

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10682**
January 12, 1994]

COMMUNITY REINVESTMENT

Revision of Regulation BB

Comments Requested by February 22, 1994

*To All State Member Banks and Bank Holding Companies
in the Second Federal Reserve District, and Others Concerned:*

The following statement has been issued by the Board of Governors of the Federal Reserve System regarding an interagency proposal to revise the regulations of the Federal financial supervisory agencies implementing the Community Reinvestment Act:

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.

It 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.

Comment is requested by February 22, 1994.

Enclosed -- for member banks and bank holding companies -- is that portion of the text of the interagency proposal that is applicable to the Board of Governors' proposed revision of its Regulation BB on Community Reinvestment. The complete text of the interagency proposal has been published in the *Federal Register* of December 21, 1993 (58FR243). Comments on the proposal should be submitted by February 22, and may be sent to the Board of Governors, as specified on the first page of the enclosed notice, or to our Compliance Examinations Department.

Questions concerning this matter may be directed to our Compliance Examinations Department (Tel. No. 212-720-5914).

WILLIAM J. MCDONOUGH,
President.

Board of Governors of the Federal Reserve System

EXCERPT OF FEDERAL REGISTER NOTICE

PROPOSED REVISIONS TO REGULATION BB (COMMUNITY REINVESTMENT)
(Docket No. R-0822)

Note: The complete text of the Interagency Notice on Community Reinvestment Act Regulations appears in the Federal Register of December 21, 1993.

[ENC CIR NO 10682]

Community Reinvestment Act Regulations¹

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:

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 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT:

BOARD: Glenn E. Loney, Associate Director, Division of Consumer and Community Affairs, (202) 452-3585, Scott G. Alvarez, Associate General Counsel, Legal Division, (202) 452-3583, or Leonard N. Chanin, Managing Counsel, Division of Consumer and Community Affairs, (202) 452-3667.

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.

¹ This document contains all portions of the December 21, 1993 interagency Federal Register notice that pertain to State member banks and excludes the regulations of the agencies other than that of the Board of Governors of the Federal Reserve System.

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 even-handedness, 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 comments on the following particular issues:

- (1) Are the lending, service, and investment tests meaningful and workable? Is the appropriate weight given to each of the three tests in determining the composite rating? Should numbers or ratios be substituted for the descriptive quantitative terms used in the various rating levels under the three tests? If so, what should they be?
- (2) Should "indirect loans", or loans made by entities in which a bank or thrift has made an investment, be included in the lending test as proposed? Is the treatment of "indirect loans" meaningful, workable, and effective?
- (3) Should the quantitative measures used in the lending, service, and investment tests be expanded to include a broader array of performance measures? If so, what would those additional measures include?
- (4) Should banks and thrifts be permitted to elect to be evaluated on the basis of their performance relative to an approved CRA plan? Is the regulation sufficiently clear about the bases upon which agencies would approve a proposed plan?
- (5) Are the provisions of the regulations on the circumstances under which the agencies would use their enforcement authority to promote compliance with the community reinvestment obligation of regulated banks and thrifts appropriate? Is the community reinvestment obligation appropriately stated?
- (6) Should the performance of affiliates be considered in CRA examinations of a regulated bank or thrift? Should the performance of affiliates be considered in decisions on corporate applications filed by a bank or thrift?
- (7) Does the formulation of the regulation strike an appropriate balance between the need of institutions for certainty in the evaluation system and the need for the flexibility to reflect individual institutions' service capabilities and the credit needs of particular locales? Will this proposal result in a clearer, more objective evaluation scheme? If sufficient certainty and objectivity are not achieved, what adjustments should be made?
- (8) Are the data collection provisions under the proposed regulation warranted and are the appropriate data collection elements called for? What adjustments should be made to the data collection provisions? What costs will be imposed and what benefits derived from the data collection provisions?
- (9) How would the proposed changes affect the amount of time that financial institutions spend on CRA compliance? If you operate a financial institution, how much time do you now devote to compliance and how much time do you anticipate the proposed regulations would require that you devote? (Please indicate the size of your institution when answering.) How might compliance costs be reduced consistent with the regulatory and statutory objectives?

- (10) What analytical or computational problems, if any, result from the fact that this proposal requires calculation of relevant ratios under the lending test using only the loans made by institutions that would be required by the proposal to report their lending, rather than loans made by all lenders in the relevant markets? How should the regulation be adjusted to deal with any such problems?

- (11) Are there other approaches to changing the CRA regulations that would be more beneficial and cost effective, and that would achieve the goals of this reform effort? If so, what alternative approach should be considered and what would its elements be?

Text of Proposed Common Appendix

The text of the proposed common appendix appears below:

Appendix A to Part ___ -- CRA Loan Data Form

PART A

**Loans to Small Businesses
Total Sales less than \$250M**

Census Tract/ Block Numbering Area	Total # of Apps.		Total # of App. Denials		Total # of Apps Approved		\$ Amount Approved		Total # & \$ Purchased				Indirect Loans # and \$ Amount			
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. #	Govt. \$	Other #	Other \$	Govt. #	Govt. \$	Other #	Other \$

PART B

**Loans to Small Businesses
Total Sales more than or equal to \$250M but less than \$1MM**

Census Tract/ Block Numbering Area	Total # of Apps.		Total # of App. Denials		Total # of Apps Approved		\$ Amount Approved		Total # & \$ Purchased				Indirect Loans # and \$ Amount			
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. #	Govt. \$	Other #	Other \$	Govt. #	Govt. \$	Other #	Other \$

10682

Part C

Loans to Small Businesses
Total Sales more than or equal to \$1MM but less than \$10MM

Census Tract/ Block Numbering Area	Total # of Apps.		Total # of App. Denials		Total # of Apps Approved		\$ Amount Approved		Total # & \$ Purchased				Indirect Loans # and \$ Amount			
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	\$	Other	\$	Govt.	\$	Other	\$

Part D

Loans to Small Businesses
Total Sales more than or equal to \$10MM with less than 500 Employees

Census Tract/ Block Numbering Area	Total # of Apps.		Total # of App. Denials		Total # of Apps Approved		\$ Amount Approved		Total # & \$ Purchased				Indirect Loans # and \$ Amount			
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	\$	Other	\$	Govt.	\$	Other	\$

10682

Consumer Loans

Census Tract/ Block Numbering Area	Total # of Apps.		Total # of App. Denials		Total # of Apps Approved		\$ Amount Approved		Total # & \$ Purchased			Indirect Loans # and \$ Amount				
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. #	\$	Other #	\$	Govt. #	\$	Other #	\$

Small Farm Loans

Census Tract/ Block Numbering Area	Total # of Apps.		Total # of App. Denials		Total # of Apps Approved		\$ Amount Approved		Total # & \$ Purchased			Indirect Loans # and \$ Amount				
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. #	\$	Other #	\$	Govt. #	\$	Other #	\$

10612

PART A

**Home Purchase Loans
Loans on 1-to-4 Family Dwellings**

Census Tract/ Block Numbering Area	Total # of Apps.		Total # of App. Denials		Total # of Apps Approved		\$ Amount Approved		Total # & \$ Purchased			Indirect Loans # and \$ Amount				
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. #	\$	Other #	\$	Govt. #	\$	Other #	\$

PART B

**Home Improvement Loans
Loans on 1-to-4 Family Dwellings**

Census Tract/ Block Numbering Area	Total # of Apps.		Total # of App. Denials		Total # of Apps Approved		\$ Amount Approved		Total # & \$ Purchased			Indirect Loans # and \$ Amount				
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. #	\$	Other #	\$	Govt. #	\$	Other #	\$

1082

PART C

Refinancing
Home Purchase or Home Improvement 1-to-4 Family Dwellings

Census Tract/ Block Numbering Area	Total # of Apps.		Total # of App. Denials		Total # of Apps Approved		\$ Amount Approved		Total # & \$ Purchased				Indirect Loans # and \$ Amount			
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. #	Govt. \$	Other #	Other \$	Govt. #	Govt. \$	Other #	Other \$

PART D

Multifamily Dwelling Loans
Home Purchase, Home Improvement and Refinancings

Census Tract/ Block Numbering Area	Total # of Apps.		Total # of App. Denials		Total # of Apps Approved		\$ Amount Approved		Total # & \$ Purchased				Indirect Loans # and \$ Amount			
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. #	Govt. \$	Other #	Other \$	Govt. #	Govt. \$	Other #	Other \$

10650

Paperwork Reduction Act

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.

Regulatory Flexibility Act

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.

List of Subjects

12 CFR part 228
Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

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:

**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.
- 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 lending 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) of this part 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

Board of Governors of the Federal Reserve System, December 13, 1993