

**FEDERAL RESERVE BANK  
OF NEW YORK**

[ Circular No. **10735**  
October 18, 1994 ]

**COMMUNITY REINVESTMENT**

**Revised Proposed Amendments to Regulations BB and C**

*Comments Requested by November 21, 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 a revised interagency proposal to amend the regulations of the Federal financial supervisory agencies implementing the Community Reinvestment Act; the Board of Governors is proposing to amend its Regulation BB, "Community Reinvestment," and is making conforming amendments to its Regulation C, "Home Mortgage Disclosure."

The Federal Reserve Board in conjunction with the other financial institutions regulatory agencies has requested public comment on a revised proposal to amend Regulation BB (Community Reinvestment) and related conforming amendments to Regulation C (Home Mortgage Disclosure). The prior amendments were proposed earlier for public comment on December 21, 1993.

Comment on the revised proposal is requested by November 21, 1994.

The revised proposal would provide guidance to financial institutions on the assessment of their CRA-related activities. The proposed procedures seek to emphasize performance rather than process, promote consistency in assessments, and reduce unnecessary compliance burden while stimulating improved performance.

As compared to the December proposal, the revised proposal broadens the examination of performance, more explicitly considers community development activities, reflects comments received on the December proposal, takes into account the agencies' further internal considerations, and makes other modifications and clarifications.

In addition, all financial institutions, except small financial institutions, would have to collect data on the race and gender of applicants for small business and small farm loans, if the loan is originated or denied on the basis of a written application. Race and gender data for loans to small businesses and small farms also would be reported to the agencies and these financial institutions would be required to publicly disclose these data in aggregated form.

Enclosed — for member banks and bank holding companies — is that portion of the text of the interagency proposal that contains the Board of Governors' proposed revision of Regulation BB on Community Reinvestment, together with the Regulation C proposal. Comments should be submitted by November 21, and may be sent to the Board of Governors, as specified in the notice, or to our Compliance Examinations Department. The complete text of the interagency proposal has been published in the *Federal Register* of October 7.

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

WILLIAM J. McDONOUGH,  
*President.*

Friday  
October 7, 1994

EXCERPT OF FEDERAL REGISTER NOTICE:

1. PROPOSED AMENDMENTS TO REGULATION BB (COMMUNITY REINVESTMENT)  
(See pp. 51232-51250; 51269-51286)
2. PROPOSED CHANGES TO REGULATION C (HOME MORTGAGE DISCLOSURE)  
(See pp. 51323-24)

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**Part II**

**Department of the Treasury**

Office of the Comptroller

12 CFR Part 25

**Federal Reserve System**

12 CFR Part 228

**Federal Deposit Insurance Corporation**

12 CFR Part 345

**Department of the Treasury**

Office of Thrift Supervision

12 CFR Part 563e

Community Reinvestment Act  
Regulations; Proposed Rule

**Federal Reserve System**

12 CFR Part 203

Home Mortgage Disclosure; Proposed Rule

[Enc. Cir. No. 10735]



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

[Docket No. 94-15]

RIN 1557-AB32

**FEDERAL RESERVE SYSTEM****12 CFR Part 228**

[Regulation BB; Docket No. R-0822]

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

RIN 3064-AB27

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

[Docket No. 94-213]

RIN 1550-AA69

**Community Reinvestment Act Regulations**

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

**SUMMARY:** The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, (collectively, the Federal financial supervisory agencies or agencies) propose to revise their regulations concerning the Community Reinvestment Act (CRA). The agencies published a joint notice of proposed rulemaking on this issue on December 21, 1993 (December proposal). The revised proposal published today reflects comments received on the December proposal and the agencies' further internal considerations.

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 neighborhoods, consistent with safe and sound operations and to provide guidance on how the agencies assess the performance of institutions in meeting that obligation.

The revised proposal would provide 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 seek to emphasize performance rather than process, promote consistency in assessments, permit more effective enforcement against institutions with poor performance, and reduce unnecessary compliance burden while stimulating improved performance. As compared to the December proposal, the revised proposal broadens the examination of performance, more explicitly considers community development activities, and makes other modifications and clarifications.

**DATES:** Comments must be received by November 21, 1994.

**ADDRESSES:**

**OCC:** Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Attention: Docket No. 94-15. Comments will be available for public inspection and photocopying at the same location.

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

**FDIC:** Comments should be directed to: Robert E. Feldman, Acting Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429. They may be hand delivered to Room 402, 1776 F Street, NW., Washington, DC between 8:30 a.m. and 4:30 p.m. on business days. They may be sent by facsimile transmission to (202) 898-3838. Comments will be available for public inspection at the FDIC Reading Room #7118 at 550 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

**OTS:** Comments should be directed to: Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street,

NW., Washington, DC 20552, Attention: Docket No. 94-213. These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Comments will be available for public inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

**FOR FURTHER INFORMATION CONTACT:**

**OCC:** Stephen M. Cross, Deputy Comptroller for Compliance, (202) 874-5216; and Matthew Roberts, Director, Community and Consumer Law Division, (202) 874-5200.

**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; Robert deV. Frierson, Assistant General Counsel, Legal Division, (202) 452-3711; and Leonard N. Chanin, Managing Counsel, Division of Consumer and Community Affairs, (202) 452-3667.

**FDIC:** Ken A. Quincy, Acting Assistant Director, Division of Compliance and Consumer Affairs, (202) 898-6753; Bobbie Jean Norris, Chief, Fair Lending Section, Division of Compliance and Consumer Affairs, (202) 898-6760; Robert Mooney, Fair Lending Specialist, Division of Compliance and Consumer Affairs, (202) 898-3540; Ann Hume Loikow, Counsel, Regulation and Legislation Section, Legal Division, (202) 898-3796; and Sandy Comenetz, Counsel, Regulation and Legislation Section, Legal Division, (202) 898-3582.

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

**SUPPLEMENTARY INFORMATION:****Introduction**

The Federal financial supervisory agencies are jointly proposing to revise their regulations implementing the CRA (12 U.S.C. 2901 *et seq.*). The proposed regulations would replace the existing regulations in their entirety.

The CRA is designed to promote affirmative and ongoing efforts by



regulated financial institutions to help meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, 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 rather than 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 would implement one part of this reform effort by substituting a new system that would rate institutions based on their actual performance in helping to meet community credit needs.

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 procedures. These efforts should produce a CRA assessment process that is less burdensome for many institutions yet yields better 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, consistent with safe and sound lending practices. 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 has come to play an increasingly important role in improving access to credit among under-served communities—both rural and urban—across the country. Under the impetus of the CRA, many banks and thrifts opened new branches, provided expanded services, and made substantial commitments to increase lending to all segments of society.

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.

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

Believing that the CRA examination and enforcement process can be improved, the President requested in July 1993 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 the agencies to refocus the CRA examination system on more objective, performance-based assessment standards that minimize compliance burden while stimulating improved performance. He also asked the agencies to develop a well-trained corps of examiners who would specialize in CRA examinations. In undertaking this effort, the President requested that the agencies promote consistency and evenhandedness, improve CRA performance evaluations, and institute more effective sanctions against institutions with consistently poor performance.

To implement the President's initiative, the four agencies held a series of seven public hearings across the country in 1993. At those hearings, the agencies heard from over 250 witnesses. Nearly 50 others submitted written statements. The preamble to the December proposal reviewed the results of those hearings.

#### The December Proposal

The December proposal (58 FR 67466) would have eliminated the twelve assessment factors in the present CRA regulation and substituted a performance-based evaluation system. Under the December proposal, a financial institution would not have been assessed on its efforts to meet community credit needs, nor on its methods for determining the credit

needs of its community. Rather, the agencies would have evaluated institutions based on their actual lending, service, and investment performance.

Generally, independent institutions with at least \$250 million in assets and affiliates of holding companies with at least \$250 million in bank and thrift assets would have been evaluated based on some combination of lending, service, and investment tests. Institutions would have had 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 have elected to be evaluated under a streamlined method that would not have required them to report this data. Every institution would have had the option to have its performance evaluated 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 strategic plan option would not have relieved an institution of its data reporting obligations.

There would have been five ratings—"outstanding," "high satisfactory," "low satisfactory," "needs to improve," and "substantial noncompliance"—under each of the lending, investment, and service tests so as to measure with more refinement the variations in performance among institutions. The agencies proposed to have only four overall ratings, however, as required by statute—"outstanding," "satisfactory," "needs to improve," and "substantial noncompliance."

The December proposal was originally published with a 60-day comment period. This period was extended for 30 additional days in view of the magnitude of the proposed changes, the complexity of the issues, the level of interest in the subject, and delays resulting from the holiday season (59 FR 5138). After considering the thousands of comments received, the agencies produced the revised regulations proposed today, which respond to suggestions in the comments while preserving the December proposal's goal of emphasizing performance over process.

#### Overview of Comments on the December Proposal

Collectively, the agencies received over 6700 comment letters on the December proposal. The agencies received comment letters from representatives of banks and thrifts, consumer and community groups.



Congress, state and local governments, and others as shown in the following table:

TABLE OF COMMENTS RECEIVED

Agency	Letters from banks, thrifts and their trade associations	Letters from consumer and community groups	Letters from government entities	Letters from others	Total
OCC .....	1329	253	78	153	1813
Board .....	1236	209	54	181	1680
FDIC .....	2002	219	71	82	2374
OTS .....	486	240	62	55	843

The agencies reviewed and considered all of the above-described comments concerning the December proposal. Comments are discussed in greater detail in the section-by-section analysis of the revised proposal. As a general matter, the vast majority of commenters expressed support for the agencies' goal of developing more objective, performance-based assessment standards that minimize burden while stimulating improved performance. Many commenters believed that, under the existing CRA regulations, the agencies focus too closely on documentation of CRA performance and too little on actual performance. These commenters felt the present documentation requirements are overly burdensome. Many commenters also supported the agencies' goal of ensuring consistency and evenhandedness among the agencies in CRA evaluations. Commenters supported enhanced CRA examiner training to increase consistency. While most commenters generally supported the agencies' goals in amending their CRA regulations, many expressed concern over some aspects of the December proposal.

#### The Revised Proposal

##### *In General*

The revised proposal retains, to a significant extent, the principles and structure underlying the December proposal but makes significant changes to the details in order to respond to many of the concerns raised in the comments. Like the December proposal, the revised proposal would eliminate the existing regulation's twelve assessment factors and substitute a performance-based evaluation system.

In order to take into account community characteristics and needs, the revised proposal would make explicit the assessment context against which the tests and standards set out in the proposed regulation would be applied. This assessment context would

include consideration of: (1) Demographic data about the community; (2) information about community characteristics and needs; (3) information about the institution's capacity and constraints; (4) information about the institution's product offerings and business strategy; (5) data on the prior performance of the institution; and (6) data on the performance of similarly-situated lenders. The agencies, rather than the institution, would develop the assessment context for each institution. The agencies will neither require nor request an institution to provide data for this assessment context, although any data offered by an institution would be considered.

As in the December proposal, the agencies would give particular attention to the institution's record of helping to meet credit needs in low- and moderate-income geographies. However, the revised proposal would further emphasize the institution's performance with respect to low- and moderate-income individuals, and other individuals and areas where appropriate, given community characteristics and needs. The agencies also have modified the definitions of low- and moderate-income geographies in response to concerns that the definitions in the December proposal were too low for high cost areas. Under the revised proposal, the qualifying income levels would be adjusted to reflect prevailing housing construction costs or significant anomalies in family income levels. The agencies would make available annually a list of qualifying income levels by geographic area.

The lending, service and investment tests would continue to constitute the primary method by which the agencies would assess the CRA performance of independent retail institutions with at least \$250 million in assets and affiliates of holding companies with at least \$250 million in bank and thrift assets. However, the revised proposal changes how an institution's ratings on the three

tests would be combined to produce the institution's overall composite rating. The revised proposal would give primacy to lending performance by requiring an institution to receive a "satisfactory" or better rating on the lending test in order to receive a "satisfactory", or better, overall rating. At the same time, the rating system would increase the importance of the service and investment tests, because the effect of those tests on the overall rating would no longer be limited to situations in which an institution had extraordinarily strong or weak performance on one of the tests.

The agencies also have made modifications to the details of the lending, service and investment tests in order to broaden their scope. Rather than rely presumptively on a few quantitative measures that could then be adjusted or rebutted by other considerations, the tests would be based from the outset on a broader range of quantitative and qualitative criteria that would include both those criteria that formed the basis for the presumptive ratings in the December proposal and those additional considerations contained in the adjustment and rebuttal sections of the December proposal. The revised proposal therefore would not use rebuttable presumptions and adjustments.

These revisions to the lending, investment and service tests would increase, rather than reduce, the number of judgments that examiners would be required to make in the examination process. The agencies believe that a CRA evaluation system eliminating all examiner judgment would not be desirable, even if it were achievable. Preservation of examiner judgment to take into account the characteristics and needs of an institution's community and the capacity and constraints of the institution is critical.

At the same time, the agencies believe that consistency in evaluations, reduction in compliance burden, and focus on performance are fully



consistent with the necessary degree of examiner judgment. The agencies believe that the revised proposal, which entails a series of examiner decisions in reliance on detailed data concerning an institution's actual lending, service and investment performance, would provide the proper balance between objective analysis and subjective judgment. In order to minimize unnecessary subjectivity, the agencies have attempted to provide more guidance in the revised proposal as to the standards that examiners would apply to make the required judgments.

In addition to identifying the data that would form the basis for their performance analysis, the information that would provide the background assessment context, and the criteria that would guide the assessments, the agencies have proposed detailed performance rating profiles for each rating level of the lending, service, and investment tests. An institution's performance need not fit every performance aspect of the typical profile in order to receive a certain rating. Exceptionally strong performance on some aspects can compensate for weak performance on others. However, the institution would receive a rating which is generally consistent with the institution's overall performance on the various aspects of the profile.

The December proposal based its presumptive ratings on comparative terms, for example whether an institution's qualified investments were significant as compared to its capital, or whether an insignificant percentage of an institution's branches were located in or readily accessible to low- and moderate-income geographies in the institution's service area. While many comments stated that these terms should be further defined, few commenters, despite a specific request in the December proposal, actually suggested what these definitions should be.

The ratings profiles in the current proposal continue to use comparative terms, such as excellent, significant, and poor, without further specification. Many comments agreed that the mechanical application of numerical ratios would not foster fair and appropriate CRA assessments. The agencies continue to believe, given the wide diversity of institutions and communities, that it is inadvisable to provide such specific numerical ranges or ratios. The agencies expect the current proposal to increase the consistency and clarity of the examination process. By identifying a set of performance-based assessment criteria, and expanding the objective

performance data available to examinations, institutions and the public will be better able to evaluate the basis on which examiner judgments are made. In addition, by providing more detailed profiles that involve several criteria, assessment under the current proposal will not turn on the evaluation of a single factor.

The revised proposal also modifies the lending and service tests for retail institutions to emphasize the importance of community development activities in the assessments of performance under those tests. In addition, the revised proposal replaces the investment test with a community development test for wholesale or limited purpose institutions. The proposal incorporates into this community development test both community development lending and community development services in addition to qualified investments. Therefore, under the revised proposal, wholesale or limited purpose institutions would be subject only to the community development test.

The revised proposal would reduce data reporting burdens by streamlining reporting requirements to coincide more closely with existing requirements and eliminating unnecessary reporting. The one significant new data reporting requirement would be that small business and small farm loan data reported to the agencies would include information on the race and gender of small business and farm borrowers to respond to concerns that the December proposal did not give enough weight to the fair lending aspect of an institution's CRA performance. This concern is also reflected in the revision of the provisions regarding consideration of illegal discrimination to conform them more closely to existing regulatory language.

Smaller banks and thrifts would continue to be evaluated under a streamlined assessment method that would not require reporting of additional lending data. However, the streamlined method would be the presumptive method for evaluating small institutions and would be applied to every qualifying institution unless the institution affirmatively requests an alternative assessment method. The agencies have also altered the description of the streamlined assessment method in order to make clear that this assessment is not intended to operate as an exemption from the CRA rules.

The streamlined assessment method would continue to focus on the institution's loan-to-deposit ratio, degree of local lending, record of

lending to borrowers and geographies of different income levels, and record of responding to complaints. The institution's fair lending record would still be taken into account in assigning a final rating. In response to comments, the agencies have eliminated the provision in the December proposal that made a loan-to-deposit ratio of 60% or more presumptively satisfactory. The revised proposal would consider an institution's size, financial condition, and credit needs of its service area in evaluating whether its loan-to-deposit ratio is reasonable. The evaluation would further consider, as appropriate, other lending-related activities, such as originations for sale on the secondary market and community development lending and investment.

Every institution would continue to have the option to be evaluated pursuant to a pre-approved strategic plan. The strategic plan option would not relieve an institution from any reporting obligations that it otherwise would have. The revised proposal clarifies, however, that small institutions would not subject themselves to any data reporting responsibilities by electing the strategic plan option. The agencies also have provided more detail as to how the proposed strategic plan option would operate in practice.

The revised proposal has eliminated provisions that some comments interpreted as "safe harbors" from examination or enforcement action. The revised proposal would not make substantive modifications to the December provisions governing what types of institutions are subject to the proposed regulations, although the agencies have clarified that bankers banks would not be covered. The revised proposal continues to provide that uninsured branches of foreign banks would not be covered by the proposed regulations. However, the agencies are aware that the Interstate Banking Efficiency Act would address the CRA coverage of certain uninsured branches of foreign banks. Should this Act be signed into law, the agencies would modify the revised proposal to reflect the new legal requirements.

The December proposal would have made an institution with an assigned rating of "substantial noncompliance" subject to an enforcement action under 12 U.S.C. 1818. A number of commenters questioned the legal authority of the agencies under the CRA to use assigned ratings as the basis for an enforcement action. Other commenters endorsed taking enforcement action against institutions with poor CRA ratings.



The revised proposal includes the enforcement provisions from the December proposal while the agencies continue to analyze the issues raised by the comments. The agencies invite further comment on these issues before issuing a final rule.

#### *The Lending Test*

The lending test in the December proposal would have evaluated—on the basis of its performance in relation to other lenders subject to CRA and on an independent basis—the extent to which a retail institution was making loans in the low- and moderate-income portions of its service area. The test would have evaluated an institution's lending performance relative to other lenders by comparing the institution's market share of housing, small business, small farm, and consumer loans in the low- and moderate-income geographies of its service area with its share of such loans in the other parts of its service area. The test would have evaluated performance on an independent basis by examining the ratio of reported loans made (both number and amount) by the institution in the low- and moderate-income geographies of its service area to the reported loans made throughout its entire service area and the geographic distribution of its reported loans across the low- and moderate-income geographies of its service area.

At the election of the institution, the agencies would have considered indirect loans under the lending test. Indirect loans were defined to include loans made by third parties, such as lending consortia, subsidiaries of the institution, non-chartered affiliates funded by the institution, and other lenders that lent to low- and moderate-income individuals or geographies and in which the institution had made lawful investments. The agencies would have attributed indirect loans to an institution in proportion to the size of the institution's investment in or funding of the third party lender or participation in the third party's loans, provided the institution reported the indirect loans.

The December proposal would have made 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. An institution would have been able to claim credit for lending by its subsidiaries or non-chartered affiliates if the institution either invested in the entity or made a loan to it. For third party lenders, however, the institution would have been required to make an

investment in the entity (as opposed to making a loan to the entity) in order to claim credit under the lending test for the third party loans. The purpose of this distinction was to recognize the unique relationship between an institution and its subsidiaries and affiliates, and to give institutions and their parent corporations greater flexibility to structure their lending as they saw fit.

While the foregoing factors would have served as the basis for a rating under the lending test, the December proposal would have allowed the agencies to adjust an institution's assessment upward, and, in exceptional cases, downward. Upward adjustment might have been warranted if the institution made, for example, a substantial amount of loans requiring innovative underwriting or loans for which there was special need, such as loans for multifamily housing construction and rehabilitation, loans for start-up or very small businesses, loans to community development organizations or facilities, or loans to very low-income individuals and geographies. An institution's assessment also could have been increased if it operated a "second look" program to reevaluate loan applications that, based on an initial review, the institution had planned to deny. On the other hand, a downward adjustment could have been warranted if, for example, the quantitative measures inaccurately portrayed the institution's actual lending to low- or moderate-income geographies or individuals.

Commenters from both the banking industry and the public believed the lending test contained in the December proposal was too narrow in its focus. In particular, some believed the test gave insufficient emphasis to community development lending and innovative underwriting. Other commenters noted that the proposed lending test placed undue emphasis on the location of the borrower rather than on the borrower's individual characteristics (e.g., income). Some commenters believed the December proposal would have given institutions a greater incentive to make loans to high-income borrowers located in low-income geographies than to make loans to low-income borrowers located in high-income geographies.

In response to commenters who believed the December proposal underemphasized the importance of community development lending, the revised proposal would treat such lending as a principal component of an institution's lending performance, not merely an adjustment factor. The revised proposal also defines

community development loans. Such loans are loans (including lines of credit, commitments and letters of credit) that address affordable housing or other community economic development needs not being met by the private market, provided such loans (1) Principally benefit low- or moderate-income individuals, businesses or small farms with annual revenues less than or equal to \$1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; (2) have not been reported or collected by the bank or one of its affiliates as home mortgage loans, small business loans, small farm loans, or consumer loans for CRA purposes, unless the loans are for multifamily dwellings (as defined in the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq.*) regulations); and (3) except in the case of a wholesale or limited purpose bank, benefit the bank's service area(s) or a broader statewide or regional area that includes the bank's service area(s). This definition clarifies that community development loans deserving of favorable consideration are those that fill a void left by the ordinary operation of the private market. In addition, it is designed to prevent double-counting of all loans except for multifamily housing loans, which the agencies believe should be considered both in the distribution analyses of an institution's home mortgage lending and for evaluation of its community development lending in order to properly evaluate the value of the loans for CRA purposes. Finally, the definition also provides that an institution will get favorable consideration for a community development loan if it is in the institution's service area or is in a broader region that includes the institution's service area. This broader geographic scope would recognize the nature of some lending programs and consortia that produce these loans. An institution would be evaluated based on the number, amount, complexity, and innovativeness of its community development loans.<sup>1</sup>

<sup>1</sup> Examples of community development loans identified by the agencies include, but are not limited to, loans to borrowers in support of affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons; not-for-profit organizations serving primarily low- and moderate-income housing or other community economic development needs; borrowers in support of community facilities in low- and moderate-income areas or that primarily benefit low- and moderate-income individuals; and financial intermediaries including, but not limited to, Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs),



The agencies also have revised the lending test in response to comments that the December proposal placed undue emphasis on the geography of the borrower rather than on the borrower's individual characteristics. Under the revised proposal, while the agencies would continue to place a heavy emphasis on the geographic distribution of an institution's lending, they also would consider favorably loans made to low- and moderate-income individuals regardless of where the borrowers reside. The agencies would evaluate the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals; the number and amount of loans to small businesses and small farms with annual revenues less than or equal to \$1 million; the number and amount of loans to small businesses and small farms by size of loan; and, at the institution's option, the number and amount of consumer loans to low-, moderate-, middle-, and upper-income individuals. The revised proposal provides that distribution of borrower characteristics would be examined with particular reference to the institution's service area, but need not be limited to the institution's service area. Institutions would receive favorable consideration for lending to low- and moderate-income individuals and small businesses and farms outside of their service area, so long as they have not neglected these borrowers inside their service area. The agencies have also created an assessment criterion regarding an institution's use of innovative and flexible lending practices to recognize those programs and products that might have been cause for upward adjustments in the December proposal.

The agencies received numerous comments on the market share component of the lending test. Many banks and thrifts felt the market share test was misleading in that, among other things, it overlooked loans by institutions that do not have any reporting obligations under HMDA or CRA. Further, institutions could have had service areas that overlapped partially, but not completely, in ways that would distort the measurement of their lending performance under the test. Many also were concerned that if one bank increased its market share, another necessarily would lose market share; hence, the commenters suggested

that the market share test could promote a price war among institutions trying to make loans in low- and moderate-income areas, potentially leading to unsafe and unsound banking practices. Banks and thrifts frequently stated that the lending test in the December proposal was a form of credit allocation. On the other hand, many community groups and government officials liked the market share test because it provided an objective and quantitative standard for measuring an institution's CRA performance. At the same time, a number of community groups expressed concern that the formula did not take into account qualitative differences among loans.

In light of these comments, the lending test has been modified. The lending test would continue to give significant weight to the geographic distribution of an institution's lending; and, as part of the assessment context, examiners would consider, among other considerations described earlier in this preamble, the performance of other similarly-situated lenders where appropriate. In this regard, examiners would use market share and other analyses to assist in evaluating the geographic distribution of an institution's lending where such analyses would provide accurate insight. However, the proposed regulation does not require examiners to use any single type of analysis, and would not link a particular market share ratio, or any ratio, with a particular lending test rating.

In considering the geographic distribution of an institution's loans, the agencies, under the revised proposal, would evaluate the number and amount of an institution's loans in the low-, moderate-, middle-, and upper-income geographies of the institution's service area. They also would assess the dispersion of the institution's lending throughout its service area. In response to concerns expressed by some commenters that an institution might limit the size of its service area to obtain a better performance rating, the revised proposal would penalize an institution if too little of its lending were made inside its service area.

While agreeing with the concept of including affiliate and third-party lending at the institution's option, many industry commenters criticized the December proposal—which would not have considered lending by chartered or non-funded affiliates—as unduly restrictive and inconsistent with the corporate funding practices of certain institutions. Also, some community and consumer groups expressed concern that institutions could use third-party

lending to avoid their direct lending obligations and, in effect, “buy out” of their CRA obligations.

Like the December proposal, the revised proposal would allow institutions, at their option, to include affiliate and third-party lending in their lending record but would make certain changes to the December proposal in this regard. First, the revised proposal would consider indirect lending by any of an institution's affiliates—regardless of whether the affiliate is chartered or how it is funded. The revised proposal would not impose restrictions on the corporate structures of institutions and their affiliates.

Second, the rules regarding the allocation of loans among affiliates have been simplified. The revised proposal would also include several new provisions designed to prevent an institution from selectively including (or excluding) its affiliate lending. Under the revised proposal, the agencies would evaluate an institution's affiliate lending when assessing the institution's overall lending performance, provided the institution (or its affiliate) chooses to collect and report the data pertaining to such lending. If an institution chooses to report some of its affiliate loans in a service area for a particular lending category, such as home mortgages, or small business loans, it would be required to report all of its affiliate loans of that category for that specific service area. An agency would be able to consider the lending of an institution's affiliate, notwithstanding whether the institution wants the agency to consider its affiliate lending, if the agency were to determine that such lending is integral to the institution's business. An affiliate's lending would be integral to an institution's business if the institution's operations closely involve or support the marketing, management, or other operation of the affiliate's lending. Lending would not be considered integral to an institution's business merely because the institution had a financial interest in the affiliate.

Third, the revised proposal would no longer allow an institution to include third party loans with its direct and affiliate loans for purposes of assessing the geographic distribution of the institution's lending or the distribution of its lending across borrower characteristics. Under the revised proposal, third party loans could be attributed to an institution only if they meet the definition of community development loans. This change responds to comments from community and consumer groups who expressed concern that institutions could use third-party lending to avoid their direct

minority- and women-owned financial institutions, and low-income or community development credit unions that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote affordable housing and/or community economic development.



lending obligations and, in effect, "buy out" of their CRA obligations. The revised proposal also would operate to relieve third party lenders of the burden of reporting the geographic location of their loans that could have been placed on them by the December proposal.

#### *The Investment Test*

In the December proposal, retail institutions as well as wholesale or limited purpose institutions would have been evaluated under the investment test based on the amount of assets they had devoted to "qualified investments" in comparison to their risk-based capital. The focus of the investment test would have been on the ultimate impact of an institution's investment rather than the investment per se. Therefore, qualified investments would not have been 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 geographies.

Qualified investments would have included lawful investments that benefit low- and moderate-income geographies or individuals in an institution's service area. Examples of such investments would have included those: (1) in support of local affordable housing and community, economic, or small business development; (2) in community development financial institutions, community development corporations, community development projects, small business investment companies (including specialized small business investment companies), and minority- and women-owned financial institutions and other community development financial intermediaries; (3) in consortia or other entities serving low- and moderate-income individuals and areas; and (4) 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. Eligible grants and the donation or sale on favorable terms of branches to minority- or women-owned financial institutions also would have counted as qualifying investments.

The agencies could have adjusted an institution's rating upward under the investment test to take into account whether the institution's investments were particularly innovative or met a special need or whether the institution's activities in connection with the investments were particularly complex or intensive. The agencies also would have been able to adjust an institution's rating upward if the institution had made a large amount of investments that

would have been qualified investments except that they failed to benefit the institution's service area. Downward adjustments would have been justified only in exceptional cases.

Commenters criticized several aspects of the proposal. Most notably, many banking industry commenters expressed dissatisfaction with the test's focus on the amount of qualified investments relative to an institution's risk-based capital. They felt reliance on any such investment-to-capital ratio would unfairly penalize well-capitalized institutions. Community groups commented on various aspects of how the term "qualified investments" was defined and the banking industry criticized the restriction that qualified investments must benefit the institution's service area.

The investment test in the revised proposal has been modified to address the principal concerns raised in the comments. The reliance on the ratio of qualified investments to risk-based capital has been eliminated. Rather, under the revised proposal, the agencies would focus on the dollar amount of the institution's qualified investments (independent of the institution's capital), the innovativeness and complexity of the qualified investments and their connection to credit needs, and the institution's responsiveness to credit and community economic development needs.

Further, the revised proposal clarifies the definition of "qualified investments."<sup>2</sup> Qualified investments

<sup>2</sup> Examples of qualified investments identified by the agencies include, but are not limited to, investments and grants: in or to financial intermediaries (including, but not limited to CDFIs, CDCs, minority- and women-owned financial institutions, and low-income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote affordable housing and/or community economic development; in support of organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing; in support of organizations promoting small businesses, including Small Business Investment Companies (SBICs), and specialized SBICs; in and to not-for-profit organizations serving low- and moderate-income housing needs and/or other community economic development needs; to support or develop facilities that promote community economic development in low- and moderate-income areas or for low- and moderate-income individuals, such as day care facilities, in projects eligible for low-income housing tax credits; in state and municipal obligations that specifically support affordable housing or other community economic development to benefit low- and moderate-income individuals or areas; to not-for-profit organizations serving low- and moderate-income housing and/or other community economic development needs, such as home-ownership counseling, home maintenance counseling, credit counseling, and other financial services education; and in or to

are lawful investments, deposits, membership shares in a credit union, and grants that primarily benefit low- or moderate-income individuals or businesses or farms with under \$1 million in annual revenues or that qualify as small businesses under SBA regulations; and that address affordable housing (including multifamily rental housing) or other community economic development needs that are not being met in the normal course of business by the private market. The agencies intend the limitation regarding needs not being met by the private market to exclude untargeted municipal bonds and standard mortgage-backed securities. The revised proposal also would clarify that grants, membership shares in a credit union, and other non-loan financial support can qualify as qualified investments. Under the definition, a qualified investment would not otherwise be disqualified because an institution receives favorable treatment (for example as a tax deduction or credit) for them under the Internal Revenue Code. In addition, under the revised proposal, qualified investments no longer would need to benefit an institution's service area, provided the investments benefit a broader statewide or regional geographic area that includes the institution's service area. This change would conform with the broader geographic scope permitted for community development loans discussed previously.

The revised proposal deletes the definition of small business from the December proposal that some commenters criticized as too complicated. Instead, the qualified investment and community development loan definitions refer to investments and loans that benefit businesses with annual revenues under \$1 million or that would qualify as small businesses under a Small Business Administration program. The \$1 million figure was chosen because it is used in Regulation B to differentiate among borrowers for requirements concerning adverse action notices and application retention. The new proposed definitions also maintain a treatment of small business that conforms to the SBA definitions, as required by law for federal agencies.

As described more fully later in this preamble, under the revised proposal, wholesale or limited purpose banks would be subject to evaluation under

organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development.



the new community development test rather than under the investment test.

#### *The Service Test*

The December proposal would have evaluated an institution's CRA service performance primarily on the basis of the percentage of its branches located in or readily accessible to low- and moderate-income geographies. The percentage of branches that an institution would have been expected to have in or readily accessible to low- and moderate-income geographies in each service area would have depended, in part, on the number of such geographies in the service area. Under the December proposal, institutions would not have been required to expand the size of their branching network or to operate branches at a loss.

The agencies would have been able to adjust an institution's service record upward or downward to reflect more accurately its branch service to lower moderate-income geographies or individuals, but downward adjustments would have been made only in exceptional cases. In determining the appropriateness and degree of any adjustment, the agencies would have considered: (1) the institution's record of opening and closing branches; (2) whether branches—wherever located—were actually serving low- and moderate-income individuals; (3) any significant differences in the quality, quantity or types of services offered to low- or moderate-income individuals or geographies; and (4) similar factors. The agencies also could have adjusted an 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 or geographies. Particular weight would have been given to credit and home-ownership counseling, small and minority-owned business counseling, low-cost check-cashing, and low-cost deposit services.

The service test contained in the revised proposal would change the service test contained in the December proposal in response to comments received by the agencies. In crafting the December proposal, the agencies were guided by a belief that ready access to branches is a critical factor in the availability of credit and deposit services in a community. However, many banking industry representatives commented that the service test placed too much emphasis on "brick and mortar" branches (i.e., permanent staffed banking facilities). The commenters noted that although branches are still valuable, present technology has made the need for

branches less imperative to the provision of banking services. On the other hand, many consumer groups stressed that, despite changes in technology, brick and mortar branches continue to have symbolic and practical relevance to credit availability. A number of commenters emphasized, however, that evaluations based on the mere presence of brick and mortar facilities is not sufficient. Rather, the agencies must consider the actual services that are provided.

In light of these comments, the agencies have decided to modify the service test so that "brick and mortar" branches no longer would serve as the overwhelming factor in assessing an institution's service performance, although they still would receive prominent consideration. Under the revised proposal, equal weight would be given to the actual services provided to low- and moderate-income geographies.

Under the revised proposal, the agencies would evaluate an institution's systems for delivering retail banking services (where the term "systems" includes, among other things, branches, automated teller machines (ATMs), loan production offices, banking by telephone or computer, mobile branches, and bank-at-work or by-mail programs) by: (1) assessing the distribution of the institution's branches and ATMs among low-, moderate-, middle-, and upper-income geographies; (2) reviewing the institution's record of opening and closing branches and ATMs; (3) assessing the range of services provided in low-, moderate-, middle-, and upper-income geographies; and (4) evaluating the availability of alternative systems for delivering retail banking services.

In addition, the agencies would evaluate the extent to which an institution provides community development services and the innovativeness and responsiveness of such services, given the needs of the institution's community and the capacity and constraints of the institution. The revised proposal defines community development services as services that primarily benefit low- and moderate-income individuals, businesses or farms with annual revenues less than or equal to \$1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program and that address affordable housing (including multifamily rental housing) or other community economic

development needs that are not being met by the private market.<sup>3</sup>

#### *The Community Development Test for Wholesale or Limited Purpose Institutions*

Under the December proposal, wholesale or limited purpose institutions were defined as insured depository institutions that are in the business of extending credit to the public but do not make a significant amount of reportable loans (i.e., home mortgage, consumer, small farm and small business loans). These would have included institutions that make primarily large commercial loans, as well as credit card banks, and similar institutions. The December proposal would have required an evaluation of the CRA performance of these institutions primarily under the proposed investment test.

Performance under that test would have been measured based on the amount of an institution's assets devoted to qualified investments as compared to its risk-based capital. Qualified investments would have consisted of lawful investments that benefited low- and moderate-income geographies or individuals in an institution's service area, including investments that supported local affordable housing and community, economic, or small business development. Eligible grants and loans that would have constituted a qualified investment also would have been included within the investment test. In assigning the overall rating for wholesale or limited purpose institutions, the institution's investment test rating could have been increased one level for outstanding performance and decreased one level for a "substantial noncompliance" rating on the service test.

In light of the comments received, the revised proposal would replace the investment test with the community development test as the primary test for wholesale or limited purpose institutions. A number of commenters considered the investment test too

<sup>3</sup> Examples of community development services would include, among other things: providing technical expertise for not-for-profit organizations serving low- and moderate-income housing needs and/or economic growth and development, lending executives to organizations facilitating affordable housing construction and rehabilitation and/or development of affordable housing; providing credit counseling, home buyers counseling, home maintenance counseling, and/or financial planning to promote community economic development and affordable housing, school savings programs, and other financial services education; and offering lifeline deposit services, low-cost or free government check cashing, or participating in an electronic benefit transfer network.



narrowly focused to use as a tool for assessing the CRA performance of wholesale or limited purpose institutions and suggested replacing the test with a test that focused on community development activities more generally.

The community development test in the revised proposal would focus on a wholesale or limited purpose institution's record in helping to meet the credit needs of its service area through qualified investments, community development lending, and community development services. In general, these community development-related activities would be similar to the community development aspects of the lending and service tests, and would adopt the definition of qualified investments used in the investment test in the revised proposal. The community development test also would consider small business and small farm loans as well as loans to low- and moderate-income individuals and geographies as community development loans, whether or not reported or collected under the data collection requirements of the revised proposal.

Several commenters believed the December proposal's definitions of wholesale or limited purpose institutions did not clearly distinguish between these types of institutions and retail institutions. Some commenters also suggested that these institutions be permitted to conduct a certain amount of incidental retail lending without losing their wholesale or limited purpose institution status. Several comments suggested that an institution should have the opportunity to confirm its status as a wholesale or limited purpose institution with the agencies in advance of being examined.

In response to these comments, the revised proposal would clarify which institutions would be considered wholesale or limited purpose institutions for purposes of CRA. The definition for institutions eligible for wholesale or limited purpose designation would be as follows: (1) wholesale institutions are institutions that are not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers; and (2) limited purpose institutions are institutions that offer only a narrow product line (such as credit cards or automobile loans) to a national or regional market. An institution would not be considered in the business of extending loans to retail customers if it does not hold itself out to the retail public as providing such loans and the institution's revenues from extending such loans are

insignificant when compared to its overall lending operations. An institution could conduct some incidental retail lending if the retail activity would not cause the institution to exceed these limitations. However, a so-called "niche institution" (an institution that is in the business of lending to the public but which specializes in certain types of retail loans or extending credit to a class of borrowers with, for example, certain financial or professional characteristics) would not generally qualify as a wholesale or limited purpose institution.

The revised proposal also would require an institution that elects to be evaluated as a wholesale or limited purpose institution to file a written request with the appropriate agency and receive confirmation of its status before the commencement of the examination. The agencies will issue guidelines regarding how long in advance of a scheduled examination an institution must file its request, and under what circumstances an institution will have to reapply to retain wholesale or limited purpose status. An institution whose request for wholesale or limited purpose status has been denied by the appropriate agency would be evaluated under the tests applicable to retail institutions, small institutions, or an institution with approved strategic plans, as appropriate.

The OTS did not include provisions for wholesale or limited purpose thrifts in its version of the December proposal. In response to comments, the OTS's revised proposal includes provisions that would allow thrifts the opportunity to request designation as a wholesale or limited purpose institution.

#### *Small Institution Assessment Option*

The December proposal would have offered small banks and thrifts the option of choosing to be evaluated under a streamlined assessment method. The regulations would not have imposed upon small institutions the data collection requirements imposed on other institutions. The agencies stressed in the preamble to the December proposal that, notwithstanding the different assessment methods, examinations of small banks and thrifts would have been meaningful examinations and would not have been implemented as de facto exemptions.

Small banks and thrifts were defined in the December proposal as independent institutions with assets of less than \$250 million or members of holding companies the total banking and thrift assets of which are less than

\$250 million. A small institution's CRA rating under the December proposal would have been based primarily on its lending record. An institution would have been presumed to receive a "satisfactory" rating if it had a reasonable loan-to-deposit ratio, made the majority of its loans locally, had a good loan mix (i.e., made a variety of loans to the extent permitted by law and regulation and lent across economic levels), had no legitimate, bona-fide complaints from community members, had not committed an isolated act of illegal discrimination of which it had knowledge that it had not corrected fully or was not in the process of correcting fully, and had not engaged in a pattern or practice of illegal discrimination that it had not corrected fully. If an institution was required to report loans under the HMDA, the institution also would have been required to have a reasonable geographic distribution of reported loans.

A small institution that met each of the standards for a "satisfactory" rating and exceeded some or all of those standards could have received an overall rating of "outstanding" depending on the degree to which it exceeded the criteria for a "satisfactory" rating and, at its option, its record of making qualified investments and its record of providing services. If a small institution failed to meet or exceed all of the standards for a "satisfactory" rating, the relevant agency would have conducted a more extensive examination of the institution, including, at the option of the institution, an examination of its investment and service performance. Also, if a small institution operated in more than one service area, the relevant agency would have evaluated the institution's performance in all of those service areas.

Many community and consumer group commenters asked the agencies to eliminate the small institution assessment method because they believed that it would operate as an exemption for qualifying institutions. However, many banks and thrifts, as well as the weight of Congressional comments, supported the streamlined approach. The agencies have retained the streamlined assessment method as modified in the revised proposal. The agencies also have retained the December proposal's exemption of small institutions from the new data collection and reporting requirements for small business, small farm and community development loans, although the agencies have clarified that small institutions would not be



subjected to those requirements because they request to be evaluated under the strategic plan assessment option.

The agencies reiterate, however, that they do not intend by the proposal to exempt small institutions from the CRA or subject them to a less demanding standard of performance. The revised proposal has been redrafted so that the format of the small institution approach is more straightforward. The revised proposal first states the criteria that the agencies would use to assess the performance of a small institution, and then describes the performance levels that correspond to satisfactory performance. As under the tests for large retail institutions, the agencies have eliminated the structure of rebuttable presumptions and have proposed a rating profile. A small institution's performance need not fit every aspect of the rating profile describing "satisfactory" performance for it to receive that rating. Exceptionally strong performance on some aspects can compensate for weak performance on others provided the institution's overall performance is consistent with the rating profile. Small institutions that do not meet the standards for a "satisfactory" record would be given the appropriate rating without the necessity of a "closer review."

Some commenters expressed concern that under the December proposal an institution would be required to affirmatively elect to be examined under the streamlined assessment method and suggested that the streamlined method be the default examination procedure unless a qualifying institution elects another assessment method. The agencies agree and have drafted the revised proposal accordingly.

Commenters representing holding companies and small institutions that are affiliates of holding companies with total banking and thrift assets over \$250 million urged that the \$250 million asset limit take into consideration only the assets of the subject bank or thrift and not the aggregate amount of bank and thrift assets held by the holding company or, alternatively, that the asset limit be raised. Many community and governmental groups, on the other hand, believed that the asset limit should be lowered. After considering all of the comments, the agencies have decided to retain the definition of small institution set forth in the December proposal. No compelling evidence was presented to support a change of the asset limit. Further, the revised proposal reflects the notion that the CRA performance of a small independent institution or small affiliate institution of a small holding company should be measured against

different standards than a small institution affiliate of a larger holding company. The consideration of assessment context added in the revised proposal will permit the agencies to make this differentiation. The larger holding company could be expected to provide support and assistance to a degree not available to a small independent institution or to an affiliate institution of a small holding company.

Many commenters from small institutions criticized the presumption in the December proposal that a 60% loan-to-deposit ratio was reasonable. These commenters pointed out that economic conditions, institutional capacity and other constraints may result in loan-to-deposit ratios significantly below this figure. Although the agencies did not intend the December proposal to suggest that a loan-to-deposit ratio below 60% would have been presumed less than reasonable, the agencies have eliminated the use of any fixed percentage. Instead, the revised proposal would require that an institution's loan to deposit ratio, adjusted for seasonal variation and, as appropriate, other lending related activities, must be reasonable given the institution's size, financial condition, and the credit needs of its service area. The adjustment for lending related activities, such as secondary market sales and community development lending and investment, is new in the revised proposal. This provision responds to concerns that institutions that package and sell their loans would be disadvantaged, compared to portfolio lenders, by a strict loan-to-deposit ratio test. The proposed adjustment also addresses concerns raised by commenters that the small institution assessment method in the December proposal would have ignored the community development lending performance of small institutions.

Many industry commenters also criticized the requirement in the December proposal that, to be presumed to be performing satisfactorily, an institution would have needed a good loan mix, which would have included offering, to the extent permitted by law, a variety of loans to customers across economic levels. These commenters were concerned that an institution would have been required to offer all permissible loan products to all customers. The agencies agree that the focus on the types of products offered was inconsistent with the tenor of the proposed regulation as a whole and have altered the criterion in the revised proposal to eliminate any requirement concerning the types of products that an

institution offers. The revised proposal would retain the aspect of the criterion focussing on lending to customers across economic levels.

In a related change, the revised proposal would broaden the criterion in the December proposal concerning the distribution of loans by institutions required to report loan data under HMDA. The revised proposal would explicitly provide that the agencies would consider the geographic distribution of loans of all small institutions, not just those subject to HMDA. The agencies believe this consideration was implicit in the December proposal, which required lending across economic levels. In any event, the agencies do not intend this change to result in any increased documentation burden on small institutions. The geographic analysis would be performed by the agencies' examiners and would not be required of the institutions.

The agencies also received comments questioning the meaning of the criterion in the December proposal focussing on the complaint record of small institutions. Because of concerns by commenters that a "legitimate, bona-fide complaint" was not adequately defined, the agencies have now proposed a criterion that would focus on the institution's record of taking appropriate action, as warranted, in response to written complaints about its CRA performance.

Many commenters expressed concern that the December proposal was unclear regarding the circumstances under which a small institution could have earned an "outstanding" or less than "satisfactory" rating. The changes in the revised proposal clarify and conform the treatment of small banks to the requirement proposed for large retail institutions—that lending performance must be "satisfactory" for an institution to receive an overall satisfactory rating. Under the revised proposal, the agencies would consider a small institution's investment and service performance in order to determine whether it is eligible for an "outstanding" rating. Strong investment or service performance could help boost a small institution's rating to the "outstanding" level. Poor investment or service performance would not lower a small institution's rating below "satisfactory" but could prevent the institution from receiving an "outstanding" rating. The agencies would not consider investment and service performance to offset less than "satisfactory" performance by a small institution on the basic assessment criteria.



The revised proposal also reflects minor changes to clarify the treatment of small institutions. The agencies have eliminated the criterion in the December proposal relating to discrimination because the issue is addressed in the section on the assignment of overall ratings. In addition, consistent with the changes in the proposal for large institutions, the discussion of the examination procedures for small institutions with multiple service areas has been eliminated.

#### *Strategic Plan Assessment*

The December proposal would have provided that, as an alternative to being rated under the lending, service, and investment tests, or the small institution assessment standards, an institution could submit to its supervisory agency for approval a strategic plan detailing how the institution proposed to meet its CRA obligation. The December proposal would have required that the plan be submitted three months in advance of its effective date, and that the institution solicit public comment on the plan at the time the plan is submitted to the agency. No plan would have been approved unless it provided measurable goals for proposed performance and those goals constituted at least satisfactory performance under the standards of the regulation. No plan could have had a term beyond two years, and the institution could have petitioned the agency to amend the plan on the grounds that a material change of circumstances made the plan no longer appropriate. The agency would have assessed the CRA performance of the institution under the plan. If the institution failed to meet or exceed the preponderance of its goals, its performance would have been evaluated against the lending, service and investment tests or the small institution assessment method, as applicable. The preamble to the December proposal stated that an institution operating under an approved strategic plan would not be relieved of its obligation to report data under the regulation.

The concerns regarding the strategic plan option most consistently raised by the comments were the December proposal's lack of details concerning important aspects of how the plan option would operate and the nature of public input into the process. The revised proposal would provide substantially more detail about the operation of the plan option than the December proposal, and would modify the December proposal in other respects as well. In the revised proposal, the agencies have attempted to provide a real alternative to the standard lending,

investment, and service tests through the strategic plan option, while assuring that those operating under a plan are subject to a CRA assessment that is no less stringent and performance-based than the proposed standard tests.

The revised proposal would substantially revise the provisions in the December proposal regarding public participation in the plan process. An institution would be required to informally seek suggestions from the public while developing the plan. Once the institution had developed the plan, the institution would be required to formally solicit public comment on the plan for at least 30 days. The agencies have decided not to extend the minimum comment period to avoid unduly lengthening the plan process. After the comment period, the institution would submit the plan to its regulator, along with any comments received, and, if the plan was revised in light of the comments received, the plan in the form released for public comment. Under the revised proposal, a submitted plan would be approved if the agency fails to act on the plan within 60 days after submission, unless the agency extended the review period for good cause. Until a plan was approved, an institution would be subject to the standard performance tests.

These changes would increase the opportunity for productive community input in the plan process. By requiring an institution to seek informal suggestions in formulating a plan, and then to solicit formal comment before submitting a plan to the agency, this process will encourage consultation between an institution and its community, including local government, community leaders, and the public. There would not be a further comment period after the institution submits its proposed plan to the agency because such a comment period could undermine the direct communication and consultation between an institution and its community that is most beneficial to the process. The revised proposal would provide that, in evaluating a plan, the agency would consider the public's involvement in formulating the plan and any response by the institution to public comment on the plan.

Several comments appeared to misunderstand why the strategic plan would provide for input from the public. The plan option would provide institutions an opportunity to tailor their CRA objectives to the needs of their community and their capacity and expertise. Few comments suggested that an institution would be able to

determine the needs of its community without consulting in some fashion with those in the community. Several industry comments were concerned that under the strategic plan option, community organizations would play an inappropriate role in an institution's operations. However, the purpose of the consultation would be for the institution to develop information about the needs of its community and how they might be met so that it can make better judgments when formulating its plan objectives. The decision regarding how the institution is to meet those needs would remain with the institution. In reviewing the public participation, the agencies would not consider whether community organizations unanimously supported the plan, but whether the institution made an appropriate investigation to determine the needs of its community, and whether, considering the information about community credit needs that the institution received in the comments, the plan goals are appropriate. The agencies would evaluate strategic plans and their proposed measurable goals in the assessment context against which the tests and standards of the proposed regulation would be applied.

The revised proposal also would provide significantly more guidance regarding the standards for approval of a plan. Commenters on the December proposal were divided over the standards for approval. Some commenters thought the regulation should state that the standards for approval of a plan are the same as the standards on the lending, service, and investment tests, or that the plan should require no less lending than the lending test. In contrast, some industry commenters thought that the plan would not provide a real alternative unless it permitted an institution to depart from the standard tests in responding to local needs. Under the revised proposal, a plan would have to specify measurable goals for helping to meet the credit needs of the institution's service area, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals. These goals would have to reflect the institution's capacity and constraints, product offerings, and business strategy.

The revised proposal would require that the plan specify measurable goals in lending, investment, and the provision of services, as appropriate to the circumstances. The proposal would specify the broad criteria in lending, investment, and services that should be the framework for the plan goals. At the same time, however, the proposal would



make clear that an institution has great flexibility to fashion its program within those parameters. An institution would not be required to set levels of performance in all three categories. In order to maintain the focus on lending for retail institutions operating under a plan, a retail institution's goals would have to emphasize lending and lending-related activities, unless a different emphasis were appropriate given the credit needs of the service area, public comment, and the institution's capacity and constraints.

The agencies intend through these provisions to provide guidance to the industry and the community regarding the standards for plan approval, while preserving substantial flexibility for institutions to tailor their CRA programs. The purpose of the plan is not to provide institutions operating under a plan with a different or lesser obligation to help meet the needs of their community; it is to provide more certainty and flexibility for those institutions that wish to meet their obligation in a fashion that they believe may not be appropriately assessed by the standard performance tests.

The revised proposal would require that each plan specify measurable goals, the satisfaction of which, the institution believes, would warrant a "satisfactory" rating. An institution also would have the option of identifying a separate set of goals that, if met, would warrant an "outstanding" rating. An institution would not be considered for a rating of outstanding unless its plan contained outstanding goals that had been approved by the relevant agency.

The revised proposal also would clarify how performance would be assessed under the plan. The agencies believe that the standard of performance in the December proposal should be strengthened, and the revised proposal would require an institution to substantially achieve its plan goals to receive that rating. This would apply to the satisfactory rating and, if the plan contained such approved goals, to the outstanding rating.

Some commenters believed that the possibility of being considered under the standard tests, as contemplated by the December proposal, made the plan a less attractive alternative to the standard tests. The revised proposal would, unless the institution chose otherwise, rate an institution's performance under an approved plan solely in relation to its plan goals. An institution would have the option, however, to elect in its plan to be subject to the standard tests should its performance under the plan goals be less than satisfactory. The agencies

intend that an institution operating under an approved plan would, during the period of the plan, never be subject to assessment under the standard tests, unless the institution so chose.

In response to industry comments that said the two year plan term in the December proposal was too short to warrant the expense of preparing a plan and to permit institutions to initiate activities with a longer view, the agencies have lengthened the possible plan term to 5 years, but would require the plan to have annual interim measurable goals. The agencies agree that it is beneficial to provide institutions the opportunity for long-range planning, and the interim goals should enable effective examinations during the plan period. The proposal also would permit an institution to develop a single plan for one or more or all of its service areas and allow affiliated institutions to prepare joint plans.

A number of industry commenters indicated that the possibility of public disclosure of confidential information presented a major disincentive to their use of the strategic plan alternative. The revised proposal would allow institutions to submit additional information to the relevant agency on a confidential basis. However, the publicly available information would have to be sufficiently specific to enable the public and the agency to judge fairly the merits of the plan's goals.

The revised proposal also would provide more detail regarding plan amendment. An institution would be able to petition for an amendment on the grounds that a material change in circumstances had made the plan no longer appropriate. In order to preserve the integrity of the public participation in the plan process, any proposed amendment would have to go through the public consultation and comment process described earlier in this preamble.

Despite industry comments to the contrary, the revised proposal continues to provide that approval of a plan would not affect an institution's data collection responsibilities. The data are useful to the agencies in assessing overall lending in communities, and would also be of value to the public. Since the institution's plan would be in its public file, the public would have the appropriate context in which to evaluate the lending data.

The revised proposal also clarifies that evidence of discrimination would affect an institution's rating based on plan performance in the same manner as such evidence would affect an

institution's rating calculated pursuant to the standard tests.

#### *Assigned Ratings*

Under the December proposal, institutions would have been assigned one of four overall, or composite, ratings, as required by the statute: "outstanding", "satisfactory", "needs to improve", and "substantial noncompliance". In the December proposal, ratings on the lending, investment, and service test were combined into a composite rating. For a retail institution, the institution's rating under the lending test would have served as the base rating. This base rating would then have been increased by two levels in the case of outstanding investment performance or by one level in the case of high satisfactory investment performance. For a wholesale or limited-purpose institution, the institution's rating under the investment test would have served as the basis for the overall rating. For any institution, the rating would have been increased by one level in the case of an "outstanding" rating for service and decreased by one level in the case of a "substantial non-compliance" rating for service.

Because the lending, service and investment tests had five rating levels rather than four, the rating would then have been converted to the statutorily-required four level rating system, with "high satisfactory" and "low satisfactory" both scored as "satisfactory". An institution that would otherwise have received a "needs to improve" rating would have been rated in "substantial noncompliance" if the institution received no better than a "needs to improve" rating on each of its two previous examinations. Finally, the rating would have been adjusted to take into account any illegal lending discrimination by the institution to arrive at a final composite rating.

Many commenters, particularly community and consumer groups, were concerned that the rating system proposed in December permitted a retail institution with poor lending performance to achieve a satisfactory or outstanding overall rating through outstanding performance on the investment and service tests. These commenters asked that no retail institution be permitted to achieve a satisfactory overall rating unless it received a satisfactory rating on the lending test. The revised proposal would ensure that lending performance receives sufficient weight by weighing a retail institution's rating on the lending test so as to count for at least 50 percent of its overall rating. Furthermore, a



retail institution would be required to achieve a rating of satisfactory on the lending test in order to receive an overall rating of satisfactory.

Some commenters were concerned that investment and service performance only affected an institution's overall rating at the margins—if investment or service performance was extraordinarily strong or weak. The revised proposal would allow investment and service performance to boost an institution's rating provided the institution had achieved a rating of satisfactory on the lending test. Poor performance on either the investment or service test could negatively affect an institution's overall performance.

These principles would be implemented through the process described in paragraph (b) of Appendix A for assigning a rating for retail institutions assessed under the lending, service and investment tests. Points would be assigned to an institution's performance on each of the underlying tests. The total number of points would determine the composite rating, unless the total exceeds twice the number of points attributable to the institution's performance under the lending test. In that case, the composite rating would be determined using twice the number of points attributable to the institution's lending performance to ensure that lending performance accounts for at least 50 percent of the overall rating.

Small institutions, wholesale or limited purpose institutions, or institutions with an approved strategic plan would be rated as described in paragraphs (c) through (e) of Appendix A.

As in the December proposal, the revised proposal would require the agencies to adjust ratings for all institutions, regardless of the method of CRA evaluation, to take evidence of discrimination or other illegal credit practices into consideration. In addition, the revised proposal, as in December's proposal, provides that an institution that otherwise would receive a needs to improve rating would be rated in substantial noncompliance if it received no better than a needs to improve rating on each of its two previous examinations.

#### *Lending Discrimination*

Under the December proposal, an institution would presumptively have received a final CRA rating of less than satisfactory if the institution (1) committed an isolated act of illegal discrimination of which it had knowledge that it had not corrected fully or was not in the process of

correcting fully or (2) engaged in a pattern or practice of illegal discrimination that it had not corrected fully. The presumption could have been rebutted in the case of technical or de minimis violations, for example, if an institution violated 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).

Many community and consumer groups criticized this proposal as a retreat from current practice. They pointed out that the existing regulation provides that the agencies will consider any evidence of discriminatory or other illegal credit practices. Although the agencies did not intend in the December proposal to reduce the weight given evidence of illegal discrimination in the CRA evaluation process, they believe that the commenters' concerns should be addressed. The revised proposal conforms with the language of the existing regulation. Also, the discrimination provisions in the revised proposal would avoid the use of a rebuttable presumption consistent with the elimination of presumptions throughout the proposal.

Under the revised proposal, any evidence of discriminatory or other illegal credit practices would adversely affect the agencies' evaluation of an institution's CRA rating. In determining the effect on an institution's rating, the agencies would consider the nature and extent of the evidence, the policies and procedures that the institution has in place to prevent discriminatory or other illegal credit practices, any corrective action that the institution has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information, such as the institution's past fair lending performance.

There was also some confusion regarding whether the December proposal intended that illegal discrimination would have the same effect for all institutions regardless of the assessment method that they chose. The revised proposal makes clear that evidence of discrimination would be considered in assigning a rating to all banks and thrifts, regardless of whether they were evaluated under the lending, service, and investment tests, the community development test for wholesale or limited purpose banks, the small institution assessment method, or the strategic plan option.

#### *Multiple Service Areas*

The preamble to the December proposal stated that an institution's CRA

rating should reflect its performance in all the local communities in which it does business. However, the proposed regulatory language provided that the agencies would conduct full lending, service, and investment tests (or the other appropriate assessments) in a sample of the service areas in which the institution operated. 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.

Some commenters urged the agencies to conduct assessments in every one of an institution's service areas, because every institution has an obligation to help meet the credit needs of all of its service areas. These commenters and others also expressed concern that the regulation did not provide clear rules as to how performance in each of the service areas assessed would be combined to arrive at an overall rating for the institution.

An institution is obligated to help meet the credit needs of its entire community, including all of the institution's service areas. However, ensuring that institutions fulfill this responsibility does not necessarily require that an institution's performance in each of its service areas must be examined. Questions of how many service areas should be examined during an examination and how performance in different service areas should be weighed are more appropriately handled through examination procedures than through regulatory language. The agencies have therefore omitted from the revised proposal all discussion of examination treatment of multiple service areas.

The agencies note that the Interstate Banking Efficiency Act would establish requirements for the examination of multi-state and other institutions. This proposal and examination procedures will be modified as necessary to comply with that Act if it becomes law.

#### *Effect of Ratings on Applications*

The CRA requires the agencies to consider an institution's CRA performance record when considering an application by the institution to establish a deposit facility (e.g., branch). The December proposal specified how CRA ratings would be considered in applications. For example, an application from an institution with a "substantial noncompliance" CRA rating would have generally been denied, whereas an application from an institution with an "outstanding" rating would have been given extra weight. A "satisfactory" rating generally would



have been consistent with approval of an application and a "needs to improve" rating, absent other evidence, generally would have resulted in a denial or conditional approval of an application. The agencies emphasized, however, that the CRA examination rating is not conclusive and recognized that other information related to CRA performance and the convenience and needs of communities, including information collected through public comment and reports, is also relevant and would be considered.

Although not intended as such, a number of the commenters believed these provisions would have provided institutions with a "safe harbor" from challenges to their performance record in the applications process if they achieved an "outstanding" CRA examination rating. Those commenters were concerned that they could be prevented from effectively commenting on the CRA performance aspects relevant to applications and urged that those provisions be dropped.

The discussion of the effect of particular ratings on applications in the December proposal was not intended to alter the agencies' policy of considering examination ratings and public comment during the applications process and has been deleted. As stated in the December proposal, the agencies have consistently recognized that materials relating to CRA performance received during the applications process from public comments and other sources, can and do provide relevant and valuable information. The revised proposal explicitly states that interested parties would have the opportunity to comment on applications and that the agencies would take their views into account in considering the CRA performance of an institution in the applications process. The agencies continue to believe, as provided in the Interagency Policy Statement Regarding the Community Reinvestment Act, that information from an examination is a particularly important consideration in the applications process because it represents the on-site evaluation of an institution's CRA performance by its primary federal regulator. The revised proposal also would specify that an institution's record of CRA performance would be considered in an institution's expansion proposals (as defined in the CRA) and may be the basis for approving, denying, or conditioning approval of an application.

#### *Definition of Service Area*

The December proposal would have replaced the concept of "delineated community" in the existing regulation

with the concept of service area. The December proposal would have defined service area as the area around each institution's office or group of offices where the preponderance of direct reportable loans made through those offices are located. A service area would have been presumed acceptable if it was broad enough to include low- and moderate-income geographies and did not arbitrarily exclude such geographies. An institution had the opportunity to show there were no low- and moderate-income geographies within a reasonable distance given its size and financial condition, and the supervisory agency could reject an otherwise acceptable service area if the service area did not account for the true effective lending territory of the institution or if it reflected past redlining or illegal discrimination. The proposal would have required an institution to delineate multiple service areas if the geographies it served extended substantially across state boundaries or the boundaries of a Metropolitan Statistical Area (MSA). An institution serving military customers would have been permitted to delineate a "military community" consisting of those customers. Each institution would also have been required to compile and maintain a list of all the geographies within its service area or areas and a map of each service area. The December proposal would not have required wholesale or limited purpose institutions to delineate a service area, but would have treated all low- and moderate-income geographies in the country as the service area for wholesale or limited purpose institutions.

As a result of numerous comments received on this issue, the revised proposal makes several changes to the definition. Several commenters suggested that the proposed regulation adopt concepts from the existing regulation, including the equidistance provision that requires an institution to include those areas around its offices where it makes a substantial portion of its loans and all other areas equidistant from its offices as those areas. The revised proposal would adopt the equidistance principle from the current regulation in slightly modified form. The equidistance requirement is an effective tool to assure that the delineation of a service area is consistent with the purposes of the statute and that institutions do not draw their service areas too narrowly. This modification clarifies the service area requirement and builds on concepts with which the industry and community already have experience.

This change does not significantly modify the substance of the December proposal, since the December proposal preamble stated that a service area conforming to the equidistance concept would generally have been acceptable.

The revised proposal also incorporates the concept of "local area" from the current regulation. This responds to comments expressing concern that loans made a substantial distance from a branch might inappropriately expand the scope of a service area.

The revised proposal would delete the requirement that a service area be broad enough to include low- and moderate-income areas. The necessity for this requirement was unclear, given the provision preventing institutions from arbitrarily excluding low- and moderate-income geographies. The proposal would clarify that the requirement that low- or moderate-income geographies not be arbitrarily excluded would take into account the institution's size, financial condition, and the extent of its branching network. An institution's performance evaluation would include an account of how many low- and moderate-income geographies are included in the institution's service area(s).

The revised proposal would clarify that an institution's service area is derived from its direct lending in relation to its branches and proprietary deposit-taking ATMs, rather than its other non-deposit-taking offices. This appropriately links an institution's CRA obligations to where it takes deposits, while enabling the agencies to review whether the institution is serving the needs of its entire community in the manner in which it extends credit.

Industry commenters were particularly concerned that the December proposal meant that lending conducted by non-branch offices, such as loan production offices, would expand an institution's service area. The revised proposal would not require an institution to include geographies where an institution has made loans through a loan production office, unless those geographies are in the local area around a deposit-taking branch or ATM. However, an institution would be free to include such geographies if it wishes, and the regulation would provide some incentive to do so. Under the revised proposal, if an agency determined that lending by an institution's affiliate(s) was integral to the business of the institution, then it would include the lending by that affiliate in its assessment of the institution's lending performance, even if the institution had not requested the agency to do so. In



addition, by limiting the size of its service area; an institution would increase the likelihood that it would perform poorly on the criterion of the lending test that considers the proportion of the institution's total lending in its service area(s).

Rather than requiring the service area to include those geographies accounting for a "preponderance" of the institution's loans, as in the December proposal, or the areas accounting for a "substantial portion" of the institution's loans, as in the existing regulation, the revised proposal would require the service area to include those geographies in which the institution has made "a significant number and amount of loans." The agencies intend the meaning of "significant" to be broad, and to include all geographies around its branches and proprietary deposit-taking ATMs where an institution has made more than a handful of loans. Because of this change in the proposal, the criterion in the small institution assessment method that requires a majority of an institution's loans to be in its service area(s) for a satisfactory rating would not be redundant as it might have been in the December proposal.

Under the revised proposal, as in the December proposal, the agencies would consider whether the delineation reflects illegal discrimination, and thus would, as some commenters suggested, consider the racial composition of geographies in reviewing an institution's delineation. The agencies have eliminated the term "redlining" because the agencies believe that term is included in the term "illegal discrimination." In this regard, illegal discrimination includes the practice of refusing to lend to an area or neighborhood on the basis of race or other prohibited bases.

Some commenters thought that the agencies should require institutions to justify the methodology for delineations, and that the regulation expressly provide for community input into the delineation. Under the revised proposal, examiners would review whether the service area meets the requirements of the regulation, but the agencies would not prescribe or review the method by which an institution defines its service area. Rather than having the agencies determine whether a delineation is "reasonable," it is simpler and more effective in meeting the purposes of the statute to focus on the lending patterns of the institution, whether low- and moderate income areas are excluded, and whether the service area reflects illegal discrimination. Furthermore, the revised proposal would not expressly

provide for community input into the delineation. As part of the assessment context, agency staff would review comments from the community with regard to the performance of an institution, including its delineation of its service area(s).

The revised proposal would retain the requirement from the December proposal that institutions delineate multiple service areas, with clarifying modifications. The revised proposal would not require institutions to delineate an MSA or other political boundary. The requirements that would govern under the revised proposal should prevent institutions from inappropriately limiting their service area(s) in order to exclude certain geographies.

Some commenters suggested requiring the service area to include full census tracts and block numbering areas to facilitate data collection and reporting. The agencies agree, and the revised proposal would contain such a requirement.

While comments generally supported the separate treatment of wholesale or limited purpose institutions, many commenters questioned whether wholesale or limited purpose institutions should have nationwide service areas and suggested that more consideration should be given to qualified investments in the institution's local area. Some commenters claimed that permitting wholesale banks to define a "national community" violated the "local community" orientation of the statute. The revised proposal would eliminate a mandatory nationwide service area for wholesale or limited purpose institutions. Such institutions have chosen to locate in particular communities, and it is appropriate that their CRA performance reflect their location. The revised proposal would therefore require that a wholesale or limited purpose institution designate as its service area the area or areas around its offices, or a broader statewide or regional area that includes such areas. The institution would have a broad scope in preparing this designation, so long as the area meets the purposes of the CRA and does not arbitrarily exclude low and moderate income geographies. Performance under the community development test would focus on qualified investments, community development loans outstanding and community development services that benefit the areas within the institution's service area. Qualifying activities that benefit areas outside the institution's service area would be considered up to an

amount equal to the amount of qualifying activities within the institution's service area. However, if the institution could demonstrate only a limited need or opportunity to provide qualifying activities within its service area, the appropriate agency could modify or eliminate this limitation.

#### *Data Collection and Reporting*

The December proposal would have required institutions that were not eligible for the small institution streamlined assessment method to collect and report to the agencies data showing the geographic distribution of written applications, application denials, originations and purchases for home mortgage, small business and small farm, and consumer loans. Home mortgage loans would have included all mortgage loans reportable under HMDA and its implementing regulations. The proposal would have required institutions to report separately information covering loans for home purchase, home improvement, multifamily dwellings, and refinancings. Small business loans would have included all loans to private, for-profit organizations that in the fiscal year preceding the making of the loan had gross receipts of less than \$10 million (for a firm providing services), or up to 500 employees (for a manufacturing firm). As proposed, institutions would have had to separate such loans into four categories based on the sales volume of the business. Small farm loans would have been defined to include all loans to private organizations engaged in farming operations with gross receipts of less than \$500,000 in the fiscal year preceding the making of the loan. Consumer loans would have been 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.

The December proposal would also have required institutions to report data in summary form by geography for each of the three major loan categories—mortgages, small businesses and small farms, and consumer—by January 31 of each calendar year. The data would have covered the related lending activity that took place in the preceding calendar year.

Some commenters raised general concerns regarding the data collection requirements in the December proposal. As discussed later in this preamble, the agencies have streamlined requirements



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to reduce burden. In addition, the agencies plan to make software available to institutions to facilitate compliance with the proposed requirements. The agencies have proposed the data collection and reporting requirements in this revised proposal as a means for permitting the agencies to fulfill their responsibilities under the CRA of assessing each institution's record of helping to meet the credit needs of the community. This proposal has also been made to permit the agencies to discuss the facts supporting the agencies' conclusions regarding the institution's record of lending.

The comments on the proposed data collection raised five principal concerns, all of which have been addressed in the revised proposal. First, many commenters indicated that the proposed rules would be overly burdensome and, in the case of home mortgage loans, would have required duplicative tracking of data. Under the revised proposal, the agencies would base their analysis of mortgage lending on the data already reported pursuant to HMDA. To acquire more geographic detail on home mortgage lending, the agencies propose to amend the HMDA regulation to require that institutions other than small banks and thrifts report the geography of applications, approvals, and denials for loans secured by properties outside the institution's MSA, data that is already reported on a voluntary basis.

Second, some commenters questioned whether the need for consumer loan data justified the burden of mandatory reporting. However, many of the same commenters suggested that if consumer loan data were to be required, the data should include all consumer loans, including credit card loans and motor vehicle loans, which were not included in the collection and reporting requirements of the December proposal. Some institutions indicated that consumer lending was an important aspect of their CRA performance that should be considered by the agencies. The revised proposal would offer institutions the option of collecting data on the amount outstanding, the location of the borrower, and the income of the borrower for each open-end and closed-end consumer loan outstanding as of the end of the calendar year. Such data is typically required by all institutions as an integral part of their loan underwriting procedures. If an institution selected this option, the foregoing data would be reviewed during the institution's CRA examination but would not be reported to the agencies.

Third, many lenders criticized the December proposal's inclusion of information on small business applications and application denials. Those commenters indicated that reporting should be limited to loan outstandings or loan originations. The revised proposal would simplify the definition of small business and small farm loans, by adopting the definition of those terms now used by institutions for purposes of completing, in the case of banks, their Reports of Condition and Income (Call Reports), and in the case of thrifts, the Thrift Financial Report (TFR). Under the revised proposal, institutions would collect and report data on a loan-by-loan basis for all loans included in the aggregate small business and small farm loan figures on the institution's Call Report or TFR, which includes business loans with original amounts under \$1 million and farm loans with original amounts under \$500,000. These data would include the outstanding balance as of December 31 of each year, the location of the business or farm or the location where the loan proceeds would be applied (as indicated by the borrower), an indication of whether the borrower has annual revenues of less than or equal to \$1 million, and an indication of whether the borrower (if not publicly traded) is more than 50 percent owned by one or more minority individuals or by one or more women. The loan register information would be required to be submitted at the same time and in accordance with the provisions for submitting HMDA data as provided in 12 CFR Part 203 (Regulation C). In addition, the revised proposal would change the date on which Call Report or TFR data on small business and small farms loans would be required to be submitted from June 30 to December 31 of each year to coincide with the calendar year reporting requirements of HMDA.

Fourth, many commenters criticized the failure of the December proposal to require the collection of data on the race and gender of borrowers except to the extent such data was required by current law. These commenters were particularly interested in the reporting of race and gender data for small business loans in order to support the fair lending component of the CRA assessment. In response to these comments, the revised proposal would require institutions to collect certain race and gender data in connection with their small business and small farm lending. Each institution would be required to request, either in connection with a written application or, if the

institution did not use written applications, at an appropriate point in the lending process, that an applicant or borrower indicate the percentage of the business or farm owned by men and by women as well as the percentages owned by members of different racial and ethnic categories. If the institution neither takes a written application nor originates the loan, the institution would not be required to request the information. To protect the privacy of individual borrowers, this detailed information would not be included on loan registers, which, as noted earlier in this preamble, would only indicate whether an individual loan was to a business or farm that was more than 50 percent women-owned or more than 50 percent minority-owned. The institution would also retain but not report or disclose the information on applicants who did not receive a loan. To further safeguard privacy, the loan registers would not be disclosed to the public but the institutions would include aggregate information about the loans in their public CRA files.

Finally, some commenters were concerned that because community development loans were not required to be reported, examiners would not give them sufficient weight in evaluating an institution's lending performance. The revised proposal would require institutions to report on their Call Reports and TFRs the aggregate number and dollar amount of community development loans outstanding as of December 31 of each year.

#### *Public File and Disclosure*

The December proposal would have required institutions to make available for public inspection: (1) a file containing all the signed, written comments that it had received from the public for the past two years; (2) its performance data for that period; (3) maps of its service areas (with lists of the census tracts or block numbering areas that make up each service area); and (4) a copy of the public section of its most recent CRA Performance Evaluation. If an institution elected to be assessed under the strategic plan option, it would have been required to include a copy of its plan in the public file. The December proposal would have required the institution to maintain the public file at its main office and to make available copies of the file at cost to members of the public. Materials relating to a given service area would have been maintained at each branch in that service area, and every institution would have been required to post in the public lobby of each branch a notice of its CRA obligation and the public's



opportunity to comment on and review data concerning that performance.

Commenters generally favored the public disclosure of an institution's CRA-related activities, and the revised proposal retains all the relevant public disclosure provisions of the December proposal. The revised proposal modifies the required contents of the public file to reflect proposed changes in the various assessment tests and the proposed data collection requirements for small business and small farm loans. For example, consistent with the proposed service test, the revised proposal would require an institution to maintain a list of its branches and ATMs along with their locations and the services generally available at such facilities.

To protect the privacy of borrowers and the competitive information of institutions, the revised proposal would not require an institution to include the small business or small farm loan registers containing information on individual applicants in its public file. Instead, the revised proposal would require the public disclosure of aggregated information on small business and small farm loans for the past two calendar years by every institution (other than a small institution). Loan registers would be available to agency examiners to confirm the accuracy of the aggregated data but the agencies do not intend to make unaggregated information publicly available.

Under the revised proposal, the following aggregated loan data for small business and small farm loans would be placed in the public file: (1) the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; (2) a list of the geographies in which an institution made at least one loan; (3) the number and amount of loans inside and outside the institution's service area; (4) the number and amount of loans to minority- and women-owned businesses; and (5) the number and amount of loans to businesses and farms with annual revenues equal to or less than \$1 million. Institutions would also be required to disclose the number and amount of community development loans outstanding. Institutions may elect to disclose publicly the number and amount of consumer loans to individuals and geographies by various income levels, and the number and amount of these loans made within and outside its service area(s). However, to protect the privacy interests of borrowers, an institution may not place in its public file any loan information described above for a particular year if

special circumstances, such as a small number of loans or a limited number of geographies in the designated categories, could reasonably be expected to disclose the borrower's identity.

A small institution would be required to include its loan-to-deposit ratio computed at the end of the most recent calendar year. The institution could include other data on its loan-to-deposit ratio if it believed the data would give a more accurate picture of its lending and lending-related activities. If a small institution elects to be rated under the lending, investment, and service tests applicable to larger institutions, it would be required to include in its public file all of the lending information described earlier in this preamble. An institution electing to be assessed under an approved plan would continue to provide a copy of its plan in the public file but would not have to disclose information submitted to the agencies on a confidential basis.

In response to comments, the agencies have modified the provisions regarding the location of the public file. The complete public file would be required to be maintained at the institution's main office. In addition, at least one branch in each service area would be required to have copies of the bank's HMDA Disclosure Statements and all materials in the public file relating to the service area in which the branch is located. If a member of the public requested to review a bank's public file at a branch that did not have a copy, the bank would have to make a complete copy of the file for that service area available for review at the branch within 5 business days at no cost.

#### Public Notice

The December proposal would have required that institutions provide the Community Reinvestment Act Notice "in the public lobby of its head office and each branch," and it would have set forth the Notice. The revised proposal makes minor changes to the Notice requirements. The term "head office" is changed to "main office" for clarity. Within the Notice, the statement of what is included in the CRA performance file would be expanded to describe more accurately the contents of the file. In addition, the revised proposal would require that the file include a map identifying the institution's service area, a list of its branches and ATMs in its service area, and a list of services the institution provides at each of the foregoing locations.

#### Publication of Examination Schedule

The December proposal would have required that each agency publish a list

of the banks scheduled for CRA exams in each calendar quarter at least 30 days before the beginning of the quarter, and permitted members of the public to submit comments about a bank's CRA performance. The revised proposal would leave intact the provision concerning timing of publication, but delete as redundant the provision concerning public comment.

#### Transition

The December proposal would have established a transition period from July 1, 1994, to April 1, 1996. Institutions subject to data collection and reporting requirements would have been required to begin collecting home mortgage, small business, and consumer loan data on July 1, 1994. The data would have been reported to the agencies no later than January 31, 1995, and annually thereafter. Evaluations under the proposed standards would have begun April 1, 1995. However, any institution could have elected to be evaluated under the existing twelve assessment factors rather than the proposed standards until July 1, 1995, and any institution showing cause could have requested evaluation under the existing standards up to April 1, 1996. The agencies would have accepted strategic plans for approval at any time after the publication of the final rule.

The December proposal, in addition, would have insulated some institutions from supervisory sanctions until they had been subject to at least two examinations under the proposed standards. Specifically, the agencies would not have disapproved corporate applications or taken any enforcement action against an institution whose initial CRA rating under the proposed standards dropped by more than one level, if the agencies determined that the drop in ratings occurred despite a good faith effort to achieve at least a satisfactory level of performance.

Many of the commenters criticized the transition period in the December proposal for being too short. Those commenters were particularly critical of the proposal to begin collection of data on July 1, 1994. Several commenters suggested that the proposed data collection be delayed as much as 12 months after the publication of a final rule. Some also criticized the proposal to begin conducting examinations in 1995 using a partial year's data from the second half of 1994.

Other commenters criticized the proposal to insulate certain institutions from supervisory actions until they had gained more experience with the proposed standards. Those commenters were generally concerned that the



proposal would have protected institutions whose performance ratings would have suffered as a result of more objective, performance-based assessments.

In developing the revised proposal, the agencies sought to address these concerns in two principal ways. First, despite substantial simplification in data collection compared to the December proposal, the revised proposal would provide institutions additional time before the data collection would begin. Under the revised proposal, collection of new data elements would not be required until July 1, 1995.

Second, compared to the December proposal, the revised proposal eliminates the grace period and instead would provide institutions with additional time before assessments under the proposed standards would become mandatory.

The revised proposal would also provide institutions with assessment options prior to full implementation of the rule. Even though assessments under the proposed standards would not be mandatory until July 1, 1996, small institutions would have the opportunity to be examined, at their option, under the small bank assessment method anytime after July 1, 1995. Anytime on or after July 1, 1995, an institution could also elect to submit for approval a strategic plan to achieve satisfactory or better CRA performance. Examinations under approved strategic plans could begin July 1, 1996.

Under the proposed transition schedule, the current regulation would be repealed in its entirety on July 1, 1996.

#### Review

The agencies recognize that the revised proposal, like the December proposal, represents a significant 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.

#### Benefit and Burden of Administrative Compliance Requirements

With respect to the reporting, disclosure, and other administrative compliance requirements in the proposal, the agencies invite comment on (1) any administrative burdens that these requirements in the revised proposal would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of these requirements in the revised proposal for depository institutions, their customers, and their communities.

#### Paperwork Reduction Act

**OCC:** The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3502(h)). Comments on the collections of information should be sent to the Comptroller of the Currency, Legislative, Regulatory, and International Activities, Attention: 1557-0160, 250 E. Street, SW., Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1557-0160), Washington, DC 20503.

The collections of information in this proposed regulation are in 12 CFR 25.25, 25.27, 25.29, 25.42 and 25.43. This information is required to evidence national bank efforts in satisfying their continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas.

This information will be used to assess national bank performance in satisfying the credit needs of their communities and in evaluating certain corporate applications. The likely respondents/recordkeepers are for profit institutions, including small businesses.

The estimated annual burden per respondent/recordkeeper varies from three to 200 hours, depending on individual circumstances, with an

estimated average of 37 hours. There will be an estimated 857 respondents averaging 132 hours and 2,460 recordkeepers averaging 3.4 hours.

**Board:** In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the proposed information collection will be reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of the 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, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

The collections of information in this proposed regulation are in 12 CFR 228.25, 228.27, 228.42, 228.43 and 228.44. This information is 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 bank performance in satisfying the credit needs of their communities and in evaluating certain applications.

The estimated annual burden per respondent/recordkeeper varies from eight to 280 hours, depending on individual circumstances, with an estimated average of 36 hours. There will be an estimated 297 respondents, averaging 133 hours, and 972 recordkeepers, averaging five hours.

**FDIC:** The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3502(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (3604-0092), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F-453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

The collection of information requirements in this proposed regulation are found in 12 CFR 345.25, 345.27, 345.29, 345.42 and 345.43. This information is required to evidence efforts of financial institutions in satisfying their continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas. It will be used to assess an institution's performance in satisfying



the credit needs of its communities and in evaluating certain corporate applications.

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

The estimated annual burden per respondent/recordkeeper varies from two to 250 hours, depending on individual circumstances, with an estimated average of 17 hours. There will be an estimated 730 respondents averaging 136 hours and 7,128 recordkeepers averaging three hours.

**OTS:** The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3502(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550-0012), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G. Street, NW., Washington, DC 20552.

The collections of information in this proposed regulation are in 12 CFR 563e.25, 563e.27, 563e.29, 563e.42 and 563e.43. This information is required to evidence savings association efforts in satisfying their continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas.

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

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

The estimated annual burden per respondent/recordkeeper varies from two to 300 hours, depending on individual circumstances, with an estimated average of 38 hours. There will be an estimated 450 respondents averaging 136.3 hours and 1,600 recordkeepers averaging four hours.

#### **Regulatory Flexibility Act**

**OCC:** It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small banks. Accordingly, a regulatory flexibility analysis is not required. This proposal would enable most small banks to avoid the data collection requirements in 12 CFR Part 25 and will encourage greater small business lending by banks of all sizes.

**Board:** For all the reasons discussed in the joint preamble, 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 12 CFR Part 228 and will encourage greater small business lending by financial institutions of all sizes. Accordingly, a regulatory flexibility analysis is not required. The Board invites comment on this matter.

**FDIC:** It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small banks. This proposal would enable most small banks to avoid the data collection requirements in 12 CFR Part 345 and will encourage greater small business lending by financial institutions of all sizes. Accordingly, a regulatory flexibility analysis is not required.

**OTS:** It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small savings associations. This proposal provides an alternative means of evaluating a small savings association's CRA requirements that would enable most such savings associations to avoid the data collection requirements in 12 CFR Part 563e and will encourage greater small business lending by savings associations of all sizes.

#### **Executive Order 12866**

**OCC:** It has been determined that this document is a significant regulatory action. The proposal would clarify existing requirements and would exempt small banks from many of the requirements in 12 CFR Part 25. Further, the proposal will encourage greater small business lending by banks of all sizes.

**OTS:** It has been determined that this document is a significant regulatory action. The proposal sets forth a more focused and streamlined method of evaluating savings associations' compliance with existing statutory requirements; moreover it would exempt small savings associations from many of the requirements in 12 CFR Part 563e. Further, the proposal will encourage greater small business lending by savings associations of all sizes.

#### **List of Subjects**

##### **12 CFR Part 25**

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

##### **12 CFR Part 228**

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

##### **12 CFR Part 345**

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

##### **12 CFR Part 563e**

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



## FEDERAL RESERVE SYSTEM

## 12 CFR CHAPTER II

For the reasons outlined in the joint preamble, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR chapter II as set forth below:

## PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

1. The authority citation for part 228 is revised to read as follows:

**Authority:** 12 U.S.C. 321, 325, 1828, 1842, 1844, and 2901 *et seq.*

## § 228.1001 [Redesignated as § 228.9]

2. Existing § 228.100 is redesignated as § 228.9 and transferred immediately following § 228.8.

3. Part 228 is amended by adding Subparts A through E and Appendices A through C following § 228.9 to read as follows:

## Subpart A—General

Sec.

228.11 Authority, community reinvestment obligation, purposes and scope.

228.12 Definitions.

## Subpart B—Standards for Assessing Performance

228.21 Assessment tests and ratings, in general.

228.22 Lending test.

228.23 Investment test.

228.24 Service test.

228.25 Community development test for wholesale or limited purpose banks.

228.26 Small bank assessment standards.

228.27 Strategic plan assessment.

228.28 Assigned ratings.

228.29 Effect of ratings on applications.

## Subpart C—Records, Reporting and Disclosure Requirements

228.41 Service area delineation.

228.42 Data collection and reporting.

228.43 Public file and disclosure by banks.

228.44 Public notice by banks.

228.45 Publication of planned examination schedule.

## Subpart D—Transition Rules

228.51 Transition rules.

## Subpart E—Interpretations

228.100 Applicability of the Community Reinvestment Act to certain special purpose banks.

## Appendix A to Part 228—Ratings

## Appendix B to Part 228—CRA Notice

## Appendix C to Part 228—CRA Loan Data Format

## Subpart A—General

## § 228.11 Authority, community reinvestment obligation, purposes and scope.

(a) *Authority.* The Board of Governors of the Federal Reserve System (the Board) issues this part to implement the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*) (CRA). The regulations in this part are issued under the authority of the CRA and under the provisions of the United States Code authorizing the Board:

(1) To conduct examinations of State-chartered banks that are members of the Federal Reserve System (12 U.S.C. 325);

(2) To conduct examinations of bank holding companies and their subsidiaries (12 U.S.C. 1844); and

(3) To consider applications for:

(i) Domestic branches by state member banks (12 U.S.C. 321);

(ii) Merger in which the resulting bank would be a state member bank (12 U.S.C. 1828); and

(iii) Formation of, acquisition of banks by, and mergers of, bank holding companies (12 U.S.C. 1842).

(b) *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.

(c) *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.

(d) *Scope.*—(1) *General.* This part applies to all state member banks that are in the business of extending credit to the public, including wholesale or limited purpose banks, as defined in § 228.12 of this part.

(2) *Certain special purpose banks.* This part does not apply to a bankers bank that engages exclusively in providing services for other depository institutions and for their officers, directors and employees, or to other special purpose banks described in § 228.100 of this part.

## § 228.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. For purposes of this part, the term "control" has the meaning given to that

term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means the median family income for the MSA in which a person or geography is located or, in the case of a person or geography located outside an MSA, the higher of the county median family income or the statewide nonmetropolitan median family income.

(c) *Automated teller machine (ATM)* means an automated, unstaffed banking facility with a fixed site owned or operated by or operated exclusively for the bank at which deposits are received, cash dispersed, or money lent.

(d) *Bank* means a state chartered bank that is a member of the Federal Reserve System.

(e) *Branch* means a staffed banking facility (shared or unshared) licensed as a branch with a fixed site at which deposits are received, checks paid, or money lent, including a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(f) *Community development loan* means a loan (including a line of credit, commitment, or letter of credit) that addresses affordable housing (including multifamily rental housing) or other community economic development needs not being met by the private market; provided the loan:

(1) Primarily benefits low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to \$1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program;

(2) Has not been reported or collected by the bank or one of its affiliates as a home mortgage loan, small business loan, small farm loan, or a consumer loan pursuant to § 228.42 of this part, unless it is a multifamily dwelling loan (as described in Appendix A to 12 CFR Part 203); and

(3) Except in the case of a wholesale or limited purpose bank, benefits the bank's service area(s) or a broader statewide or regional area that includes the bank's service area(s).

(g) *Consumer loan* means a loan extended to one or more individuals for household, family, or other personal expenditures; provided the loan is not secured by real estate and is not used for the purpose of purchasing or carrying securities.

(h) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent



decennial census, or a block numbering area delineating a small statistical subdivision where a census tract has not been established.

(i) *HMDA* means the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*).

(j) *Home mortgage loan* means a mortgage loan as defined in section 303(1) of HMDA (12 U.S.C. 2802(1)) and implementing regulations.

(k) *Income level*—(1) *Low-income* means, in the case of a person, an individual income, or in the case of a geography, a median family income, that is less than 50 percent of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(2) *Moderate-income* means, in the case of a person, an individual income, or in the case of a geography, a median family income, that is at least 50 percent and less than 80 percent of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(3) *Middle-income* means, in the case of a person, an individual income, or in the case of a geography, a median family income, that is at least 80 percent and less than 120 percent of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(4) *Upper-income* means, in the case of a person, an individual income or, in the case of a geography, a median family income, that is 120 percent or more of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(l) *Limited purpose bank* means a bank that offers only a narrow product line (such as credit cards or automobile loans) to a national or regional market and has, pursuant to a written request, been designated by the Board as a limited purpose bank, as provided in § 228.25 of this part.

(m) *Loan location*. A loan is located in a geography as follows:

(1) A consumer loan is located where the borrower resides;

(2) A home mortgage loan is located where the property to which the loan relates is located;

(3) A small business or small farm loan is located where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(n) *Loan production office* means a staffed banking facility that is accessible to the public, and provides lending-related services such as loan information and applications, but is not a branch.

(o) *MSA* means metropolitan statistical area or primary metropolitan statistical area, as defined by the Director of the Office of Management and Budget.

(p) *Minority* means an individual who is an American Indian or Alaskan Native, an Asian or Pacific Islander, a Black, or of Hispanic origin as provided in the Office of Management and Budget's Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting.

(q) *Minority-owned business* means a business, including a farm, that is more than 50 percent owned by one or more minority individuals, and that has not issued any securities registered under Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and has 100 or fewer shareholders.

(r) *Service area* means a geographical area delineated in accordance with § 228.41 of this part.

(s) *Small bank* means a bank with total assets of less than \$250 million that is:

(1) Independent; or

(2) An affiliate of a holding company with total banking and thrift assets of less than \$250 million.

(t) *Small business loan* means a loan with an original amount of \$1 million or less that is either a commercial or industrial loan or a loan secured by nonfarm, nonresidential property.

(u) *Small farm loan* means a loan with an original amount of \$500,000 or less that is a loan secured by farmland (including a loan to finance a farm residence or other improvements), a loan to finance agricultural production, or any other loan to a farmer.

(v) *Women-owned business* means a business, including a farm, that is more than 50 percent owned by one or more women, and that has not issued any securities registered under Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and has 100 or fewer shareholders.

(w) *Wholesale bank* means a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and has, pursuant to a written request, been designated by the Board as a wholesale bank, as provided in § 228.25 of this part.

## Subpart B—Standards for Assessing Performance

### § 228.21 Assessment tests and ratings, in general.

(a) *Assessment tests and standards*. In connection with an examination of a bank, the Board shall assess the CRA performance of the bank as follows:

(1) *Lending, investment, and service tests*. The Board shall apply these three tests, as described in §§ 228.22 through 228.24 of this part, in evaluating the performance of banks, except as provided in paragraphs (a)(2), (3) and (4) of this section.

(2) *Community development test for wholesale or limited purpose banks*. In evaluating the performance of wholesale or limited purpose banks (as defined in § 228.12 of this part), the Board shall apply the community development test, as provided in § 228.25 of this part, except as provided in paragraph (a)(4) of this section.

(3) *Assessment standards for small banks*. In evaluating the performance of small banks (as defined in § 228.12 of this part), the Board shall apply the assessment standards for small banks as provided in § 228.26 of this part. However, a small bank may elect instead to be assessed as provided in paragraphs (a) (2) and (4) of this section, or it may elect to be evaluated under paragraph (a)(1) of this section if it has collected and reported the data required for other banks under § 228.42(a)(1) of this part.

(4) *Strategic plan*. Any bank may elect not to be assessed by any tests described in paragraphs (a)(1), (2) and (3) of this section by submitting to the Board and receiving approval of a strategic plan as described in § 228.27 of this part.

(b) *Assessment context*. The Board shall apply the tests and standards in paragraph (a) of this section in the context of the following information:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a bank's service area(s);

(2) Examiner-developed information regarding the credit needs of the bank's service area(s) obtained from community-based organizations, state and local governments, economic development agencies, and from any information the bank may choose to provide;

(3) The bank's product offerings and business strategy as determined from data provided by the bank;

(4) Institutional capacity and constraints, including the size and financial condition of the institution, the economic climate (national, regional



and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to lend to the different parts of its service area(s);

(5) The bank's past performance and the performance of similarly-situated lenders;

(6) The bank's public file, as described in § 228.43 of this part, and any signed, written comments about the bank's CRA performance submitted to the bank or the Board; and

(7) Any other information deemed relevant by the Board.

(c) *Assigned ratings.* The Board shall assign to each bank one of the following four ratings as set out in § 228.28 of this part and Appendix A of this part: "outstanding"; "satisfactory"; "needs to improve"; or "substantial noncompliance" based on:

(1) The results of the applicable assessment test(s) or standards or performance under an approved strategic plan; and

(2) Any evidence of discriminatory or other illegal credit practices.

(d) *Safe and sound operations.* This part and the CRA do not require any bank to make loans or investments, or to provide services that are inconsistent with safe and sound operations. Banks are permitted and encouraged to develop and apply flexible underwriting standards, consistent with safe and sound operations, for loans that benefit low- or moderate-income geographies or individuals.

(e) *Compliance with community reinvestment obligation.* The assigned ratings reflect the extent of compliance or noncompliance with the community reinvestment obligation described in § 228.11(b) of this part. A bank that receives an assigned rating of "substantial noncompliance" shall be subject to enforcement actions pursuant to 12 U.S.C. 1818.

#### § 228.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank's performance in helping to meet the credit needs of its service area(s) through its lending activities, as measured by home mortgage originations and purchases, small business and small farm loans outstanding, and community development loans outstanding. At the bank's option, the lending test will also evaluate the bank's consumer loans outstanding and any other loan distribution data the bank may choose to provide, such as data on extensions of lines of credit, commitments, and letters of credit.

(2) When evaluating a bank's overall lending performance, the Board shall

weigh its assessments of the bank's home mortgage lending, small business and small farm lending, and (at the bank's option) consumer lending to reflect the relative importance of each category of lending to the bank's overall business.

(3) The Board shall weigh the bank's community development lending according to the characteristics and needs of the bank's service area(s), the capacity and constraints of the bank, and the opportunities available to the bank for this lending.

(b) *Assessment criteria.* The Board shall evaluate a bank's lending performance pursuant to the following criteria:

(1) *Geographic distribution.* The geographic distribution of the bank's lending (based on the location of the loan as provided in § 228.12 of this part), including:

(i) The proportion of total lending in the bank's service area(s);

(ii) The dispersion of lending throughout the bank's service area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's service area(s);

(2) *Borrower characteristics.* The distribution, particularly in the bank's service area, of the bank's lending (based on borrower characteristics), including:

(i) The number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues less than or equal to \$1 million;

(iii) The number and amount of small business and small farm loans by size of loan; and

(iv) At the bank's option, the number and amount of consumer loans to low-, moderate-, middle-, and upper-income individuals;

(3) *Community development lending.* The bank's community development lending, including the number and amount of community development loans outstanding, their complexity and innovativeness, and the number and amount of lines of credit, commitments, and letters of credit for community development purposes; and

(4) *Innovative or flexible lending practices.* The bank's use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) The Board shall, if the bank elects, consider in its assessment of a bank's lending

performance under this section lending by an affiliate of the bank, if the bank, or its affiliate, reports or collects the lending data pursuant to § 228.42 of this part.

(2) The Board may consider in its assessment lending by a bank's affiliate even if the bank has chosen not to have the affiliate's lending considered if the Board determines that this lending is integral to the business of the bank.

(3) Consideration of affiliate lending shall be subject to the following constraints:

(i) No affiliate may claim the same loan as another institution; and

(ii) If the Board considers loans within a particular lending category (e.g., home mortgage, small business, small farm, consumer or community development lending) made by one or more of the bank's affiliates in a particular service area, the Board shall consider all the loans within that lending category made by all of the bank's affiliates in that particular service area.

(d) *Consortia and third-party lending.* Community development loans made through consortia in which the bank participates or through third parties in which the bank has invested:

(1) Shall be considered under the lending test, if the bank elects, provided the data pertaining to these loans are reported by the bank under the applicable provisions of § 228.42 of this part; and

(2) May be allocated among participants or investors as they choose for purposes of the lending test, provided that no participant or investor claims the same loan or part of a loan as another participant or investor, or claims in the aggregate greater than its percentage share (based on the level of its participation or investment) of the total loans made by the consortium or third party.

(e) *Lending performance rating.* The Board shall rate a bank's lending performance as provided in Appendix A of this part.

#### § 228.23 Investment test.

(a) *Scope of test.* The investment test evaluates the degree to which a bank is helping to meet the credit needs of its service area(s) through qualified investments. To be considered under this test, the qualified investments of a bank must benefit its service area(s) or a broader statewide or regional geographic area that includes the bank's service area(s).

(b) *Qualified investments.* (1) Qualified investments are lawful investments, deposits, membership shares in a credit union, or grants that:



(i) Primarily benefit low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to \$1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; and

(ii) Address affordable housing (including multifamily rental housing) or other community economic development needs that are not being met by the private market.

(2) Donating, selling on favorable terms, or making available on a rent-free basis any branch of the bank that is located in any predominantly minority neighborhood to any minority depository institution or women's depository institution (as defined in 12 U.S.C. 2907(b)) shall be considered under the investment test.

(3) Activities considered under the lending or service tests may not be considered under the investment test.

(4) At a bank's option, the Board shall consider in its assessment of a bank's investment performance a qualified investment made by an affiliate of the bank, provided that the qualified investment is not claimed by any other institution.

(c) *Assessment criteria.* The Board shall evaluate the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments that directly address credit needs;

(2) The use of innovative or complex qualified investments to support community development initiatives; and

(3) The degree of responsiveness to credit and community economic development needs.

(d) *Investment performance rating.* The Board shall rate a bank's investment performance as provided in Appendix A of this part.

#### § 228.24 Service test.

(a) *Scope of test.* The service test evaluates a bank's record of helping to meet the credit needs of the bank's service area(s) by analyzing both the availability and responsiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Assessment criteria—retail banking services.* The Board shall evaluate the availability and responsiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the bank's branches and ATMs among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the bank's branches and ATMs, the bank's record of opening and closing branches and ATMs, particularly branches and ATMs located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability of alternative systems for delivering retail banking services (e.g., banking by telephone or computer, mobile branches and ATMs, ATMs not owned or operated by or operated exclusively for the bank, loan production offices, and bank-at-work or by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(c) *Assessment criteria—community development services.* (1) Community development services are services that:

(i) Primarily benefit low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to \$1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; and

(ii) Address affordable housing (including multifamily rental housing) or other community economic development needs that are not being met by the private market.

(2) The Board shall evaluate community development services pursuant to the following criteria:

(i) The extent to which the bank provides community development services; and

(ii) The innovativeness and responsiveness of community development services.

(3) When evaluating a bank's overall service performance, the Board shall weigh the bank's community development services according to the characteristics and needs of the bank's service area(s), the capacity and constraints of the bank, and the opportunities available to the bank to provide community development services.

(4) At a bank's option, the Board shall consider in its assessment of a bank's service performance a community development service provided by an affiliate of the bank, provided that the community development service is not claimed by any other institution.

(d) *Service performance rating.* The Board shall rate a bank's service performance as provided in Appendix A of this part.

#### § 228.25 Community development test for wholesale or limited purpose banks.

(a) *Scope of test.* (1) The Board shall assess the degree to which a wholesale or limited purpose bank (as defined in § 228.12 of this part) is helping to meet the credit needs of its service area(s) under the community development test only if the bank's written request to be designated as a wholesale or limited purpose bank has been approved by the Board before the commencement of its CRA examination, and the designation has not been revoked either at the request of the bank or at the Board's own initiative.

(2) The community development test evaluates the record of a wholesale or limited purpose bank in helping to meet the credit needs of its service area(s) through qualified investments, community development lending, or community development services.

(3) For purposes of the community development test only, community development loans include small business and small farm loans and loans to low- and moderate-income individuals and geographies, whether or not reported or collected by the bank or one of its affiliates as home mortgage loans, small business loans, small farm loans, or consumer loans, pursuant to § 228.42 of this part.

(b) *Assessment criteria.* The Board shall evaluate the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

(1) The number and amount of community development loans outstanding, qualified investments (as defined in § 228.23 of this part), or community development services (as defined in § 228.24 of this part);

(2) The use of innovative or complex qualified investments, community development loans outstanding, or community development services and their connection to credit needs; and

(3) The degree of responsiveness to credit and community economic development needs.

(c) *Indirect activities.* The Board shall, if the wholesale or limited purpose bank elects, consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank, provided the investment or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 228.22(c)(3) and (d) of this part.



(d) *Benefit to service area(s)*—(1) *Benefit inside service area(s)*. For purposes of assessing a wholesale or limited purpose bank's community development performance under this section, the Board shall consider all qualified investments, community development loans outstanding, and community development services that benefit areas within the bank's service area(s).

(2) *Benefit outside service area(s)*. The Board shall consider the qualified investments, community development loans outstanding, and community development services provided by a wholesale or limited purpose bank that benefit areas outside the bank's service area(s) only up to an amount equivalent to the amount of investments, loans, and services considered under paragraph (d)(1) of this section. If a bank demonstrates a limited need or opportunity for these investments, lending, and services, in its service area(s), the Board may exempt the bank from all or part of this limitation.

(e) *Community development performance rating*. The Board shall rate a bank's community development performance as provided in Appendix A of this part.

#### § 228.26 Small bank assessment standards.

(a) *Scope of assessment*. The Board shall assess the degree to which a small bank is helping to meet the credit needs of its service area(s) under the assessment standards described in this section.

(b) *Assessment criteria*. The Board shall evaluate a small bank's CRA performance pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets or community development lending or investment;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's service area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans given its service area(s); and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in meeting the credit needs of its service area(s).

(c) *Small bank performance rating*. The Board shall rate a small bank's performance as provided in Appendix A of this part.

#### 228.27 Strategic plan assessment.

(a) *Alternative election*. A bank may request to be rated under a strategic plan rather than under the lending, service, and investment tests (§§ 228.22 through 228.24 of this part), the community development test (§ 228.25 of this part), or the small bank assessment standards (§ 228.26 of this part), by submitting to the Board a strategic plan as provided for in this section. A bank's request to be rated under a strategic plan is not approved until the Board approves the plan. The Board's approval of a strategic plan does not affect the bank's obligation, if any, to report data as required by § 228.42 of this part.

(b) *Strategic plans in general*. (1) A plan may have a term of no more than five years, and any multi-year plan shall include annual interim measurable goals according to which the Board shall evaluate the bank's performance.

(2) A bank with more than one service area may prepare a single plan for all of its service areas or a plan for one or more but not all of its service areas.

(3) Affiliated institutions may prepare joint plans if the plans provide measurable goals for each institution.

(c) *Public participation in strategic plan development*. Before submitting a plan to the Board for approval, the bank shall:

(1) Informally seek suggestions from the public in its service area(s) while developing the plan;

(2) Once the bank has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in a newspaper of general circulation in each of its service areas; and

(3) During the period of formal public comment, make copies of the plan available for review at all offices of the bank in any service area covered by the plan.

(d) *Submission of plan*. The bank shall submit its plan to the Board at least three months prior to the proposed effective date of the plan. The bank shall also submit with its plan any public comments received, and, if the plan was revised in light of the comments received, the initial plan as released for public comment.

(e) *Plan content*—(1) *Measurable goals*. (i) A bank shall specify in its plan measurable goals for helping to meet the credit needs of each of its service area(s) covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-

income individuals, through lending, investment, and the provision of services, as appropriate.

(ii) A bank shall address all three performance categories and, unless the bank has been designated as a wholesale or limited purpose bank, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its service area, considering public comment and the bank's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information*. The bank may submit additional information to the Board on a confidential basis, but the goals stated in the plan shall be sufficiently specific to enable the public and the Board to judge fairly the merits of the plan.

(3) *Satisfactory and outstanding goals*. A bank shall specify in its plan measurable goals that constitute "satisfactory" performance. A plan may specify measurable goals that constitute "outstanding" performance. In order to be considered for an "outstanding" performance rating, the bank shall submit both "satisfactory" and "outstanding" performance goals.

(f) *Plan approval*. (1) *Timing*. The Board shall act upon a plan within 60 days after the complete plan and required accompanying material are submitted. If the Board fails to act within this time period, the plan shall be deemed approved unless the Board extends the review period for good cause.

(2) *Public participation*. In evaluating the plan's goals, the Board shall consider the public's involvement in formulating the plan, public comment on the plan, and any response by the bank to public comment on the plan.

(3) *Criteria for evaluating plan*. The Board shall evaluate a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the bank's qualified investments, as defined in § 228.23 of this part; and

(iii) The extent and availability of the bank's services, including, as



appropriate, the accessibility of retail delivery systems and the extent and innovativeness of community development services, as defined in § 228.24 of this part.

(g) *Plan amendment.* 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. Any amendment proposed shall be developed in accordance with the public participation requirements of paragraph (c) of this section.

(h) *Strategic plan assessment.* The Board shall approve the goals and assess performance under a strategic plan as provided for in Appendix A of this part.

#### § 228.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b), (c), and (d) of this section, the Board shall assign to a bank a rating of "outstanding," "satisfactory," "needs to improve," or "substantial noncompliance" based on the bank's performance under the lending, investment and service tests, the community development test, the small bank assessment standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The Board shall assign a rating for a bank assessed under the lending, investment, and service tests in accordance with the procedures provided in Appendix A of this part and the following principles:

(1) A bank's rating on the lending test shall be weighed so as to count for at least 50 percent of its assigned rating;

(2) A bank that receives an "outstanding" rating on the lending test shall receive an assigned rating of at least "satisfactory";

(3) A bank that receives an "outstanding" rating on the lending test and an "outstanding" rating on either the service test or the investment test shall receive an assigned rating of "outstanding";

(4) A bank that receives an "outstanding" rating on both the service test and the investment test and a rating of at least "high satisfactory" on the lending test shall receive an assigned rating of "outstanding"; and

(5) No bank may receive an assigned rating of "satisfactory" unless it receives a rating of at least "low satisfactory" on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* Evidence of discriminatory or other illegal credit practices shall adversely affect the Board's evaluation of a bank's performance. In determining the effect on the bank's assigned rating,

the Board shall consider the nature and extent of the evidence, the policies and procedures that the bank has in place to prevent discriminatory or other illegal credit practices, any corrective action that the bank has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information, such as the bank's past fair lending performance.

(d) *Effect of successive "needs to improve" ratings.* A bank that would otherwise receive an assigned rating of "needs to improve" shall receive an assigned rating of "substantial noncompliance" if the bank received no better than a "needs to improve" rating on each of its two previous examinations.

#### § 228.29 Effect of ratings on applications.

(a) *CRA performance.* Among other factors, the Board shall take 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, of each subsidiary bank of an applicant bank holding company, and of 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 take deposits;

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

(3) To become a bank holding company; and

(4) 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) *Interested parties.* In considering CRA performance in an application described in paragraph (a) of this section, the Board shall take into account any views expressed by interested parties which are submitted in accordance with the Board's Rules of Procedure set forth in part 262 of this chapter.

(c) *Denial or conditional approval of application.* A bank's record of performance may be the basis for denying or conditioning approval of an application described in paragraph (a) of this section.

(d) *Definition of bank.* For purposes of this section, the term "bank" has the meaning given to this term in 12 U.S.C. 1841(c).

### Subpart C—Records, Reporting and Disclosure Requirements

#### § 228.41 Service area delineation.

(a) *In general.* Subject to paragraphs (b) and (c) of this section, each bank may delineate its service area(s) using any method it chooses provided that the service area(s):

(1) Do(es) not reflect illegal discrimination;

(2) Do(es) not arbitrarily exclude low- and moderate-income geographies, taking into account the bank's size and financial condition and the extent of its branching network, as appropriate; and

(3) Consist(s) only of whole census tracts or block numbering areas.

(b) *Banks that are not wholesale or limited purpose banks.* The service area(s) for a bank that is not a wholesale or limited purpose bank (as defined in § 228.12 of this part):

(1) Shall include those geographies in the local areas around a bank's branches and deposit-taking ATMs in which the bank has originated or had outstanding, during the previous calendar year, a significant number and amount of home mortgage, small business and small farm, and (if the bank chooses to have them considered in its CRA evaluation) consumer loans and any other geographies equidistant from its branches and deposit-taking ATMs, taking into account political boundaries or significant geographic barriers; and

(2) Shall not extend substantially across MSA boundaries or state boundaries unless the service area is located in a multistate MSA. If the bank serves areas that extend substantially across state boundaries or extend substantially across boundaries of an MSA, the bank shall delineate separate service areas for the areas in each state and for the areas inside and outside the MSA.

(c) *Wholesale or limited purpose banks.* The service area for a wholesale or limited purpose bank (as defined in § 228.12 of this part) shall be delineated as an area or areas around its offices (including its main office and branches) or a broader statewide or regional area that includes the area or areas.

(d) *Banks serving military personnel.* Notwithstanding paragraphs (a), (b), and (c) of this section, a bank whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its service area.

(e) *Maintaining list and map.* Each 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.

**§ 228.42 Data collection and reporting.**

(a) *Mandatory data collection and reporting*—(1) *Loan data.* Each bank, except small banks, shall collect and report to the Board the following data pertaining to its home mortgage, small business, small farm, and community development loans:

(i) *Home mortgage loans.* If the bank is subject to reporting under HMDA, the location of each home mortgage loan located outside the MSAs in which the bank has a home or branch office (or outside any MSA) in accordance with Regulation C, Home Mortgage Disclosure (12 CFR Part 203);

(ii) *Small business and small farm loan data.* All small business and small farm loan data required to be collected and reported on the Board's Small Business and Small Farm Loan Register (CC-\_\_\_\_\_-\_\_\_\_\_), set forth in Appendix C of this part, in accordance with the instructions in Appendix C of this part; and

(iii) *Community development loan data.* All community development loan data required to be collected and reported on the Board's Community Development Report Form (CC-\_\_\_\_\_-\_\_\_\_\_), set forth in Appendix C of this part, in accordance with the instructions in Appendix C of this part.

(2) *Service area data.* Each bank shall collect and report to the Board by April 1 of each year a list of the areas the bank considers to be its service area(s), a list of the geographies it considers to be within its service area(s), and a map of each service area showing the geographies contained therein.

(b) *Optional data collection.* (1) If a bank elects to have its consumer lending considered under the lending test (as described in § 228.22 of this part), the bank shall collect the consumer loan data requested on the Board's Consumer Loan Register (CC-\_\_\_\_\_-\_\_\_\_\_), set forth in Appendix C of this part, in accordance with the instructions in Appendix C of this part.

(2) At its option, a bank may:

(i) Provide information concerning outstanding small business, small farm, or consumer loans throughout the year to account for seasonal variations in lending for use in the evaluation of the bank under the lending test described in § 228.22 of this part; and

(ii) Provide any other information concerning its lending performance, including additional loan distribution data.

(c) *Data on affiliate lending.* A bank that wishes to have the Board consider lending by its affiliates for purposes of

the lending test shall be prepared to identify the particular home mortgage loans reported under HMDA which it wishes the Board to consider, and shall collect or report, pursuant to the provisions of paragraphs (a) and (b) of this section, the requisite data concerning the small business, small farm, or consumer loans made by its affiliates that it wishes Board to consider.

(d) *Data on consortia and third-party lending.* A bank that wishes to have the Board consider community development lending through consortia in which the bank participates or through third parties in which the bank has invested shall report, pursuant to paragraph (a)(1)(iii) of this section, the requisite data concerning the community development loans made through consortia and third parties that it wishes the Board to consider.

**§ 228.43 Public file and disclosure by banks.**

(a) *Public availability.* Each bank shall maintain a file that is readily available for public inspection containing the information required by this section.

(b) *Current information.* 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 each of the prior 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 the 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;

(3) A list of the areas the bank considers to be its service area(s), a list of the geographies it considers to be within its service area(s), and a map of each service area showing the geographies contained therein;

(4) A list of the bank's branches and ATMs, their street addresses, and geographies;

(5) A list of branches and ATMs opened or closed by the bank during the current and each of the prior two calendar years, their street addresses, and geographies; and

(6) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and ATMs and descriptions of material deviations in the availability or cost of services at particular branches and ATMs, if any. At its option, a bank may

include information regarding the availability of alternative systems for delivering retail banking services (e.g., banking by telephone or computer, mobile branches and ATMs, ATMs not owned or operated by or operated exclusively for the bank, loan production offices, and bank-at-work or by-mail programs).

(c) *Information for prior years.* Each bank that is not a small bank shall include in its public file the following information for each of the prior two calendar years derived from the data collected or reported pursuant to § 228.42 of this part:

(1) The number and amount of small business loans and small farm loans located in low-, moderate-, middle-, and upper-income geographies;

(2) A list of the geographies where the bank had outstanding at least one small business loan or small farm loan;

(3) The number and amount of small business and small farm loans located inside the bank's service area(s) and outside the bank's service area(s);

(4) The number and amount of small business and small farm loans to minority-owned businesses;

(5) The number and amount of small business and small farm loans to women-owned businesses;

(6) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues less than or equal to \$1 million;

(7) The number and amount of community development loans outstanding; and

(8) If the bank has elected to have its consumer loans considered under the lending test (as described in § 228.22 of this part), the number and amount of consumer loans to low-, moderate-, middle-, and upper-income individuals, the number and amount of consumer loans located in low-, moderate-, middle-, and upper-income geographies, and the number and amount of consumer loans located inside the bank's service area(s) and outside the bank's service area(s).

(d) *Exception.* A bank shall not place in its public file any information required under paragraph (c) of this section for a particular year if, given special circumstances such as a small number of loans made within a small number of designated income geographies or to a small number of designated borrowers, the information could reasonably be expected to disclose the identity of the borrower.

(e) *HMDA statement.* Each bank required to report home mortgage loan data pursuant to the HMDA shall include in its public file a copy of its



HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council for each of the prior two calendar years. The statement shall be placed in the main office public file within three business days and in the branch office public files within 10 business days of the bank's receipt of the statement.

(f) *Small bank file.* (1) 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. A bank may include additional data on its loan-to-deposit ratio at its option.

(2) A small bank that elects to be evaluated under the lending, investment and service tests (as described in §§ 228.22 through 228.24 of this part) shall include in its public file the information specified in paragraph (c) of this section.

(g) *Strategic plan.* Each bank that has been approved to be assessed under a strategic plan as described in § 228.27 of this part shall include in its public file a copy of that plan. Information submitted to the Board on a confidential basis in conjunction with the plan does not have to be included in the public file.

(h) *Less than satisfactory rating.* 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 the credit needs of its entire community. This description shall be updated quarterly.

(i) *Location of public file.* Each bank shall maintain its public file as follows:

(1) The main office shall have a copy of the complete public file;

(2) At least one branch in each service area shall have a copy of the bank's HMDA Disclosure Statements and all materials in the public file relating to the service area in which the branch is located; and

(3) If a member of the public requests to review a bank's public file at a branch that does not have a copy, the bank shall make a complete copy of the file for that service area available for review at the branch within 5 business days at no cost.

(j) *Copies.* Each bank shall provide copies of the information in its 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).

#### § 228.44 Public notice by banks.

(a) *CRA notice for banks.* Each bank shall provide in the public lobby of its main office and each of its branches the

public notice set forth in Appendix B of this part. Bracketed material shall be used only by banks having more than one service area.

(b) *Additional notice for affiliate banks.* The last two sentences shall be included only if the bank is an affiliate of a holding company and the last sentence only if the company is not prevented by statute from acquiring additional banks.

#### § 228.45 Publication of planned examination schedule.

The Board shall 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.

### Subpart D—Transition Rules

#### § 228.51 Transition rules.

(a) *Effective date.* Sections of this part 228 become effective over a period of time in accordance with the schedule set forth in paragraph (c) of this section. The provisions of part 228 become fully effective on July 1, 1996.

(b) *Data collection and reporting; strategic plan; small bank assessment standards; and performance tests—*(1) *Data collection and reporting.* On July 1, 1995, the data collection and reporting requirements set forth in § 228.42 of this part become effective.

(2) *Strategic plan.* Beginning July 1, 1995, a bank that elects to be evaluated under an approved strategic plan pursuant to § 228.27 of this part may submit its strategic plan to the Board for approval.

(3) *Small bank assessment standards.* Beginning July 1, 1995, a bank that qualifies as a small bank pursuant to § 228.12 of this part may elect to be evaluated under the small bank assessment standards set forth in § 228.26 of this part. Beginning July 1, 1996, the Board shall evaluate each small bank under the small bank assessment standards, unless the bank elects to be evaluated pursuant to the performance tests set forth in §§ 228.22 through 228.25 of this part or under an approved strategic plan.

(4) *Performance tests.* On July 1, 1996, the lending, investment, service, and community development tests set forth in §§ 228.22 through 228.25 of this part become effective. Thereafter, the Board shall evaluate all banks pursuant to these test(s), except small banks evaluated under the small bank assessment standards and banks that elect to be evaluated under an approved strategic plan.

(c) *Schedule.* On January 1, 1995, §§ 228.11, 228.12, 228.29, 228.51 and

228.100 become effective, and §§ 228.1, 228.2, 228.8, and 228.9 will expire. On July 1, 1995, §§ 228.26, 228.27, 228.42, and 228.45 become effective, and §§ 228.28 and 228.41 become effective for banks that are evaluated under §§ 228.26 or 228.27. On July 1, 1996, §§ 228.21 through 228.25, 228.28, 228.41, 228.43, and 228.44 become effective, and §§ 228.3 through 228.7 will expire.

### Subpart E—Interpretations

#### § 228.100 Applicability of the Community Reinvestment Act to certain special purpose banks.

In response to its July 1978 proposed regulation, 12 CFR Part 228, to implement the CRA, the Board received several inquiries from institutions that, although they are chartered as banks, do not perform commercial or retail banking services. These institutions serve solely as correspondent banks, or as trust companies, or as clearing agents, and they do not extend credit to the public for their own account. The Board concludes that the CRA is not intended to cover these institutions. It is the purpose of the CRA to require the Board to encourage banks to meet the credit needs of their local communities. To this end, the Board must assess banks' records of performance and take those records into account in acting on certain applications affecting the banks. The Board believes that these provisions were intended to cover all banks that are in the business of extending credit to the public, including both wholesale and retail banks. The lending activities of these banks affect the economic health of the communities in which they are chartered. However, the Board believes it would be pointless to encourage or to assess the credit-granting record of institutions that are not organized to grant credit to the public in the ordinary course of business, other than as an incident to their specialized operations. Accordingly, the term *State member bank* as used in this part does not include banks that engage solely in correspondent banking business, trust company business, or acting as a clearing agent.

### Appendix A to Part 228—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the Board shall evaluate a bank's performance under the applicable assessment criteria in this part, subject to § 228.28 of this part, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices and prior "needs to improve" ratings.

(2) A bank's performance need not fit each aspect of a particular rating profile in order



to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, should generally be consistent with the appropriate profile stated below.

(b) *Banks that are not wholesale or limited purpose banks or small banks.* (1) *Lending performance rating.* The Board shall assign each bank's lending performance one of the five ratings described below.

(i) *Outstanding.* The Board shall rate a bank's lending performance "outstanding" if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its service area(s);

(B) A substantial majority of its loans are made in its service area(s);

(C) An excellent geographic distribution of loans throughout its service area(s);

(D) An excellent distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) An excellent record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to \$1 million, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The Board shall rate a bank's lending performance "high satisfactory" if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its service area(s);

(B) A high percentage of its loans are made in its service area(s);

(C) A good geographic distribution of loans throughout its service area(s);

(D) A good distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) A good record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to \$1 million, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The Board shall rate a bank's lending performance "low satisfactory" if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its service area(s);

(B) An adequate percentage of its loans are made in its service area(s);

(C) An adequate geographic distribution of loans throughout its service area(s);

(D) An adequate distribution, particularly in its service area(s), of loans among

individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) An adequate record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to \$1 million, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The Board shall rate a bank's lending performance "needs to improve" if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its service area(s);

(B) A small percentage of its loans are made in its service area(s);

(C) A poor geographic distribution of loans throughout its service area(s), particularly to low- or moderate-income geographies in the service area(s);

(D) A poor distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) A poor record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to \$1 million, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a limited number of community development loans.

(v) *Substantial noncompliance.* The Board shall rate a bank's lending performance as being in "substantial noncompliance" if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its service area(s);

(B) A very small percentage of its loans are made in its service area(s);

(C) A very poor geographic distribution of loans throughout its service area(s), particularly to low- or moderate-income geographies in the service area(s);

(D) A very poor distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) A very poor record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to \$1 million, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The Board shall assign each bank's investment

performance one of the five ratings described below.

(i) *Outstanding.* The Board shall rate a bank's investment performance

"outstanding" if, in general, it demonstrates: (A) An excellent level of qualified investments, often in a leadership position, particularly those that directly address credit needs;

(B) Extensive use of innovative or complex qualified investments to support community development initiatives; and

(C) Excellent responsiveness to credit and community economic development needs.

(ii) *High satisfactory.* The Board shall rate a bank's investment performance "high satisfactory" if, in general, it demonstrates:

(A) A significant level of qualified investments, occasionally in a leadership position, particularly those that directly address credit needs;

(B) Significant use of innovative or complex qualified investments to support community development initiatives; and

(C) Good responsiveness to credit and community economic development needs.

(iii) *Low satisfactory.* The Board shall rate a bank's investment performance "low satisfactory" if, in general, it demonstrates:

(A) An adequate level of qualified investments, although rarely in a leadership position, particularly those that directly address credit needs;

(B) Occasional use of innovative or complex qualified investments to support community development initiatives; and

(C) Adequate responsiveness to credit and community economic development needs.

(iv) *Needs to improve.* The Board shall rate a bank's investment performance "needs to improve" if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that directly address credit needs;

(B) Rare use of innovative or complex qualified investments to support community development initiatives; and

(C) Poor responsiveness to credit and community economic development needs.

(v) *Substantial noncompliance.* The Board shall rate a bank's investment performance as being in "substantial noncompliance" if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that directly address credit needs;

(B) No use of innovative or complex qualified investments to support community development initiatives; and

(C) Very poor responsiveness to credit and community economic development needs.

(3) *Service performance rating.* The Board shall assign each bank's service performance one of the five ratings described below.

(i) *Outstanding.* The Board shall rate a bank's service performance "outstanding" if, in general, the bank demonstrates:

(A) Its service delivery systems are readily accessible to essentially all portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and ATMs has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;



(C) Services (including, where appropriate, business hours) are tailored to the convenience and needs of its service area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The Board shall rate a bank's service performance "high satisfactory" if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to essentially all portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and ATMs has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Services (including, where appropriate, business hours) do not vary in a way that inconveniences certain portions of its service area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The Board shall rate a bank's service performance "low satisfactory" if, in general, the bank demonstrates:

(A) Its service delivery systems are reasonably accessible to essentially all portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and ATMs has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Services (including, where appropriate, business hours) do not vary in a way that inconveniences portions of its service area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The Board shall rate a bank's service performance "needs to improve" if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to limited portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and ATMs has adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Services (including, where appropriate, business hours) vary in a way that inconveniences certain portions of its service

area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The Board shall rate a bank's service performance as being in "substantial noncompliance" if, in general, the bank demonstrates:

(A) Its service delivery systems are inaccessible to significant portions of its service area(s), particularly low- and moderate-income geographies or low- and moderate-income individuals;

(B) To the extent changes have been made, the bank's record of opening and closing branches and ATMs has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Services (including, where appropriate, business hours) vary in a way that significantly inconveniences many portions of its service area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(4) *Assigned rating.* The Board shall use the following procedures for assigning a rating:

(i) Assign points corresponding to the bank's performance on each of the component tests as follows:

(In points)

Component test ratings	Lending	Service	Investment
Outstanding .....	12	6	6
High satisfactory .....	9	4	4
Low satisfactory .....	6	3	3
Needs to improve .....	3	1	1
Substantial noncompliance .....	0	0	0

(ii) Total the points for the three tests, and use that total to determine the composite rating according to the chart below. However, if the total exceeds twice the number of points attributable to the bank's lending test performance (as provided in paragraph (b)(4)(i) of this appendix), determine the composite rating using twice the number of points attributable to the bank's lending test performance.

Points	Composite rating
18 or over .....	Outstanding.
9 through 17 .....	Satisfactory.
5 through 8 .....	Needs to improve.
0 through 4 .....	Substantial noncompliance.

(c) *Community development test for wholesale or limited purpose banks.* The Board shall assign each wholesale or limited purpose bank's community development performance one of the four ratings described below.

(1) *Outstanding.* The Board shall rate a wholesale or limited purpose bank's community development performance "outstanding" if, in general, it demonstrates:

(i) A high level of qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Excellent responsiveness to credit and community economic development needs in its service area(s).

(2) *Satisfactory.* The Board shall rate a wholesale or limited purpose bank's community development performance "satisfactory" if, in general, it demonstrates:

(i) An adequate level of qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Adequate responsiveness to credit and community economic development needs in its service area(s).

(3) *Needs to improve.* The Board shall rate a wholesale or limited purpose bank's community development performance as "needs to improve" if, in general, it demonstrates:

(i) A poor level of qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Poor responsiveness to credit and community economic development needs in its service area(s).

(4) *Substantial noncompliance.* The Board shall rate a wholesale or limited purpose bank's community development performance in "substantial noncompliance" if, in general, it demonstrates:

(i) Few, if any, qualified investments, community development loans outstanding, or community development services,



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particularly those that directly address credit needs;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Very poor responsiveness to credit and community economic development needs in its service area(s).

(d) *Assessment standards for small banks.* The Board shall rate each small bank's performance as described below.

(1) *Eligibility for a satisfactory rating.* The Board shall rate a bank's performance "satisfactory" if, in general, the bank demonstrates:

(i) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its service area(s), and taking into account, as appropriate, lending-related activities such as loan originations for sale to the secondary markets and community development lending and investment;

(ii) A majority of its loans and, as appropriate, other lending-related activities are in its service area(s);

(iii) A distribution of loans to and, as appropriate, other lending related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's service area(s);

(iv) A record of taking appropriate action, as warranted, in response to written complaints, if any, about the bank's performance in meeting the credit needs of its service area(s); and

(v) A reasonable geographic distribution of loans given its service area(s).

(2) *Eligibility for an outstanding rating.* 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 performance is "outstanding", the Board shall consider the extent to which the bank exceeds each of the assessment standards for a "satisfactory" rating and its performance in making qualified investments (as defined in § 228.23 of this part) and its performance in providing branches, ATMs or other services and delivery systems that enhance credit availability in its service area(s).

(3) *Needs to improve or substantial noncompliance ratings.* A small bank also may receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(e) *Strategic plan assessment and rating.*

(1) *Satisfactory goals.* The Board shall approve as "satisfactory" measurable goals that adequately help meet the credit needs of each of a bank's service area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as "satisfactory," the Board shall approve those goals as "outstanding."

(3) *Rating.* The Board shall assess the performance of a bank operating under an

approved plan to determine if the bank has met its plan goals:

(i) If the bank substantially achieves its plan goals for a satisfactory rating, the Board shall rate the bank's performance under the plan as "satisfactory."

(ii) If the bank exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the Board shall rate the bank's performance under the plan as "outstanding".

(iii) If the bank fails to substantially meet its plan goals for a satisfactory rating, it shall be rated as either "needs to improve" or "substantial noncompliance," depending on the extent to which it falls short of its plan goals, or if the bank so elected at the time it first submitted its plan, it shall be rated under the lending, investment and service tests (as described in §§ 228.22 through 228.24 of this part), the community development test (as described in § 228.25 of this part), or the small bank assessment standards (as described in § 228.26 of this part), as appropriate.

## Appendix B to Part 228—CRA Notice Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Reserve Board (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 that includes: copies of all signed, written comments received by us, and any responses we have made to those comments; a map showing our service area; a list of our branches and ATMs in our service area; a list of services we provide at those locations; evaluations by the Federal Reserve System of our CRA performance; and data on the loans we have made in this community during the last two years. [Current CRA information on our performance in other communities served by us is available at our main office, located at \_\_\_\_\_.]

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

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

announcement of applications covered by the CRA filed by bank holding companies.

## Appendix C to Part 228—CRA Loan Data Format

### Instructions for the Small Business and Small Farm Loan Register

This form contains the instructions for completion of the Loan Register for Small Business and Small Farm Loans. This register is used in conjunction with the reporting of this information as part of the CRA data collection process. The register and these instructions are to be used to provide the format in which the data should be reported. The actual data are to be submitted in machine-readable form in accordance with the instructions for submission of data pursuant to 12 CFR Part 203 (Regulation C).

#### I. Who Must File a Register

All independent insured banks and thrifts with \$250 million or more in total assets and all insured banks and thrifts that are members of holding companies with \$250 million or more in bank and thrift assets must report this information for small business and small farm loans outstanding beginning December 31, 1995. Banks and thrifts with fewer assets that wish to be evaluated under 12 CFR 228.22 through 228.24 must also report this information. Only provide information on business or farm location and borrower information for loans for which applications were submitted after July 1, 1995. For loans for which applications were submitted before that date, enter "N/A" for all information relating to location or borrower.

#### II. Types of Loans To Be Reported

The loan register should contain individual loan data on each small business or small farm loan as defined on schedule RC-C of the December 31 Report of Condition and Income. Include data on individual small business loans with original loan amounts of \$1 million or less and individual small farm loans with original loan amounts of \$500,000 or less that had an outstanding balance as of December 31.

#### III. Submission of Data

The data must be submitted in machine-readable form consistent with requirements for submission of data pursuant to 12 CFR Part 203 (Regulation C). The format must conform exactly to the form, including the order of columns, column headings, etc. Contact your federal supervisory agency for information regarding procedures and technical specifications for automated data submission.

Your institution should decide on the procedure it wants to follow for collection of the data consistent with the Supplemental Instructions For Collection Of Data In Connection With Small Business and Small Farm Loans. Keep in mind that data reported on the register are outstanding as of December 31 and not originations as are reported for some other regulatory purposes. Your institution may collect the data on separate registers at different branches or on separate registers for different loan types (small business or small farm), but make sure



each loan number is unique. Entries need not be grouped on your registers by MSA, or chronologically, or by census tract, or in any other particular order.

#### IV. Instructions for Completion of Register Loan Information

1. **LOAN NUMBER**—Enter an identifying number that can be used to retrieve the loan file. It can be any number (not exceeding 25 characters). Use letters, numerals, or a combination of both. Make sure that all numbers are unique within the institution. If registers contain data for branch offices, for example, use a letter or a numerical code to identify the loans of different branches or assign a certain series of numbers to particular branches to avoid duplicate numbers. The use of the borrower's tax-payer identification number or social security number is strongly discouraged for privacy reasons.

2. **OUTSTANDING LOAN AMOUNT**—Enter the outstanding loan amount (balance) as of December 31. Show the amount in thousands rounding to the nearest thousand. Do not report loans with balances below \$500. For example, a loan with a balance of \$500 would be rounded to \$1,000; a loan balance of \$50,300 would be rounded to \$50,000; and a balance of \$15,700 would be rounded to \$16,000.

#### Business or Farm Location

For each loan, identify the location of the business or farm. Location is determined by the following:

(1) Small business loans are located in the census tract or block numbering area where the main business facilities or other property to which the loan proceeds will be applied (as indicated by borrower) are located;

(2) Small farm loans are located in the census tract or block numbering area where the farm or other property to which the loan proceeds will be applied (as indicated by borrower) is located.

1. **MSA**—For each loan in a MSA, indicate the location of the loan by the four digit MSA number. Enter only the MSA number, not the MSA name. Use MSA boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs is available from your regional supervisory agency. (In these instructions, the term MSA refers to metropolitan statistical area or

primary metropolitan statistical area.) For loans outside MSAs, enter "N/A".

2. **STATE & COUNTY**—Use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from your regional supervisory agency. Do not use the letter abbreviations used by the United States Postal Service.

3. **CENSUS TRACT/BLOCK NUMBERING AREA**—Enter the census tract number or block numbering area from the U.S. Census Bureau's Census Tract/Street Index for the most recent census reporting period. For addresses not listed in the index, consult the Census Bureau's census tract outline maps.

#### Borrower Information

1. **MINORITY-OWNED CODE**—Use the following codes to indicate small business or small farm loans with more than 50 percent ownership by one or more minority individuals (as indicated by borrower) pursuant to data collected as described in the Supplemental Instructions For Collection of Data In Connection With Small Business and Small Farm Loans.

1—Yes

2—No

3—Publicly traded business or farm (i.e. has securities registered under Section 12(g) of the Securities Exchange Act of 1934 or has more than 100 shareholders)

4—Information not provided by borrower

2. **WOMEN-OWNED CODE**—Use the following codes to indicate small business or small farm loans with more than 50 percent ownership by women (as indicated by borrower) pursuant to data collected as described in the Supplemental Instructions For Collection of Data In Connection With Small Business and Small Farm Loans.

1—Yes

2—No

3—Publicly traded business or farm (i.e. has securities registered under Section 12(g) of the Securities Exchange Act of 1934 or has more than 100 shareholders)

4—Information not provided by borrower

3. **GROSS ANNUAL REVENUES ≤ \$1MM**

**CODE**—Use the following codes to indicate whether the gross annual revenues of the small business or farm are less than or equal to \$1 million. This information should be determined based upon the revenues upon

which your institution relied in making its credit decision.

1—Yes

2—No

#### Supplemental instructions for collection of data in connection with small business and small farm loans

##### A. Format

Beginning July 1, 1995, financial institutions required to report small business and small farm loan registers are to collect information on the racial, ethnic, and gender make-up of applicants or borrowers in connection with small business and small farm loans. If you take a written application, you should list questions regarding the percent of minority and gender ownership on your loan application form or on a separate form completed by the applicant in conjunction with an application. If you do not take a written application, you should request the information at an appropriate time during the application or origination process; you must request the information for each loan you originate even if you did not take a written application. If you neither take a written application nor originate the loan, you do not have to request the information. See the sample form for recommended format and language. This information is to be maintained in the institution's in-house loan files. This information is not to be reported to the agency, but is to be used to complete the small business and small farm loan register.

##### B. Procedures

1. You must ask for this information, but cannot require the applicant or borrower to provide it. You may not consider whether or not an applicant or borrower has provided this information in making your decision whether to extend credit or in setting the terms of credit.

2. If the applicant or borrower chooses not to provide the information, note this fact on the form.

3. Inform the applicant or borrower that the Federal government is requesting this information in order to monitor compliance with Federal statutes that prohibit lenders from discriminating on these bases.

**BILLING CODES:** OCC 4810-33-P (25%); Board 6210-01-P (25%); FDIC 6714-01-P (25%); OTS 6720-01-P (25%)



## C. Sample data collection form

## INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government for certain types of loans in order to monitor the lender's compliance with equal credit opportunity, fair housing, community reinvestment and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may not discriminate on the basis of this information, or on whether you choose to furnish it. If you do not wish to furnish the information, please check the appropriate box below and do not provide any further information. If your business or farm is publicly traded (i.e. has securities registered under Section 12(g) of Securities Exchange Act of 1934 or has more than 100 shareholders), please check the appropriate box below and do not provide any further information.

- ☐ I do not wish to furnish this information
- ☐ Publicly traded (i.e. has securities registered under Section 12(g) of the Securities Exchange Act of 1934 or has more than 100 shareholders)

Indicate in the boxes below the percentage of the business or farm that is owned by individuals in each of the racial and ethnic groups listed. The percentages for the different racial and ethnic categories should total 100%. Also indicate the percentage of the business or farm that is owned by female individuals and the percentage that is owned by male individuals. The female and male percentages should total 100%.

Race or National Origin	% Ownership
1--American Indian or Alaskan Native	
2--Asian or Pacific Islander	
3--Black (not of Hispanic origin)	
4--Hispanic	
5--White (not of Hispanic origin)	
6--Other	
Gender	% Ownership
1--Female	
2--Male	



## Name of Reporting Institution

City, State, ZIP

Reporter's Identification Number

Agency  
Code

All columns must be completed for each entry. See the instructions for details.

[illegible]



### Instructions for completion of the open- and closed-end consumer loan registers

This form contains the instructions for completion of the Loan Registers for Open-End Consumer Loans and Closed-End Consumer Loans. These registers are used in conjunction with the collection of this information as part of the CRA data collection process. The registers and these instructions are to be used to provide the format in which the data should be maintained. The data must be maintained in machine-readable form. If you wish to maintain the data in an alternative format, you must obtain approval from your primary supervisory agency.

#### I. Who May Maintain a Register

Any insured bank or thrift may, at the institution's option, collect and maintain this information for loans outstanding beginning December 31, 1995. You need only provide information on borrower location and gross annual income for loans for which applications were submitted after July 1, 1995. For loans for which applications were submitted before that date, you may enter "N/A" for borrower location and gross annual income.

#### II. Types of Loans to be Recorded

If you collect and maintain information on your consumer loans for consideration in your CRA evaluation, you must provide data on all consumer loans outstanding included in the aggregate consumer loan figure on your December 31 Report of Condition and Income.

Your institution should decide on the procedure it wants to follow for collection of

the data. Keep in mind that data recorded on the registers are outstandings as of December 31 and not originations as are reported for some other regulatory purposes. Your institution may collect the data on separate registers at different branches, but is required to maintain the data on separate registers for each of the different consumer loan types (open-end and closed-end). Make sure the loan numbers are unique.

#### III. Instructions for Completion of Register Loan Information

1. **LOAN NUMBER**—Enter an identifying number that can be used to retrieve the loan file. It can be any number (not exceeding 25 characters). Use letters, numerals, or a combination of both. Make sure that all numbers are unique within the institution. If registers contain data for branch offices, for example, use a letter or a numerical code to identify the loans of different branches or assign a certain series of numbers to particular branches to avoid duplicate numbers. The use of the borrower's tax-payer identification number or social security number is strongly discouraged for privacy reasons.

2. **OUTSTANDING LOAN AMOUNT**—Enter the outstanding loan amount (balance) as of December 31. Show the amount in thousands rounding to the nearest thousand. Do not report loans with balances below \$500. For example, a loan with a balance of \$500 would be rounded to \$1,000; a loan balance of \$50,300 would be rounded to \$50,000; and a balance of \$15,700 would be rounded to \$16,000.

#### Borrower Information

For each loan, identify the location of the borrower. Consumer loans are located in the census tract or block numbering area where the borrower resides.

1. **MSA**—For each loan in a MSA, indicate the location of the loan by the four digit MSA number. Enter only the MSA number, not the MSA name. Use MSA boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs is available from your regional supervisory agency. (In these instructions, the term MSA refers to metropolitan statistical area or primary metropolitan statistical area.) For loans outside MSAs, enter "N/A".

2. **STATE & COUNTY**—Use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from your regional supervisory agency. Do not use the letter abbreviations used by the United States Postal Service.

3. **CENSUS TRACT/BLOCK NUMBERING AREA**—Enter the census tract number or block numbering area from the U.S. Census Bureau's Census Tract/Street Index for the most recent census reporting period. For addresses not listed in the index, consult the Census Bureau's census tract outline maps.

4. **GROSS ANNUAL INCOME**—Enter the gross annual income upon which your institution relied in making the credit decision. Round all dollar amounts to the nearest thousand.

**BILLING CODES:** OCC 4810-33-P (25%); Board 6210-01-P (25%); FDIC 6714-01-P (25%); OTS 6720-01-P (25%)



## CLOSED-END CONSUMER LOAN REGISTER

Page \_\_\_\_ of \_\_\_\_

Name of Reporting Institution \_\_\_\_\_

City, State, ZIP \_\_\_\_\_

Reporter's Identification Number \_\_\_\_\_

Agency  
Code \_\_\_\_\_

All columns must be completed for each entry. See the instructions for details.

LOAN INFORMATION		BORROWER INFORMATION				
Loan Number	12/31/XX Outstanding Loan Amount (000s)	Four Digit MSA Number	Two Digit State Code	Three Digit County Code	Census Tract Number or Block Numbering Area	Gross Annual Income (000s)
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____



# OPEN-END CONSUMER LOAN REGISTER

Page \_\_\_\_\_ of \_\_\_\_\_

Name of Reporting Institution \_\_\_\_\_

City, State, ZIP \_\_\_\_\_

Reporter's Identification Number \_\_\_\_\_

Agency  
Code \_\_\_\_\_

All columns must be completed for each entry. See the instructions for details.

LOAN INFORMATION		BORROWER INFORMATION				
Loan Number	12/31/XX Outstanding Loan Amount (000s)	Four Digit MSA Number	Two Digit State Code	Three Digit County Code	Census Tract Number or Block Numbering Area	Gross Annual Income (000s)
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
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## Instructions for completion of community development loan data reporting form

This form contains the instructions for completion of the form for reporting Community Development lending activity. This form is used in conjunction with the reporting of this information as part of the CRA data collection process. The form and these instructions are to be used to provide format to the data to be reported. The actual data are to be submitted electronically consistent with requirements for filing of the institution's December 31 Report of Condition and Income. Data must be provided for loans outstanding beginning December 31, 1995.

**Community development loan** means a loan (including a line of credit, commitment, or letter of credit) that addresses affordable housing (including multifamily rental housing) or other community economic development needs not being met by the private market; provided the loan: (1) primarily benefits low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to \$1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; (2) has not been reported or collected by the bank or one of its affiliates as a home mortgage loan, small business loan, small farm loan, or a consumer loan pursuant to 12 CFR Part 228, unless it is a multifamily loan; and (3) except in the case of a wholesale or limited purpose bank, benefits the bank's service area(s) or a broader statewide or regional area that includes the bank's service area(s).

1. *NUMBER OF COMMUNITY DEVELOPMENT LOANS OUTSTANDING.* Enter the number of outstanding Community Development loans as of December 31.
2. *DOLLAR AMOUNT OF COMMUNITY DEVELOPMENT LOANS OUTSTANDING.* Enter the aggregate amount of outstanding Community Development loans as of December 31.

# COMMUNITY DEVELOPMENT LOAN DATA REPORTING FORM

Name of Reporting Institution

City, State, ZIP

Reporter's Identification Number

Agency  
Code

Number of Community Development Loans Outstanding\_\_\_\_\_

### Dollar Amount of Community Development Loans Outstanding

**BILLING CODES:** OCC 4810-33-C (25%); Board 6210-01-C (25%); FDIC 6714-01-C (25%); OTS 6720-01-C (25%)

By order of the Board of Governors of the  
Federal Reserve System, September 27, 1994.  
**William W. Wiles,**  
*Secretary of the Board.*



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**FEDERAL RESERVE SYSTEM****12 CFR Part 203****(Regulation C; Docket No. R-0848)****Home Mortgage Disclosure****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Proposed rule.

**SUMMARY:** The Board is publishing for public comment proposed changes to Regulation C (Home Mortgage Disclosure) and to the instructions that financial institutions must use to comply with the annual reporting requirements under the regulation. The amendments reflect revisions proposed by the Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision to their regulations implementing the Community Reinvestment Act (CRA). Under the joint CRA proposal, banks or savings associations that report data about their home mortgage lending pursuant to HMDA—and that have assets of \$250 million or more, or that are subsidiaries of a holding company with total banking and thrift assets of \$250 million or more—would collect and report geographic information on loans and loan applications relating to property located outside the MSAs in which the institution has a home or branch office. Currently, geographic identification is required only within MSAs where these lenders have an office. Data would be collected and reported in accordance with the instructions in Regulation C. The agencies believe that these data would provide more geographic detail on home mortgage lending that would facilitate complete CRA assessments for institutions that do not qualify as small banks or thrifts.

**DATES:** Comments must be received on or before November 21, 1994. The revised final rules would apply to loan and application data beginning July 1, 1995.

**ADDRESSES:** Comments should refer to Docket No. R-0848 and be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. They

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 received will be available for inspection 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:** Jane Jensen Gell or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412 or (202) 452-3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

**SUPPLEMENTARY INFORMATION:****I. Background**

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 et seq.). HMDA requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must report that data to their federal supervisory agencies and disclose the data to the public. The reports and disclosures cover loan originations, applications that do not result in originations (for example, applications that are denied or withdrawn), and loan purchases. Information reported includes the location of the property to which the loan or application relates; the race or national origin, gender, and gross annual income of the borrower or applicant; and the type of purchaser for loans sold in the secondary market.

The federal financial regulatory agencies have proposed amendments to the CRA. The CRA proposal would require banks or savings associations that report data about their home mortgage lending pursuant to HMDA—and that have assets of \$250 million or more, or that are subsidiaries of a holding company with total banking and thrift assets of \$250 million or more—to collect and report geographic information on loans and applications relating to property located in metropolitan areas whether or not the institution has a home or branch office there. They will also report geographic information for property located outside any MSA. (This proposal does not affect the current exemption in § 203.3 of Regulation C for banks and savings

associations; for example, institutions whose assets are \$10 million or less remain exempt.) Currently, lenders have the option of collecting this information but are not required to do so. The agencies believe that these data would provide more geographic detail on home mortgage lending that would facilitate complete CRA assessments for institutions that do not qualify as small banks or thrifts. The revised final rules would apply to loan and application data beginning July 1, 1995.

**II. Summary of Proposed Amendments**

Set forth below is a section-by-section discussion of the proposed amendments to the regulation.

**Section 203.4—Compilation of Loan Data****Paragraph (e)—Data Reporting Under CRA**

The proposal would add a new paragraph to implement proposed revisions to the agencies' CRA regulations. Under the joint CRA proposal, banks or savings associations that report data about their home mortgage lending pursuant to HMDA—and that have assets of \$250 million or more, or that are subsidiaries of a holding company with total banking and thrift assets of \$250 million or more—would collect and report geographic information for all loans and applications, not just for property in MSAs where the institution has a home or branch office. The requirement also would apply to property located outside any MSA. The agencies believe that incorporating these reporting requirements in Regulation C would facilitate compliance for lenders.

**Appendix A—Form and Instructions for Completion of HMDA Loan/Application Register****V. Instructions for Completion of Loan/Application Register Paragraph C**

The Board proposed to add a new paragraph to reflect the proposed CRA reporting requirements for banks and savings associations with assets of \$250 million or more and banks and savings associations that are subsidiaries of a holding company with total banking and thrift assets of \$250 million or more.

**III. Economic Impact Statement**

The Board's Division of Research and Statistics has prepared an economic impact analysis of the proposed amendments. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington,



DC 20551, or by telephone at (202) 452-3245.

#### IV. Benefit and Burden of Administrative Compliance Requirements

With respect to the reporting, disclosure, and other administrative compliance requirements in the proposal, the Board invites comment on (1) Any administrative burdens that these requirements in the proposal would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of these requirements in the proposal for depository institutions, their customers, and their communities.

#### List of Subjects in 12 CFR Part 203

Banks, Banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 203 as follows:

#### PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801-2810.

2. Section 203.4 would be amended by adding a new paragraph (e), to read as follows:

#### § 203.4 Compliance of loan data.

\* \* \* \* \*

(e) *Data reporting under CRA for banks and savings associations with total assets of \$250 million or more and banks and savings associations that are subsidiaries of a holding company whose total banking and thrift assets are \$250 million or more.* As required by agency regulations that implement the Community Reinvestment Act, banks and savings associations that have total assets of \$250 million or more on the preceding December 31, or are subsidiaries of a holding company with total banking and thrift assets of \$250 million or more, shall also report the location for property located outside the MSAs in which the institution has a home or branch office.

3. Appendix A to part 203 would be amended by adding a new section V.C.7., to read as follows:

#### Appendix A Part 203—Form and Instructions for Completion HMDA Loan/Application Register

\* \* \* \* \*

V. \* \* \*

C. \* \* \*

7. *Data reporting under CRA for banks and savings associations with total assets of \$250 million or more and banks and savings associations that are subsidiaries of a holding company whose total banking and thrift assets are \$250 million or more.* If you are a bank or savings association with total assets of \$250 million or more on the preceding December 31, you must also report the location for property located outside the MSAs in which you have a home or branch office. You must also report this information if you are a bank or savings association that is a subsidiary of a holding company with total banking and thrift assets of \$250 million or more.

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By order of the Board of Governors of the Federal Reserve System, September 26, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-24324 Filed 10-6-94; 8:45 am]

BILLING CODE 6210-01-P