training and basic experience in all aspects of the examination process.
- Regulators should create a tiered structure for CRA examinations that contains more cost-effective requirements for small community banks.
- A five-tiered system of CRA ratings should be created.

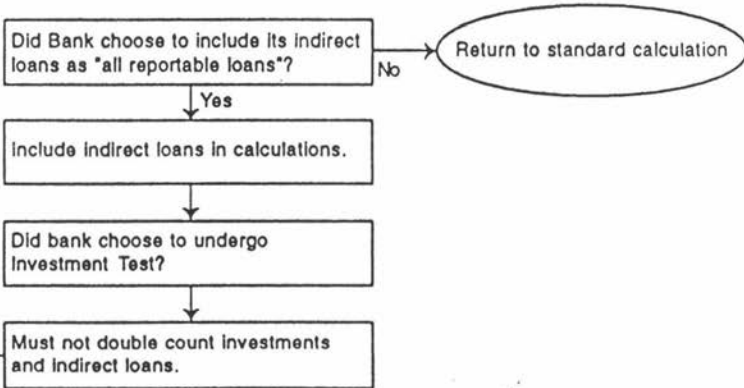
RETAIL BANKS:



Lending Test

Note: The market is determined by the total amount of lending in that area by those who must report under CRA regulations to the Federal financial regulatory agencies.

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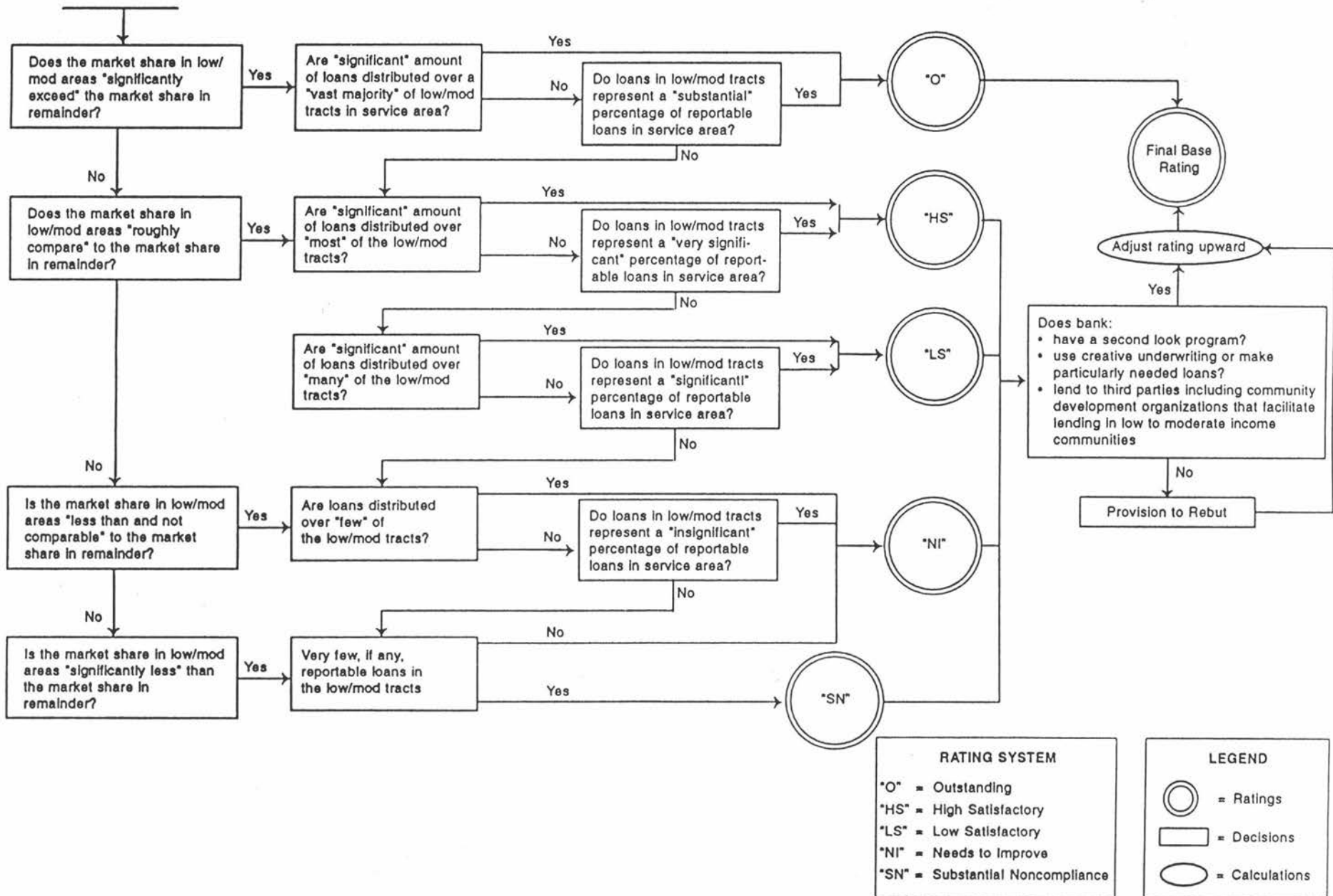
RATING SYSTEM

"O" = Outstanding
 "HS" = High Satisfactory
 "LS" = Low Satisfactory
 "NI" = Needs to Improve
 "SN" = Substantial Noncompliance

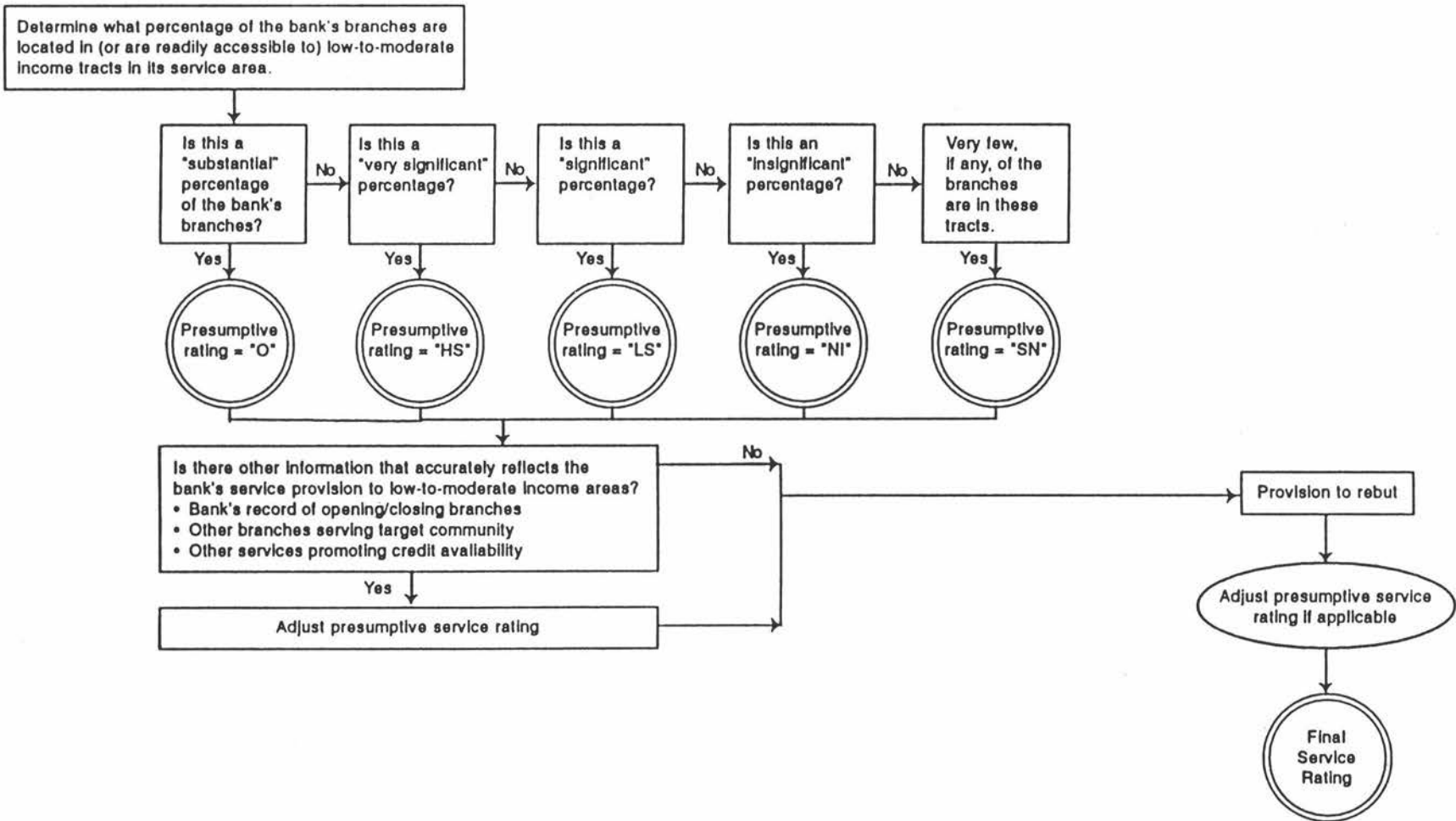
LEGEND

○ = Ratings
 □ = Decisions
 ○ = Calculations

RETAIL BANKS: Lending Test (continued)



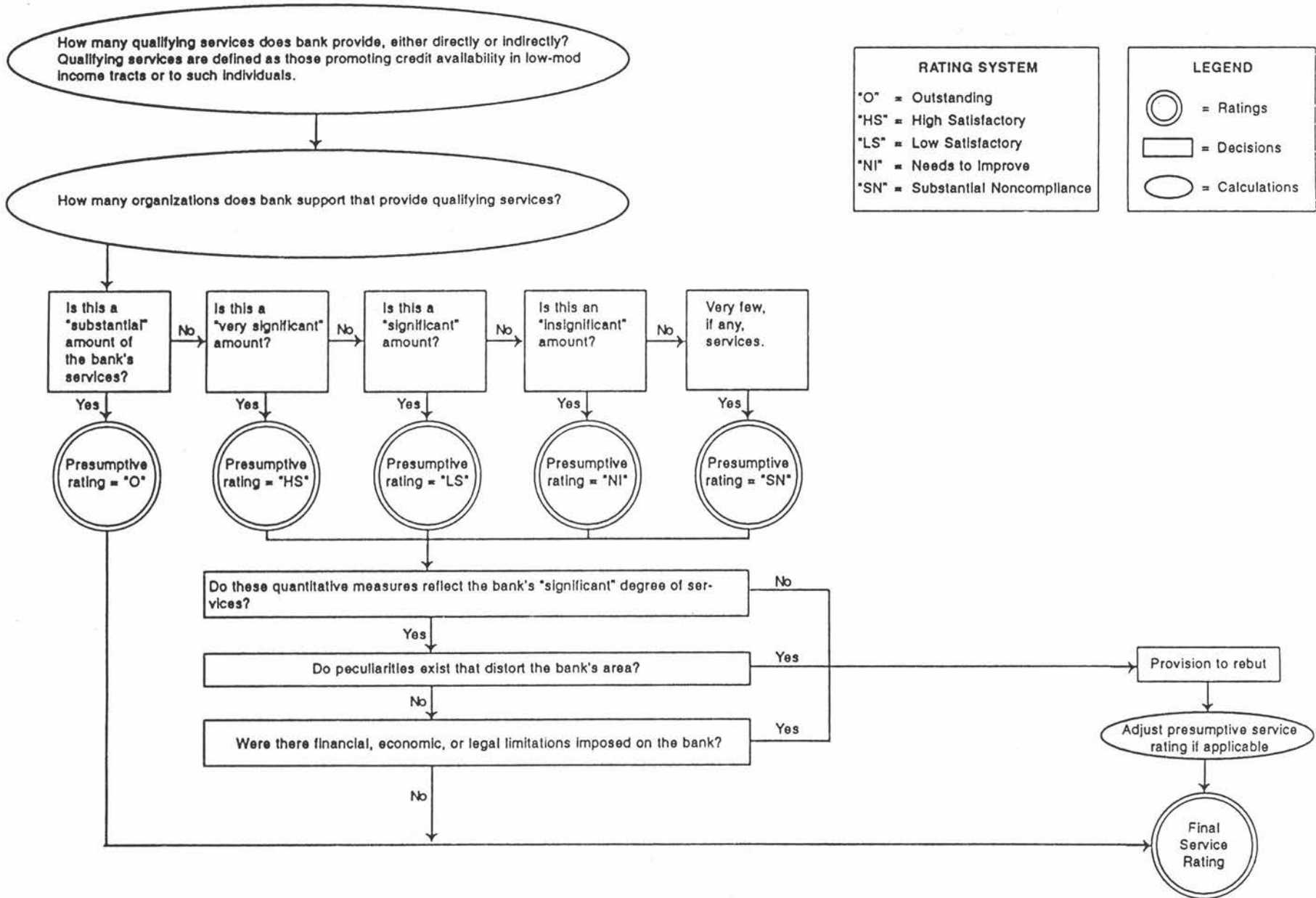
RETAIL BANKS: Service Test



| RATING SYSTEM | |
|---------------|-----------------------------|
| "O" | = Outstanding |
| "HS" | = High Satisfactory |
| "LS" | = Low Satisfactory |
| "NI" | = Needs to Improve |
| "SN" | = Substantial Noncompliance |

| LEGEND | |
|--------|----------------|
| | = Ratings |
| | = Decisions |
| | = Calculations |

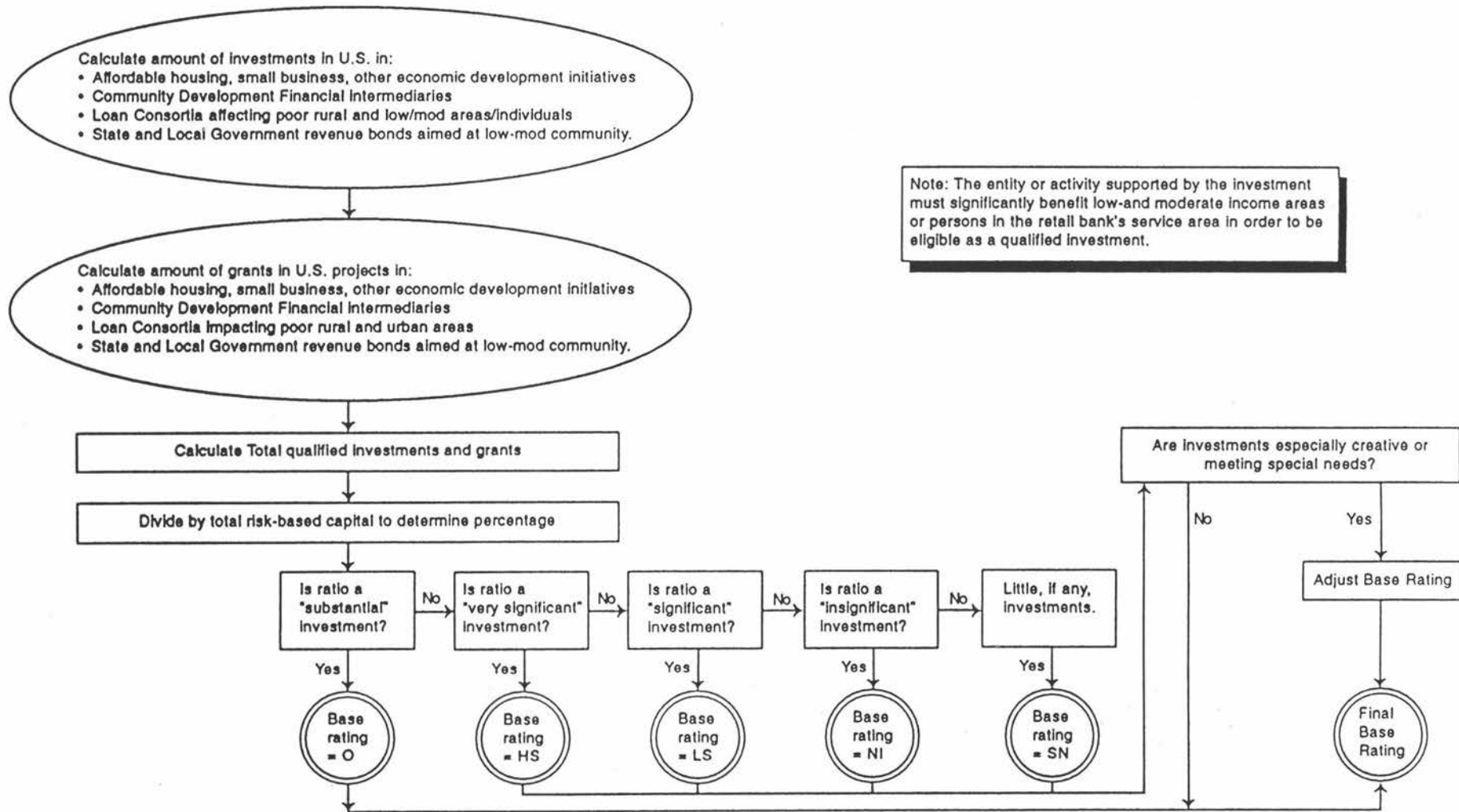
WHOLESALE/LIMITED PURPOSE: Service Test



| RATING SYSTEM | |
|---------------|-----------------------------|
| "O" | = Outstanding |
| "HS" | = High Satisfactory |
| "LS" | = Low Satisfactory |
| "NI" | = Needs to Improve |
| "SN" | = Substantial Noncompliance |




| LEGEND | |
|--------|----------------|
| | = Ratings |
| | = Decisions |
| | = Calculations |

INVESTMENT TEST: Wholesale/Limited Purpose (mandatory) Retail Banks (optional)

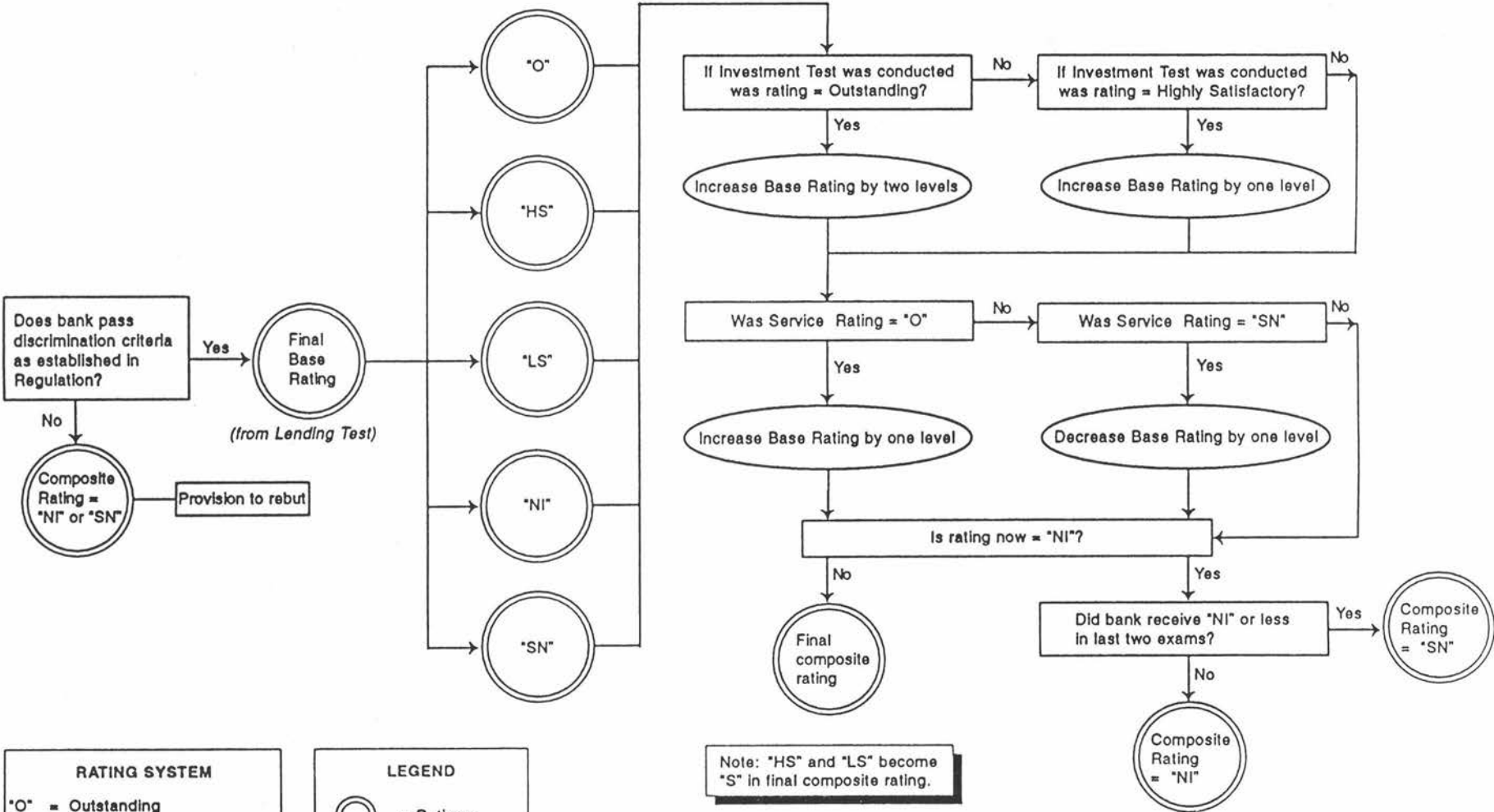


Note: The entity or activity supported by the investment must significantly benefit low-and moderate income areas or persons in the retail bank's service area in order to be eligible as a qualified investment.

| RATING SYSTEM | |
|---------------|-----------------------------|
| "O" | = Outstanding |
| "HS" | = High Satisfactory |
| "LS" | = Low Satisfactory |
| "NI" | = Needs to Improve |
| "SN" | = Substantial Noncompliance |

| LEGEND | |
|---|----------------|
|  | = Ratings |
|  | = Decisions |
|  | = Calculations |

RETAIL BANK: Composite Rating

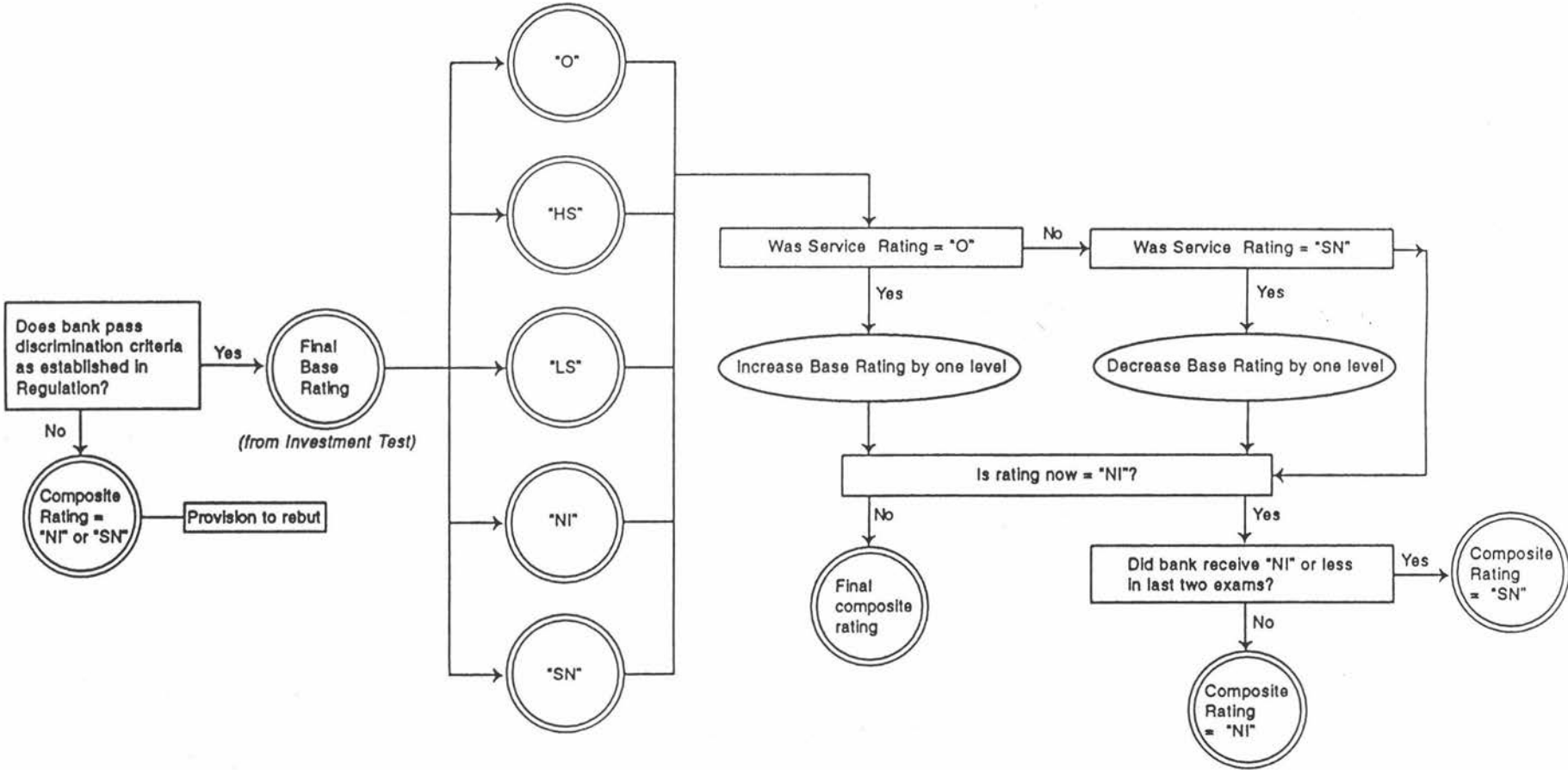


| RATING SYSTEM | |
|---------------|-----------------------------|
| *O* | = Outstanding |
| *HS* | = High Satisfactory |
| *LS* | = Low Satisfactory |
| *NI* | = Needs to Improve |
| *SN* | = Substantial Noncompliance |

| LEGEND | |
|--------|----------------|
| | = Ratings |
| | = Decisions |
| | = Calculations |

Note: *HS* and *LS* become *S* in final composite rating.

WHOLESALE/LIMITED PURPOSE: Composite Rating

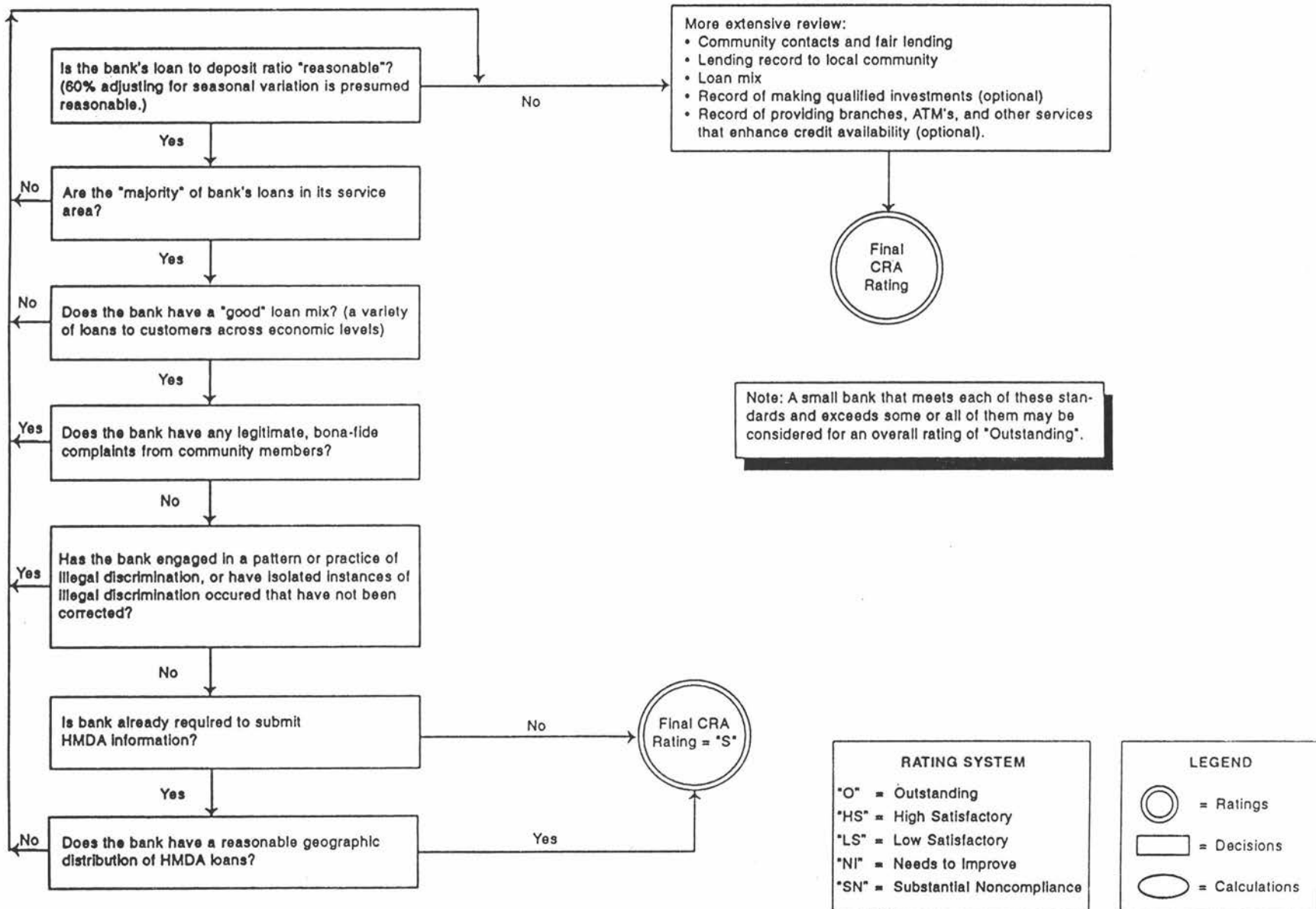


| RATING SYSTEM | |
|---------------|-----------------------------|
| "O" | = Outstanding |
| "HS" | = High Satisfactory |
| "LS" | = Low Satisfactory |
| "NI" | = Needs to Improve |
| "SN" | = Substantial Noncompliance |

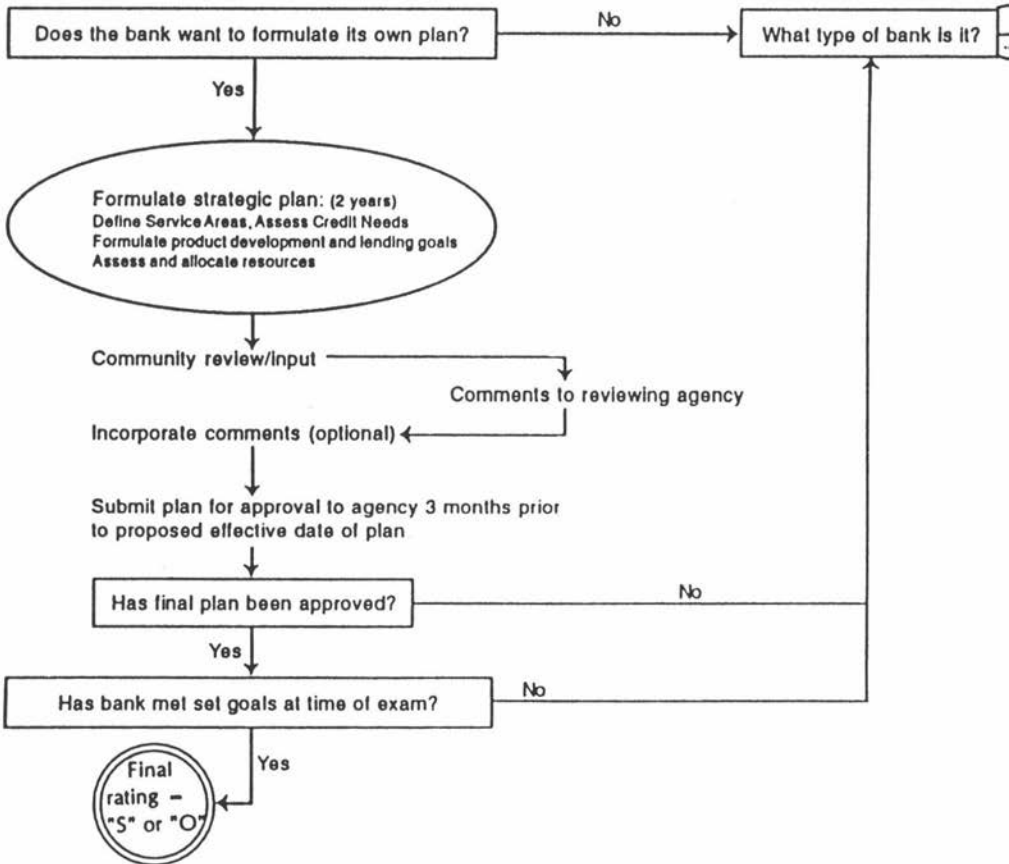
| LEGEND | |
|--------|----------------|
| | = Ratings |
| | = Decisions |
| | = Calculations |

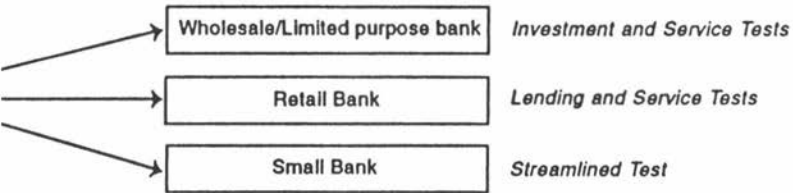
Note: "HS" and "LS" become "S" in final composite rating.

SMALL BANKS: Independent Banks with less than \$250 million and subsidiaries of holding companies with assets less than \$250.






CRA PLAN





| RATING SYSTEM |
|----------------------------------|
| "O" = Outstanding |
| "HS" = High Satisfactory |
| "LS" = Low Satisfactory |
| "NI" = Needs to Improve |
| "SN" = Substantial Noncompliance |

| LEGEND |
|--|
|  = Ratings |
|  = Decisions |
|  = Calculations |

Small Banks That Would Be Subject to Streamlined CRA Review at Various Loan to Deposit Ratios

| | | Loan-to-Deposit Ratio (LDR) | | | | | | | | | | | |
|-----------------------|-----------------|-----------------------------|------------------|----------------------------|-------------------|------------------|----------------------------|-------------------|------------------|----------------------------|-------------------|------------------|----------------------------|
| | | More than 40% LDR | | | More than 50% LDR | | | More than 60% LDR | | | More than 70% LDR | | |
| Size of Bank (Assets) | Number of Banks | No. of banks | Percent of banks | Percent of assets of group | No. of banks | Percent of banks | Percent of assets of group | No. of banks | Percent of banks | Percent of assets of group | No. of banks | Percent of banks | Percent of assets of group |
| Under \$50 million: | 4940 | 4167 | 84.4 | 85.4 | 3431 | 69.5 | 70.6 | 2395 | 48.5 | 50.1 | 1251 | 25.3 | 26.5 |
| Under \$100 million: | 7235 | 6169 | 85.3 | 86.5 | 5133 | 70.9 | 72.7 | 3659 | 50.6 | 52.9 | 1984 | 27.4 | 29.5 |
| Under \$150 million: | 8050 | 6871 | 85.4 | 86.4 | 5747 | 71.4 | 73.5 | 4110 | 51.1 | 53.6 | 2246 | 27.9 | 30.3 |
| Under \$200 million: | 8404 | 7177 | 85.4 | 86.5 | 6016 | 71.6 | 73.8 | 4324 | 51.5 | 54.5 | 2384 | 28.4 | 31.4 |
| Under \$250 million: | 8580 | 7333 | 85.5 | 86.6 | 6153 | 71.7 | 74.2 | 4430 | 51.6 | 55.0 | 2440 | 28.4 | 31.5 |

Source: Report of Income and Condition, June 1993. Domestic data for insured commercial banks. This table includes only independent banks with assets under \$250 million except those in holding companies with assets over \$250 million.