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**Office of the Comptroller of the Currency**

**12 CFR Parts 24, 25, and 35**

**[Docket ID OCC-2025-0005]**

**RIN 1557-AF30**

**FEDERAL RESERVE SYSTEM**

**12 CFR Parts 207 and 228**

**Regulation BB**

**[Docket No. R-1869]**

**RIN 7100-AG95**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Parts 345 and 346**

**RIN 3064-AG13**

**Community Reinvestment Act Regulations**

**AGENCY:** The Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) propose to amend their Community Reinvestment Act (CRA) regulations by rescinding the final rule titled “Community Reinvestment Act” published in the *Federal Register* on February 1, 2024, and replacing it with the agencies’ CRA regulations in effect on March 29, 2024, with certain conforming and technical amendments. The agencies are also proposing technical amendments to their regulations implementing the CRA sunshine requirements of the Federal Deposit Insurance Act, and the OCC is proposing technical amendments to its Public Welfare Investments regulation.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Comments should be directed to the agencies as follows:

*OCC:* Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title “Community Reinvestment Act Regulations” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal – Regulations.gov:* Go to <https://regulations.gov>. Enter “Docket ID OCC-2025-0005” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments please click on “Commenter’s Checklist.” For assistance with the *Regulations.gov* site, please call (877) 378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9 a.m.-5 p.m. EST or e-mail [regulations@erulemakinghelpdesk.com](mailto:regulations@erulemakinghelpdesk.com).
- *Mail:* Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street, SW, suite 3E-218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street, SW, suite 3E-218, Washington, DC 20219.

*Instructions:* You must include “OCC” as the agency name and “Docket ID OCC-2025-0005” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

- *Viewing Comments Electronically – Regulations.gov:* Go to <https://regulations.gov>. Enter “Docket ID OCC-2025-0005” in the Search Box and click “Search.” Click on the “Documents” tab and then the document’s title. After clicking the document’s title, click the “Browse Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Documents” tab and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Documents Results” options on the left side of the screen.” For assistance with the *Regulations.gov* site, please call (877) 378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9 a.m.-5 p.m. EST or e-mail [regulations@erulemakinghelpdesk.com](mailto:regulations@erulemakinghelpdesk.com).

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

*Board:* You may submit comments, identified by Docket No. R-1869 and RIN 7100-AG95, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/apps/proposals/>. Follow the instructions for submitting comments, including attachments. ***Preferred Method.***
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.
- *Hand Delivery/Courier:* Same as mailing address.
- *Other Means:* [publiccomments@frb.gov](mailto:publiccomments@frb.gov). You must include the docket number in the subject line of the message.

Comments received are subject to public disclosure. In general, comments received will be made available on the Board's website at <https://www.federalreserve.gov/apps/proposals/> without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would be not appropriate for public disclosure.

Public comments may also be viewed electronically or in person in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays.

*FDIC:* You may submit comments, identified by RIN 3064-AG13, by any of the following methods:

- *Agency Website:* <https://www.fdic.gov/resources/regulations/federal-register-publications>. Follow instructions for submitting comments on the agency website.
- *Email:* [comments@fdic.gov](mailto:comments@fdic.gov). Include RIN 3064-AG13 on the subject line of the message.
- *Mail:* Jennifer M. Jones, Deputy Executive Secretary, Attention: Comments RIN 3064-AG13, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.

*Public Inspection:* Comments received, including any personal information provided, may be posted without change to <https://www.fdic.gov/resources/regulations/federal-register-publications>. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of the notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:**

*OCC*: Heidi Thomas, Senior Counsel, or Emily Boyes, Counsel, Chief Counsel's Office, (202) 649-5490; Onjil T. McEachin, Director for CRA and Fair Lending Policy, Office of the Chief National Bank Examiner, (202) 649-5470; or Chandni G. Ohri, Director for Community Development, Office of Community and Industry Relations, (202) 649-6420, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

*Board*: Amal Patel, Senior Counsel, Jaydee DiGiovanni, Counsel, and Taz George, Manager, Division of Consumer and Community Affairs; Cody Gaffney, Counsel, Legal Division; at (202) 452-3000. For users of text telephone systems (TTY) or any TTY-based Telecommunications Relay Services, please call 711 from any telephone, anywhere in the United States.

*FDIC*: Cassandra Duhaney, Counsel, Legal Division, [cduhaney@fdic.gov](mailto:cduhaney@fdic.gov); Alys V. Brown, Senior Attorney, Legal Division, [alybrown@fdic.gov](mailto:alybrown@fdic.gov); Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, [psingleton@fdic.gov](mailto:psingleton@fdic.gov); Kristopher M. Rengert, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, [krengert@fdic.gov](mailto:krengert@fdic.gov), Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

## **SUPPLEMENTARY INFORMATION:**

### **I. Introduction**

The agencies are proposing to rescind the CRA final rule issued on October 24, 2023, and published in the *Federal Register* on February 1, 2024,<sup>1</sup> as subsequently amended<sup>2</sup> (2023 CRA Final Rule). The agencies also are proposing to replace the 2023 CRA Final Rule with regulations adopted by the agencies and the former Office of Thrift Supervision (OTS) on May

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<sup>1</sup> 89 FR 6574 (Feb. 1, 2024).

<sup>2</sup> 89 FR 22060 (Mar. 29, 2024).

4, 1995,<sup>3</sup> as amended,<sup>4</sup> and as published in the Electronic Code of Federal Regulations (eCFR) as of March 29, 2024 (1995 CRA regulations), with conforming amendments to the agencies’ definition of “small bank” and technical amendments to the OCC’s definition of “small bank” and transition provisions. The agencies are also proposing technical amendments to their regulations implementing the CRA sunshine requirements of the Federal Deposit Insurance Act, and the OCC is proposing technical amendments to its Public Welfare Investments regulation. If adopted, the proposal would restore certainty in the CRA framework for stakeholders and limit regulatory burden on banks,<sup>5</sup> while ensuring that banks continue to focus on the purpose of the CRA.

As explained in greater detail below, banks currently operate under the framework of the 1995 CRA regulations. Therefore, the agencies anticipate that transition considerations associated with the proposed recodification of the 1995 CRA regulations would be *de minimis*. The agencies believe the recodification of the 1995 CRA regulations would best achieve the agencies’ objectives at this time, as discussed below.

## **II. Background**

### *The CRA*

Congress enacted the CRA<sup>6</sup> in 1977 based on its findings that: “(1) regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business; (2) the convenience and needs of communities include the need for credit services as well as deposit services; and (3) regulated financial institutions have continuing and affirmative obligation[s] to help meet the

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<sup>3</sup> 60 FR 22156 (May 4, 1995). The OCC reissued its 1995 CRA regulation, as amended, with non-substantive changes on December 15, 2021. *See* 86 FR 71328. For purposes of this **SUPPLEMENTARY INFORMATION**, reference to the 1995 CRA regulations includes the OCC’s 2021 CRA final rule.

<sup>4</sup> *See e.g.*, 70 FR 44256 (Aug. 2, 2005); 75 FR 61035 (Oct. 4, 2010); 82 FR 55734 (Nov. 24, 2017).

<sup>5</sup> For purposes of this **SUPPLEMENTARY INFORMATION**, the term “bank” includes insured national banks, Federal and State savings associations, and certain Federal branches of foreign banks as defined in proposed 12 CFR 25.11; insured State nonmember banks and certain insured State branches of foreign banks as defined in 12 CFR 345.11; and State member banks and certain uninsured State branches of foreign banks, as defined in 12 CFR 228.11).

<sup>6</sup> Pub. L. 95–128, 91 Stat. 1147 (1977) (codified at 12 U.S.C. 2901 *et seq.* (as amended)).

credit needs of the local communities in which they are chartered.”<sup>7</sup> Accordingly, the purpose of the CRA is to require the agencies to encourage regulated financial institutions<sup>8</sup> “to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of the institutions.”<sup>9</sup>

To achieve this purpose, the CRA requires the agencies to “assess [an] institution’s record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution.”<sup>10</sup> Upon completing this assessment, the statute requires the agencies to “prepare a written evaluation of the institution’s record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.”<sup>11</sup> The statute further provides that each agency must “take such record into account in its evaluation of an application for a deposit facility by such institution.”<sup>12</sup>

### *The Agencies’ Regulatory Framework*

The CRA directs the agencies to publish regulations to carry out the purposes of the CRA.<sup>13</sup> In general, the agencies’ CRA regulations, first promulgated in 1978, establish the standards under which the agencies evaluate banks’ CRA performance.<sup>14</sup> The agencies’ 1995 CRA regulations significantly revised and clarified the 1978 regulations.<sup>15</sup> Periodically, the agencies have jointly updated and revised the 1995 CRA regulations with minimal significant

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<sup>7</sup> 12 U.S.C. 2901(a).

<sup>8</sup> The CRA defines “regulated financial institution,” to mean an insured depository institution as defined in 12 U.S.C. 1813(c)(2). *See* 12 U.S.C. 2902(2).

<sup>9</sup> 12 U.S.C. 2901(b).

<sup>10</sup> 12 U.S.C. 2903(a)(1).

<sup>11</sup> 12 U.S.C. 2906(a).

<sup>12</sup> 12 U.S.C. 2903(a)(2).

<sup>13</sup> 12 U.S.C. 2905. Pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376, 1522 (2010), the OTS’s CRA rulemaking authority for all savings associations transferred to the OCC and the OTS’s CRA supervisory authority for State savings associations transferred to the FDIC. As a result, the OCC’s CRA regulation applies to both State and Federal savings associations, in addition to national banks, and the FDIC enforces the OCC’s CRA regulation with respect to State savings associations.

<sup>14</sup> 43 FR 47144 (Oct. 12, 1978).

<sup>15</sup> *See supra* note 3.

alterations to the overall regulatory framework.<sup>16</sup> The OCC issued a separate CRA final rule in May 2020, but rescinded it in December 2021.<sup>17</sup>

### *The 2023 CRA Final Rule*

On May 5, 2022, the agencies issued a joint notice of proposed rulemaking to modernize their regulations implementing the CRA.<sup>18</sup> After considering public comments received, the agencies issued the 2023 CRA Final Rule on October 24, 2023.

Under the 2023 CRA Final Rule, as fully implemented:<sup>19</sup>

- Large banks (institutions with assets of at least \$2 billion as of December 31 in both of the prior two calendar years) would be subject to four performance tests: the Retail Lending Test; the Retail Services and Products Test; the Community Development Financing Test; and the Community Development Services Test.
- Intermediate banks (institutions with assets of at least \$600 million as of December 31 in both of the prior two calendar years and less than \$2 billion as of December 31 in either of the prior two calendar years) would be subject to two performance tests: the Retail Lending Test and the Intermediate Bank Community Development Test.
- Small banks (institutions with assets less than \$600 million as of December 31 in either of the prior two calendar years) would be subject to the Small Bank Lending Test.
- Limited purpose banks (institutions that do not extend closed-end home mortgage loans, small business loans, small farm loans, or automobile loans to customers,

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<sup>16</sup> For a complete discussion of the agencies' actions with respect to amending their CRA regulations, see the **SUPPLEMENTARY INFORMATION** section of the 2023 CRA Final Rule, 89 FR at 6580.

<sup>17</sup> On May 20, 2020, the OCC issued a final rule to revise and update its CRA regulation. 85 FR 34734 (June 5, 2020). On December 15, 2021, the OCC published a subsequent final rule that rescinded its 2020 CRA regulation and replaced it with a CRA regulation based on those that the agencies jointly issued in 1995, as amended. *See supra* note 3.

<sup>18</sup> 87 FR 33884 (June 3, 2022).

<sup>19</sup> For a complete overview of the 2023 CRA Final Rule, see the **SUPPLEMENTARY INFORMATION** section of the rule, 89 FR at 6574-6579.

except on an incidental and accommodation basis) would be subject to the

Community Development Financing Test for Limited Purpose Banks.

- Generally, banks operating under an approved strategic plan would be subject to the same performance tests they would have been subject to in the absence of a plan; the plan itself could include additions or modifications to tailor the applicable performance tests to the bank's business model.
- The agencies would continue to evaluate banks' performance in the areas surrounding their main office, branches, or deposit-taking remote service facilities (*i.e.*, facility-based assessment areas). In addition, the agencies would evaluate the retail lending performance of certain large banks in areas outside their facility-based assessment areas where they have concentrations of retail loans (*i.e.*, retail lending assessment areas) and the retail lending performance of large banks and certain intermediate and small banks in the nationwide area outside their facility-based assessment areas and retail lending assessment areas (*i.e.*, outside retail lending areas). Further, the agencies would consider community development loans, community development investments, and community development services both inside and outside of a bank's facility-based assessment areas.
- Large banks would be required to collect, maintain, and report certain data to enable evaluation under the applicable performance tests.
- With respect to community development:
  - The rule specified in detail the categories of bank activities that would qualify for CRA consideration as a community development loan, community development investment, or community development service;
  - The agencies would provide an illustrative, non-exhaustive list of examples of loans, investments, and services that qualify for community development

consideration and a process for banks to inquire whether a particular loan, investment, or service is eligible for consideration; and

- The agencies would consider impact and responsiveness factors when evaluating a bank's community development loans, community development investments, and community development services.

As adopted, the 2023 CRA Final Rule would have become effective on April 1, 2024; however, most substantive provisions of the rule would not have become applicable until January 1, 2026, or January 1, 2027. During this transition period, the 2023 CRA Final Rule specified that the 1995 CRA regulations, as reproduced in Appendix G of the 2023 CRA Final Rule, would remain applicable.

On March 21, 2024, the agencies issued a supplemental rule to the 2023 CRA Final Rule.<sup>20</sup> The supplemental rule extended the applicability dates of the facility-based assessment area and public file provisions of the 2023 CRA Final Rule from April 1, 2024, to January 1, 2026. The supplemental rule also included some technical, non-substantive amendments to the 2023 CRA Final Rule and related regulations and corrected a citation to the OCC's CRA regulation.

Several plaintiffs jointly filed suit against the agencies in the U.S. District Court for the Northern District of Texas challenging aspects of the 2023 CRA Final Rule on February 5, 2024,<sup>21</sup> and subsequently requested a preliminary injunction on February 9, 2024.<sup>22</sup> On March 29, 2024, the district court granted plaintiffs' request and enjoined the agencies from enforcing the 2023 CRA Final Rule against the plaintiffs, pending resolution of the litigation. The district court's order also extended the 2023 CRA Final Rule's effective date of April 1, 2024, along with all other implementation dates, day for day for each day the injunction remains in place.<sup>23</sup>

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<sup>20</sup> See *supra* note 2.

<sup>21</sup> Complaint, *Tex. Bankers Ass'n v. Office of the Comptroller of the Currency*, No. 2:24-cv-00025-Z (N.D. Tex. Feb. 5, 2024), ECF No. 4.

<sup>22</sup> Plaintiffs' Motion for a Preliminary Injunction, *Tex. Bankers Ass'n v. Office of the Comptroller of the Currency*, No. 2:24-cv-00025-Z (N.D. Tex. Feb. 9, 2024), ECF No. 19.

<sup>23</sup> *Tex. Bankers Ass'n v. Office of the Comptroller of the Currency*, 728 F. Supp. 3d 412 (N.D. Tex. 2024).

On April 18, 2024, the agencies appealed the district court’s preliminary injunction to the U.S. Court of Appeals for the Fifth Circuit.<sup>24</sup> However, on March 28, 2025, during the pendency of the appeal, the agencies made an unopposed motion to stay the appeal pending completion of a new rulemaking that would propose rescinding the enjoined 2023 CRA Final Rule and reinstating the CRA framework that existed prior to the 2023 CRA Final Rule.<sup>25</sup> The agencies publicly announced this intention the same day.<sup>26</sup> On April 1, 2025, the Fifth Circuit granted the agencies’ motion.<sup>27</sup> In light of this preliminary injunction, the agencies are not supervising for, or applying, any provisions of the 2023 CRA Final Rule.

### **III. Proposed Rescission of 2023 CRA Final Rule**

The agencies’ reconsideration of the 2023 CRA Final Rule is precipitated primarily by the uncertainty created by the pending litigation.<sup>28</sup> Specifically, since the injunction was entered, the agencies have observed confusion and inconsistent understandings among stakeholders regarding the status of the CRA regulatory and supervisory landscape.

Accordingly, the agencies have reconsidered the status of the CRA regulatory framework with two major objectives in mind: (1) restoring certainty in the CRA regulatory framework for stakeholders; and (2) limiting regulatory burden on banks. Further, the agencies took into account that any changes to the proposed CRA regulatory framework must continue to focus on the CRA’s purpose—encouraging banks to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of the banks. The

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<sup>24</sup> Defendants’ Notice of Appeal, *Tex. Bankers Ass’n v. Office of the Comptroller of the Currency*, No. 2:24-cv-00025-Z (N.D. Tex. Apr. 18, 2024), ECF No. 79.

<sup>25</sup> Defendants-Appellants’ Unopposed Motion to Stay Pending Completion of New Rulemaking Proceedings, *Tex. Bankers Ass’n v. Bd. of Governors of the Fed. Reserve Sys.*, No. 24-10367 (5th Cir. Mar. 28, 2025), ECF No. 165.

<sup>26</sup> See OCC, “Agencies Announce Intent to Rescind 2023 Community Reinvestment Act Final Rule” (Mar. 28, 2025), <https://www.occ.treas.gov/news-issuances/news-releases/2025/nr-ia-2025-26.html>; Board, “Agencies Announce Intent to Rescind 2023 Community Reinvestment Act Final Rule” (Mar. 28, 2025), <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250328a.htm>; FDIC, “Agencies Announce Intent to Rescind 2023 Community Reinvestment Act Final Rule” (Mar. 28, 2025), <https://www.fdic.gov/news/press-releases/2025/agencies-announce-intent-rescind-2023-community-reinvestment-act-final>.

<sup>27</sup> Order, *Tex. Bankers Ass’n v. Bd. of Governors of the Fed. Reserve Sys.*, No. 24-10367 (5th Cir. Apr. 1, 2025), ECF No. 174.

<sup>28</sup> The agencies also note that a change in agency priorities at the FDIC and OCC has taken place since the agencies adopted the 2023 CRA Final Rule.

agencies' assessment of these objectives, as well as additional considerations that informed the agencies' reconsideration of the CRA regulatory framework, are discussed below.

### *Agency Objectives*

*Restoring Certainty.* The agencies believe that returning to the regulatory framework established by the 1995 CRA regulations is the most effective way to provide certainty regarding the applicable CRA requirements. Since the issuance of the preliminary injunction enjoining the 2023 CRA Final Rule, the agencies' observations are that not all stakeholders understand whether they should prepare to comply with the 2023 CRA Final Rule or even which regulatory framework is currently applicable. Proceeding with the litigation, particularly given its early stage, would maintain these uncertain circumstances for an indefinite period and would therefore be inconsistent with the objective of restoring certainty in the CRA regulatory framework.

The agencies also understand that despite the fact that the 2023 CRA Final Rule is now enjoined and might not go into effect, banks might be devoting resources toward preparing for the 2023 CRA Final Rule that could otherwise be allocated toward helping to meet the credit needs of banks' communities. Returning to the 1995 CRA regulations at this time, in the agencies' view, would confirm for banks that they do not need to allocate resources for this purpose. Thus, this approach could better facilitate the purpose of the CRA—encouraging banks to meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of those banks.

The agencies' view that returning to the framework established by the 1995 CRA regulations would best restore certainty is also informed by the circumstances preceding the litigation. The agencies have individually and collectively engaged in several iterations of information gatherings and CRA rulemaking processes since 2018 aimed at modernizing the CRA framework and increasing the clarity and consistency of CRA evaluations. These efforts have resulted in a shifting CRA regulatory landscape, in particular, for national banks and

savings associations.<sup>29</sup> This regulatory environment may have affected the planning, development, and management of banks' CRA programs, which can require multi-year strategies to align qualifying activities with CRA performance evaluation periods. Continuing the litigation would prolong the period during which banks will need to consider impending changes in the regulatory framework while managing their CRA programs. Further, if the litigation continues, banks may need to anticipate and plan for potential contingencies in which all or a part of the 2023 CRA Final Rule could eventually become applicable. In light of this context, the agencies believe that returning to the 1995 CRA regulations at this time would restore much needed certainty for banks and other stakeholders.

*Limiting Regulatory Burden.* When issuing the 2023 CRA Final Rule, the agencies sought to balance the increased regulatory burden imposed by the revised framework with benefits associated with the agencies' policy objectives for updating the CRA framework. The agencies also recognized that a subset of banks would have additional regulatory requirements under the 2023 CRA Final Rule relative to the 1995 CRA regulations. Furthermore, all banks would have incurred near-term costs associated with reviewing the 2023 CRA Final Rule to ensure that their policies; procedures; and data collection, maintenance, and reporting processes would be compliant.

In contrast, because banks are currently subject to and examined under the 1995 CRA regulations, the agencies expect that any new regulatory burden associated with recodifying those regulations will be *de minimis*. Further, the 1995 CRA regulations represent an established regulatory framework that is familiar to CRA stakeholders.<sup>30</sup> Therefore, although the agencies' reasons for modernizing the CRA framework remain valid, the agencies believe that replacing

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<sup>29</sup> See *supra* note 17.

<sup>30</sup> See, e.g., Laurie Goodman, *et al.*, "Under the Current CRA Rules, Banks Earn Most of Their CRA Credit through Community Development and Single-Family Mortgage Lending," Urban Institute (July 9, 2020), <https://www.urban.org/urban-wire/under-current-cra-rules-banks-earn-most-their-cra-credit-through-community-development-and-single-family-mortgage-lending>; Daniel Ringo, Board, "'Revitalize or Stabilize': Does Community Development Financing Work?," Finance and Economics Discussion Series 2020-029 (Apr. 2020), <https://www.federalreserve.gov/econres/feds/files/2020029pap.pdf>.

the 2023 CRA Final Rule with the 1995 CRA regulations would better limit overall regulatory burden on banks at this time given the totality of the circumstances.

For all the foregoing reasons, the agencies believe that the need to restore certainty and limit regulatory burden supports the decision to propose rescission of the 2023 CRA Final Rule and recodify the 1995 CRA regulations. Further, the agencies believe that recodifying the 1995 CRA regulations will continue to support the purpose of the CRA.

#### *Additional Agency Considerations*

The following considerations also informed the agencies' review of the CRA regulatory framework and the proposal to return to the 1995 CRA regulations.

*Change in Policy.* The agencies acknowledge that rescinding the 2023 CRA Final Rule would represent a change in policy. However, the agencies note that many of the provisions in the 2023 CRA Final Rule were included in, or substantially based on, the 1995 CRA regulations or reflected existing agency supervisory policies. With respect to those provisions of the 2023 CRA Final Rule, the proposal therefore does not reflect a significant change in policy. These provisions include: many aspects of the regulatory definitions; facility-based assessment areas; the Small Bank Performance Test; the Intermediate Bank Community Development Test; the effect of CRA performance on applications; the public file requirements; the public notice requirements; and some data collection, maintenance, and reporting requirements. Moreover, rescinding the 2023 CRA Final Rule and recodifying the 1995 CRA regulations would not, in practice, result in a change for banks because the agencies are currently applying the 1995 CRA regulations to banks.

Further, the agencies believe that any reliance interests vested in the 2023 CRA Final Rule are as yet *de minimis* because the rule was enjoined prior to its effective and applicability dates. Put simply, the 2023 CRA Final Rule has never applied to any bank.

*Transition Issues.* The agencies believe that transition considerations associated with implementing the proposal would likewise be *de minimis*. The agencies currently evaluate bank

CRA performance under the 1995 CRA regulations because the 2023 CRA Final Rule never took effect. Therefore, the agencies expect that a recodification of the 1995 CRA regulations will have a negligible transitional impact on all CRA stakeholders.

#### *Alternatives Considered*

Although there are potential alternatives to rescinding the 2023 CRA Final Rule and returning to the 1995 CRA regulations, the agencies believe that these alternatives do not best meet the agencies' objectives in reconsidering the CRA framework at this time.

One alternative the agencies considered was maintaining the 2023 CRA Final Rule. However, the agencies believe that this alternative would be unviable. As discussed above, maintaining the 2023 CRA Final Rule would potentially require continuing with protracted litigation, thereby extending the current uncertainty related to the applicable CRA regulatory framework. Ultimately, that litigation could result in changes to or a voiding of the 2023 CRA Final Rule, imposing further uncertainty over an extended period. As also discussed above, the agencies believe that maintaining the 2023 CRA Final Rule could result in banks expending resources to implement the rule without knowing whether all or part of the rule would survive the legal challenge.

Another alternative the agencies considered was proposing to replace the 2023 CRA Final Rule with a new CRA framework that is materially different from the framework contained in the 2023 CRA Final Rule. However, proposing to establish a materially revised framework would involve undertaking an extensive regulatory process, which would not be consistent with the agencies' objective of restoring certainty in the near term. The agencies believe that recodifying the 1995 CRA regulations at this time would provide a more predictable environment and best position stakeholders to manage any possible future regulatory developments.

Lastly, the agencies reviewed the option of proposing targeted amendments to the 2023 CRA Final Rule. However, the agencies considered that, because the 2023 CRA Final Rule is

structured in a comprehensive, layered format with interdependent provisions, removing only certain provisions would be incompatible with the operational structure of the rule. For example, proposing to remove the retail lending assessment area provision would also require the agencies to propose related changes to provisions concerning: the Retail Lending Test overall; outside retail lending areas; affiliate lending; strategic plans; public file requirements; appendix A of the 2023 CRA Final Rule (Calculations for the Retail Lending Test); the manner in which conclusions and ratings are calculated for all applicable performance tests under appendices C and D; and data collection, maintenance, and reporting requirements.

Furthermore, by proposing to amend the 2023 CRA Final Rule instead of rescinding it and replacing it with the 1995 CRA regulations, an established CRA framework, the agencies would be embarking upon a potentially lengthy period of rulemaking-related activities, thereby continuing the uncertainty for CRA stakeholders. Therefore, the agencies do not believe that it is feasible to amend the 2023 CRA Final Rule in a way that meets the agencies' objectives of restoring certainty.

Accordingly, the agencies believe that rescinding the entire 2023 CRA Final Rule and recodifying the 1995 CRA regulations is the best approach at this time to accomplish the agencies' objectives of restoring certainty and limiting regulatory burden while meeting the purpose of the CRA—encouraging banks to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of those banks.

#### **IV. Description of the Proposed Rule**

The proposal would recodify the 1995 CRA regulations currently applicable to banks, as published in the eCFR as of March 29, 2024, with updated asset-size thresholds for the definition of “small bank” to reflect the agencies' inflation adjustments for 2025.<sup>31</sup> (As described

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<sup>31</sup> The agencies annually adjust the CRA asset-size thresholds based on the annual percentage change in a measure of the Consumer Price Index. The bank asset-size thresholds set forth in this proposed rule are accurate through December 31, 2025. *See* 89 FR 106480 (Dec. 30, 2024) (Board and FDIC); OCC Bulletin 2024-36 (Dec. 23, 2024), <https://www.occ.treas.gov/news-issuances/bulletins/2024/bulletin-2024-36.html> (OCC).

elsewhere in this **SUPPLEMENTARY INFORMATION**, the OCC’s proposed regulatory text also includes technical amendments to its definition of “small bank” and its transition provisions.) As such, the proposal includes the provisions described below.

### *Standards for Assessing Performance*

The proposal provides the following different methods to evaluate a bank’s CRA performance depending on bank asset size and business strategy:

- Small banks that are not intermediate small banks—defined as banks with assets of less than \$402 million as of December 31 of either of the prior two calendar years—would be evaluated under a lending test and may receive an “Outstanding” rating based only on their retail lending performance. Qualified investments, services, and delivery systems that enhance credit availability in a bank’s assessment areas may be considered for an “Outstanding” rating, but only if the bank meets or exceeds the lending test criteria in the small bank performance standards.
- Intermediate small banks—defined as small banks with assets of at least \$402 million as of December 31 of both of the prior two calendar years and less than \$1.609 billion as of December 31 of either of the prior two calendar years—would be evaluated under the lending test for small banks and a community development test. The intermediate small bank community development test would evaluate all community development activities combined.
- Large banks—those banks with assets of at least \$1.609 billion as of December 31 of both of the prior two calendar years—would be evaluated under separate lending, investment, and service tests. The lending and service tests would consider both retail and community development activities, and the investment test would focus on qualified investments. To facilitate the agencies’ CRA analysis, large banks would be required to report annually certain data on community development loans,

small business loans, and small farm loans. Small banks and intermediate small banks would not be required to report these data unless they opt into being evaluated under the large bank lending tests.

- Designated wholesale banks (those engaged in only incidental retail lending) and limited purposes banks (those offering a narrow product line to a regional or broader market) would be evaluated under a standalone community development test.
- Banks of any size could elect to be evaluated under a strategic plan that sets out measurable, annual goals for lending, investment, and service activities to achieve a “Satisfactory” or an “Outstanding” rating. A strategic plan would need to be developed with community input and approved by the appropriate Federal financial supervisory agency.

The proposal provides that the agencies could also consider applicable performance context information to develop their analyses and conclusions when conducting CRA examinations.<sup>32</sup> Performance context would comprise a broad range of economic, demographic, and bank- and community-specific information that examiners review to calibrate a bank’s CRA evaluation to its communities. Consistent with the statute, the proposed regulations would not require banks to make loans or investments or to provide services that are inconsistent with safe and sound operations.<sup>33</sup>

#### *Assigned Ratings*

In general, the agencies would assign banks’ CRA ratings under the applicable performance tests and standards (*e.g.*, for large banks, the lending, investment, and service

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<sup>32</sup> See proposed 12 CFR \_\_.21(b).

<sup>33</sup> See proposed 12 CFR \_\_.21(d).

tests).<sup>34</sup> The evaluation of a bank's CRA performance would be adversely affected by evidence of discriminatory or other illegal credit practices.<sup>35</sup>

### *Assessment Areas*

The proposal would require a bank to delineate one or more assessment areas in which the bank's record of meeting its CRA obligations is evaluated. Specifically, the proposed regulatory text would require a bank to delineate assessment areas generally consisting of (1) one or more metropolitan statistical areas (MSAs) or metropolitan divisions or (2) one or more contiguous political subdivisions<sup>36</sup> in which the bank has its main office, branches, and, as applicable, deposit-taking automated teller machines (ATMs)<sup>37</sup> or remote service facilities (RSFs),<sup>38</sup> as well as the surrounding geographies<sup>39</sup> (*i.e.*, census tracts) in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business loans, small farm loans, and any other loans the bank chooses, such as consumer loans, on which the bank elects to have its performance assessed).<sup>40</sup>

### *Qualifying Activities*

The proposal, along with the *Interagency Questions and Answers Regarding Community Reinvestment*, provide detailed information, including applicable definitions and descriptions, regarding activities that are eligible for CRA consideration in the evaluation of a bank's CRA performance. Banks that are evaluated under a performance test that includes a review of their retail activities would be assessed in connection with retail lending activity (*e.g.*, home mortgage loans, small business loans, small farm loans, and consumer loans)<sup>41</sup> and, where applicable, retail banking service activities (*e.g.*, the current distribution of a bank's branches in geographies of

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<sup>34</sup> See proposed 12 CFR \_\_.28(a) and (b).

<sup>35</sup> See proposed 12 CFR \_\_.28(c).

<sup>36</sup> Political subdivisions include cities, counties, towns, townships, and Indian reservations. See § \_\_.41(c)(1) —1, *Interagency Questions and Answers Regarding Community Reinvestment*, 81 FR 48506 (July 25, 2016).

<sup>37</sup> See proposed 12 CFR 25.41(c)(2) (OCC); proposed 12 CFR 228.41(c)(2) (Board).

<sup>38</sup> See proposed 12 CFR 345.41(c)(2) (FDIC).

<sup>39</sup> See proposed 12 CFR \_\_.41.

<sup>40</sup> See proposed 12 CFR \_\_.41.

<sup>41</sup> See proposed 12 CFR \_\_.12(j), (l), (v), and (w).

different income levels, and the availability and effectiveness of the bank's alternative systems for delivering banking services to low- and moderate-income geographies and individuals).<sup>42</sup>

Banks evaluated under a performance test that includes a review of their community development activities would be assessed with respect to community development lending, qualified investments, and community development services, which must have a primary purpose of community development.<sup>43</sup>

### *Other Provisions*

The proposal also includes the following provisions:

- The agencies would be required to consider the effect of a bank's CRA performance on certain banking applications.<sup>44</sup> In connection with a banking application, interested parties could submit comments regarding the bank's CRA performance. Furthermore, a bank's CRA performance could be the basis for denying or conditioning approval of such applications.
- A bank would be required to collect, maintain, and report certain data to enable agencies to evaluate its CRA performance.<sup>45</sup> Small banks and intermediate small banks would generally be exempt from these requirements.
- A bank would be required to maintain certain information related to CRA performance in its public file.<sup>46</sup> The proposed public file provision specifies what information must be included, where information in the public file must be made available for public inspection, and the provision of copies.
- A bank would be required to maintain the proposed public notice contained in appendix B in the public lobby of its main office and in each of its branches.<sup>47</sup>

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<sup>42</sup> See generally proposed 12 CFR \_\_.21 through \_\_.27; see also proposed 12 CFR \_\_.24(d).

<sup>43</sup> See proposed 12 CFR \_\_.12(g), (h), (i), and (t); see also proposed 12 CFR \_\_.21 through \_\_.27.

<sup>44</sup> See proposed 12 CFR \_\_.29. The covered applications are aligned with the definition of "application for a deposit facility" found in 12 U.S.C. 2902(3).

<sup>45</sup> See proposed 12 CFR \_\_.42.

<sup>46</sup> See proposed 12 CFR \_\_.43.

<sup>47</sup> See proposed 12 CFR \_\_.44.

- As required by the CRA,<sup>48</sup> a bank could receive positive CRA consideration for low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.<sup>49</sup>
- The agencies would be required to publish a schedule of planned CRA examinations.<sup>50</sup>

### *OCC Provisions*

As in the OCC's 1995 CRA regulation, the proposal includes provisions that apply only to the OCC. Specifically, the proposed OCC regulation includes two transition provisions that have been applicable since January 1, 2022, the effective date of the OCC's 2021 CRA final rule, with technical corrections. First, in assessing a bank's performance, the OCC would consider any investment, loan, or service that is eligible for CRA consideration at the time the bank conducted the activity.<sup>51</sup> Second, a strategic plan in effect as of December 31, 2021, would remain in effect, except that provisions of the plan that are not consistent with the OCC's CRA regulation in effect as of January 1, 2022, are void, unless amended. These transition provisions are necessary because the OCC had adopted and then rescinded the final rule it issued in 2020. In both these provisions, the OCC proposes a technical amendment to apply them to savings associations as well as national banks. This change would correct a drafting error in the OCC's 2021 CRA final rule.<sup>52</sup>

In addition, the proposal includes subpart E, Prohibition Against Use of Interstate Branches Primarily for Deposit Production. This subpart implements section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, 12 U.S.C. 1835a, which only applies to certain national banks and Federal branches of a foreign bank. Subpart E redesignates

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<sup>48</sup> 12 U.S.C. 2903(b) and (d).

<sup>49</sup> See proposed 12 CFR \_\_.21(e) and (f).

<sup>50</sup> See proposed 12 CFR \_\_.45.

<sup>51</sup> See proposed 12 CFR \_\_.51.

<sup>52</sup> See *supra* note 3.

but does not amend subpart F of the 2023 CRA Final Rule. The Board and the FDIC include these provisions in separate regulations.<sup>53</sup>

## **V. Other Proposed Amendments**

### *CRA Sunshine Regulations*

The agencies are proposing conforming changes to their regulations implementing the CRA sunshine requirements of the Federal Deposit Insurance Act<sup>54</sup> (CRA Sunshine Regulations).<sup>55</sup> The CRA Sunshine Regulations currently cross-reference to the agencies' CRA regulations in appendix G of the 2023 CRA Final Rule. The proposed amendments would remove all references to appendix G so that the CRA Sunshine Regulations would instead cross-reference to the proposed recodification of each agency's respective 1995 CRA regulation.

### *OCC Amendments*

The OCC is proposing several clarifying amendments and a technical correction to the definition of "small bank" in 12 CFR 25.12(u). First, the OCC proposes to clarify that the dollar amounts included in the definition would only apply for calendar year 2025. Second, the OCC proposes to indicate that the annual adjustments to the thresholds included in the definition are published on the OCC's website. Since 2020, the OCC has announced the new asset-size thresholds for this definition each year by publication of an OCC Bulletin on OCC.gov and does not amend § 25.12(u) with the new thresholds. Together, these proposed amendments would ensure that stakeholders are informed that the asset-size thresholds in the definition are not current for years other than 2025 and direct stakeholders to where they can obtain the current thresholds. The OCC intends for these amendments to provide additional clarity and transparency. Third, the OCC is proposing to remove "appropriate Federal banking agency" in the definition so that the provision provides that only the OCC updates this asset-size threshold annually. Part 25 defines "appropriate Federal banking agency" to be the OCC and the FDIC.

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<sup>53</sup> See 12 CFR 208.7 (Board); 12 CFR part 369 (FDIC).

<sup>54</sup> Codified at 12 U.S.C. 1831y.

<sup>55</sup> 12 CFR parts 35 (OCC); 12 CFR 207 (Regulation G) (Board); and 12 CFR 346 (FDIC).

However, only the OCC updates the asset-size thresholds in the “small bank” definition of part 25.

In addition, the OCC is proposing conforming amendments to its Public Welfare Investment regulation, 12 CFR part 24. Part 24 currently refers to the OCC’s CRA regulation, 12 CFR part 25, as appendix G of the 2023 CRA Final Rule. The proposed amendment would remove all references to appendix G so that part 24 would instead cross-reference to the proposed recodification of the OCC’s 1995 CRA regulation.<sup>56</sup>

## **VI. Request for Comments**

The agencies request feedback on all aspects of the proposed rule.<sup>57</sup>

## **VII. Regulatory Analysis**

### *Regulatory Flexibility Act*

*OCC.* The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency to consider the impact of its proposed rules on small entities. In connection with a proposed rule, the RFA generally requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and publishes such certification along with a statement providing the factual basis for such certification in the *Federal Register*. An IRFA must contain: (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the

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<sup>56</sup> The Board's public welfare investment regulation does not cite to its CRA regulation and thus does not need to be amended. *See* 12 CFR 208.22. The FDIC does not have public welfare investment regulations.

<sup>57</sup> The agencies note that they are currently engaged in the review of all their regulations under the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA), 12 U.S.C. 3311, which, in general, requires the agencies to conduct a review of their regulations not less frequently than once every 10 years to identify outdated or otherwise unnecessary regulatory requirements imposed on banks. As part of this review, the agencies are requesting comment on their CRA regulations. *See:* <https://egrpra.ffiec.gov/federal-register-notice/fedreg-index.html>. The agencies generally expect to consider any EGRPRA comments received on their CRA regulations separately from this rulemaking.

projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule that accomplish its stated objectives.

The OCC currently supervises 1,030 institutions (commercial banks, trust companies, Federal savings associations, and branches or agencies of foreign banks),<sup>58</sup> of which approximately 609 are small entities under the RFA.<sup>59</sup>

Because of the preliminary injunction enjoining the 2023 CRA Final Rule, the OCC used the 1995 CRA regulations as the baseline in its RFA analysis. Using this baseline, the OCC estimates the cost of the proposal to be *de minimis* because the proposed rule would return to the 1995 regulation, which is currently applicable to banks. Therefore, the OCC certifies that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, an initial Regulatory Flexibility Analysis is not required.

*Board.* The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. In connection with a proposed rule, the RFA generally requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the proposal will not have a significant economic impact on a substantial number of small entities and publishes such certification along with a statement providing the factual basis for such certification in the

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<sup>58</sup> Based on data accessed using the OCC's Financial Institutions Data Retrieval System on May 8, 2025.

<sup>59</sup> The OCC bases its estimate of the number of small entities on the Small Business Administration's size thresholds for commercial banks and savings institutions, and trust companies, which are \$850 million and \$47 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining if it should classify an OCC-supervised institution as a small entity. The OCC used average quarterly assets in 2024 to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.

*Federal Register*. An IRFA must contain (i) a description of the reasons why action by the agency is being considered; (ii) a succinct statement of the objectives of, and legal basis for, the proposal; (iii) a description of, and, where feasible, an estimate of the number of small entities to which the proposal will apply; (iv) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposal, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (v) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap with, or conflict with the proposal; and (vi) a description of any significant alternatives to the proposal that accomplish its stated objectives and minimize any significant economic impact of the proposal on small entities.

The Board is providing an IRFA with respect to the proposal. The Board invites comment on all aspects of this IRFA.

#### 1. Reasons Action is Being Considered

The Board proposes to rescind the 2023 CRA Final Rule and replace it with the 1995 CRA regulations, with conforming amendments to the definition of “small bank.” Together with the other agencies, the Board believes that the proposal would restore certainty in the CRA framework for stakeholders and limit regulatory burden on banks, while ensuring that banks continue to focus on the purpose of the CRA. As described above, banks currently operate under the framework of the 1995 regulations.

#### 2. Objectives of and Legal Basis for the Proposal

Section 806 of the CRA (12 U.S.C. 2905) requires the Board to publish regulations to carry out the purposes of the CRA.

The Board’s and the other agencies’ reconsideration of the 2023 CRA Final Rule is precipitated primarily by the uncertainty created by the pending litigation. Accordingly, the agencies have reconsidered the status of the CRA regulatory framework with two major objectives in mind: (1) restoring certainty in the CRA regulatory framework for stakeholders;

and (2) limiting regulatory burden on banks. Further, the agencies took into account that any changes to the proposed CRA regulatory framework must continue to focus on the CRA's purpose—encouraging banks to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of the banks. The agencies' assessment of these objectives, as well as additional considerations that informed the agencies' reconsideration of the CRA regulatory framework, are discussed in section III of this

## **SUPPLEMENTARY INFORMATION.**

### **3. Description and Estimate of the Number of Small Entities**

Board-supervised institutions that would be subject to the proposed rule are State member banks (as defined in section 3(d)(2) of the Federal Deposit Insurance Act) and uninsured State branches of foreign banks (other than limited branches) resulting from certain acquisitions under the International Banking Act. Banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business would not be subject to the proposal.

The Board generally uses the industry-specific size standards adopted by the SBA for purposes of estimating the number of small entities to which a proposal would apply.<sup>60</sup> The SBA has adopted size standards that provide that depository institutions with average assets of less than \$850 million over the preceding year (based on the institution's four quarterly financial statements) are considered small entities.<sup>61</sup> The Board estimates that approximately 446 Board-supervised small entities would be subject to the proposed rule.<sup>62</sup>

### **4. Description of Compliance Requirements**

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<sup>60</sup> See 13 CFR 121.201. Consistent with the SBA's General Principles of Affiliation, the Board generally includes the assets of all domestic and foreign affiliates toward the applicable size threshold when determining whether to classify a particular entity as a small entity. See 13 CFR 121.103.

<sup>61</sup> See 13 CFR 121.201 (sectors 522110–522180).

<sup>62</sup> The Board's estimate is based on total assets reported on Forms FR Y-9 (Consolidated Financial Statements for Holding Companies) and FFIEC 041 (Consolidated Reports of Condition and Income) for 2024.

The proposal would recodify the 1995 CRA regulations currently applicable to banks, with updated asset-size thresholds for the definition of “small bank” to reflect the agencies’ inflation adjustments for 2025. In general, the CRA framework establishes the performance tests and standards that the Board uses to assess a bank’s CRA performance and adopts related requirements (including reporting, recordkeeping, disclosure, and other compliance requirements) to facilitate CRA evaluations. A fuller description of the proposal, including reporting, recordkeeping, disclosure, and other compliance requirements, is provided in sections IV and VII (Paperwork Reduction Act) of this **SUPPLEMENTARY INFORMATION**.

#### 5. Duplicative, Overlapping, and Conflicting Rules

The Board is not aware of any federal rules that may duplicate, overlap with, or conflict with the proposal.

#### 6. Significant Alternatives Considered

As an alternative to the proposal, the Board (together with the other agencies) considered maintaining the 2023 CRA Final Rule, proposing to replace the 2023 CRA Final Rule with a new CRA framework that is materially different from the framework contained in the 2023 CRA rule, and proposing targeted amendments to the 2023 CRA Final Rule. The agencies’ analysis of each of these alternatives is discussed in section III of this **SUPPLEMENTARY INFORMATION**.

*FDIC*. The RFA generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.<sup>63</sup> However, an IRFA is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets of less than

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<sup>63</sup> 5 U.S.C. 601 *et seq.*

or equal to \$850 million.<sup>64</sup> Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-supervised institutions. The FDIC believes that the proposed rule is unlikely to have a significant impact on a substantial number of small entities. The FDIC's rationale for its determination is discussed below.

As of December 31, 2024, there are 2,854 FDIC-supervised IDIs, of which 2,122 are "small entities" under the RFA.<sup>65</sup> Of these, 2,116 are subject to the CRA and covered by the proposal. As discussed in the Supplementary Information, the proposal would return the CRA examination framework to the framework in place prior to the adoption of the 2023 CRA Final Rule. The 2023 CRA Final Rule was enjoined by court order on March 29, 2024, therefore it never went into effect and small entities have instead been subject to the CRA framework in the proposed rule. Thus, if the proposal is adopted, small entities would experience no change in their CRA examination framework. Therefore, the FDIC certifies that the proposed rule will not have a significant impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. The FDIC is particularly interested in comments on any significant effects on small entities that the agency has not identified.

#### *OCC Unfunded Mandates Reform Act*

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).<sup>66</sup> Under this analysis, the OCC considered whether the proposed

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<sup>64</sup> The SBA defines a small banking organization as having \$850 million or less in assets, where an organization's "assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See 13 CFR 121.201 (as amended by 87 FR 69118, effective December 19, 2022). In its determination, the "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates." See 13 CFR 121.103. Following these regulations, the FDIC uses an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is "small" for the purposes of RFA.

<sup>65</sup> FDIC Call Report Data, December 31, 2024.

<sup>66</sup> 2 U.S.C. 1531 *et seq.*

rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (\$187 million as adjusted annually for inflation). Pursuant to section 202 of the UMRA,<sup>67</sup> if a proposed rule meets this UMRA threshold, the OCC would need to prepare a written statement that includes, among other things, a cost-benefit analysis of the proposal.

Because the 2023 CRA Final Rule did not take effect, the OCC used the 1995 CRA regulations as the baseline in its UMRA analysis. Using this baseline, the OCC estimates the cost of the proposal to be *de minimis* because the proposed rule would return to the 1995 regulation, which is currently applicable to banks. Therefore, the OCC concludes that the proposed rule would not result in an expenditure of \$187 million or more annually by state, local, and tribal governments, or by the private sector, and thus would not meet the UMRA threshold. Accordingly, the OCC has not prepared the written statement described in UMRA.

#### *Riegle Community Development and Regulatory Improvement Act of 1994*

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the agencies will consider, consistent with principles of safety and soundness and the public interest: (1) any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of the proposed rule. The agencies request comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions, and their customers, and the benefits of the proposed rule that the agencies should consider in determining the effective date and administrative compliance requirements for a final rule.

#### *Executive Orders 12866 and 14192*

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<sup>67</sup> 2 U.S.C. 1532.

Executive Order 12866, as amended, provides that the Office of Information and Regulatory Affairs (OIRA) will review all “significant regulatory actions” as defined therein. OIRA has determined that this proposal is not a “significant regulatory action” for purposes of Executive Order 12866. The proposal, if finalized as proposed, is not expected to be an Executive Order 14192 regulatory action.

### *Plain Language*

Section 722 of the Gramm-Leach-Bliley Act requires the agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies invite comment on how to make this proposed rule easier to understand.

For example:

- Have the agencies organized the material to inform your needs? If not, how could the agencies present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposal be more clearly stated?
- Does the proposed regulation contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the proposed regulation easier to understand?

### *Paperwork Reduction Act*

Certain provisions of the proposed rule contain “collections of information” within the meaning of the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 through 3521. In

accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The information collections contained in the proposed rule have been submitted to OMB for review and approval by the OCC and the FDIC under section 3507(d) of the PRA, 44 U.S.C. 3507(d), and § 1320.11 of OMB's implementing regulations, 5 CFR part 1320. The Board reviewed the proposed rule under the authority delegated to the Board by OMB. The agencies are proposing to extend for three years, with revision, these information collections.

*Title of Information Collection:* OCC, Community Reinvestment Act; Board, Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation BB; FDIC, Community Reinvestment Act.

*OMB Control Numbers:* OCC 1557-0160; Board 7100-0197; FDIC 3064-0092.

*Frequency of Response:* On occasion.

*Affected Public:* Businesses or other for-profits.

*Respondents:*

*OCC:* National banks, Federal savings associations, Federal branches and agencies.

*FDIC:* All insured state nonmember banks, insured state-licensed branches of foreign banks, insured state savings associations, and bank service providers.

*Board:* All state member banks (as defined in 12 CFR 208.2(g)), bank holding companies (as defined in 12 U.S.C. 1841), savings and loan holding companies (as defined in 12 U.S.C. 1467a), foreign banking organizations (as defined in 12 CFR 211.21(o)), foreign banks that do not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(11) and (12)), Edge or agreement corporations (as defined in 12 CFR 211.1(c)(2) and (3)), and bank service providers.

The information collection requirements in the proposed rule are as follows:

*Reporting Requirements*

**§ \_\_.25(b) - Request for designation as a wholesale or a limited purpose bank.** The appropriate Federal banking agency would assess a wholesale or a limited purpose banks record of helping to meet the credit needs of its assessment area(s) under the community development test for wholesale or limited purpose banks through its community development lending, qualified investments, or community development services.<sup>68</sup> In order to receive a designation as a wholesale or limited purpose bank, a bank would be required to file a request, in writing, with the appropriate Federal banking agency at least three months prior to the proposed effective date of the designation.<sup>69</sup>

**§ \_\_.27 - Strategic plan.** A bank could elect to be assessed under a strategic plan if the bank has submitted the plan to the appropriate Federal banking agency as provided for in proposed § \_\_.27, the appropriate Federal banking agency has approved the plan, the plan is in effect, and the bank has been operating under an approved plan for at least one year.<sup>70</sup> The appropriate Federal banking agency's approval of a plan would not affect the bank's obligation, if any, to comply with the data reporting requirements under proposed § \_\_.42.<sup>71</sup> The plan could have a term of no more than five years and any multiyear plan would be required to include annual interim measurable goals; a bank with more than one assessment area could prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas; and affiliated institutions could prepare a joint plan if the plan provides measurable goals for each institution.<sup>72</sup> Before submitting a plan to the appropriate Federal banking agency or amending a plan during its term, a bank would be required to seek suggestions from members of the public in its assessment area(s), formally solicit public comment for at least 30 days, and during the period of formal public comment make copies of the plan available for public review at its offices in assessment areas covered by the plan at no cost and by mail for a reasonable

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<sup>68</sup> Proposed 12 CFR \_\_.25(a).

<sup>69</sup> Proposed 12 CFR \_\_.25(b).

<sup>70</sup> Proposed 12 CFR \_\_.27(a)(1) and (e).

<sup>71</sup> Proposed 12 CFR \_\_.27(b).

<sup>72</sup> Proposed 12 CFR \_\_.27(c).

cost.<sup>73</sup> The bank would be required to submit its plan to the appropriate Federal banking agency at least three months prior to the proposed effective date of the plan and also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.<sup>74</sup> A strategic plan would be required to include measurable goals for helping meet the credit needs of each assessment area covered by the plan, addressing lending, investment, and service activities, as appropriate.<sup>75</sup> A bank could submit additional information to the appropriate Federal banking agency on a confidential basis, but the goals stated in the plan would be required to be sufficiently specific to enable the public and the appropriate Federal banking agency to judge the merits of the plan.<sup>76</sup> A plan would be required to specify goals that constitute “Satisfactory” performance and could specify goals that constitute “Outstanding” performance.<sup>77</sup> If a bank fails to meet substantially its own goals for “Satisfactory” performance, the bank could elect in its plan to be evaluated under the applicable performance test(s) specified in the regulation.<sup>78</sup> The appropriate Federal banking agency would act upon a plan within 60 calendar days after the agency receives the complete plan and other material that would be required under proposed § \_\_.27(e).<sup>79</sup> During the term of a plan, a bank could request the appropriate Federal banking agency to approve an amendment to the plan on grounds that there has been a material change in circumstances and the bank would be required to develop an amendment to a previously approved plan in accordance with the public participation requirements of proposed § \_\_.27(d).<sup>80</sup> The appropriate Federal banking agency would approve the goals and assesses performance under a plan as provided for in appendix A (Ratings).<sup>81</sup>

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<sup>73</sup> Proposed 12 CFR \_\_.27(d) and (h).

<sup>74</sup> Proposed 12 CFR \_\_.27(e).

<sup>75</sup> Proposed 12 CFR \_\_.27(f)(1).

<sup>76</sup> Proposed 12 CFR \_\_.27(f)(2).

<sup>77</sup> Proposed 12 CFR \_\_.27(f)(3).

<sup>78</sup> Proposed 12 CFR \_\_.27(f)(4).

<sup>79</sup> Proposed 12 CFR \_\_.27(g).

<sup>80</sup> Proposed 12 CFR \_\_.27(h).

<sup>81</sup> Proposed 12 CFR \_\_.27(i).

**§ \_\_.42(b)(1)-(3) - Loan information required to be reported.** A bank, except a small bank or a bank that was a small bank during the prior calendar year, would be required to report annually by March 1 to the appropriate Federal banking agency in machine-readable form (as prescribed by the agency) the following data for the preceding calendar year.<sup>82</sup>

*Small business and small farm loan data.* For each geography in which the bank originated or purchased a small business or a small farm loan, it would be required to report the aggregate number and amount of loans:

- with an amount at origination of \$100,000 or less;
- with an amount at origination of more than \$100,000 but less than or equal to \$250,000;
- with an amount at origination of more than \$250,000; and
- to businesses and farms with gross annual revenues of \$1 million or less (using the revenues that the bank considered in making its credit decision).<sup>83</sup>

*Community development loan data.* The aggregate number and aggregate amount of community development loans originated or purchased in the preceding calendar year.<sup>84</sup>

*Home mortgage loans.* If the bank is subject to reporting of home mortgage loan data under Regulation C, it would be required to report annually by March 1 to the appropriate Federal banking agency in machine-readable form (as prescribed by the agency) certain home mortgage loan data.<sup>85</sup> The paperwork burden for providing this data is associated with other clearances.<sup>86</sup>

**§ \_\_.42(d) - Data on affiliate lending.** A bank that elected to have the appropriate Federal banking agency consider loans by an affiliate, for purposes of the lending test or the

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<sup>82</sup> Proposed 12 CFR \_\_.42(b).

<sup>83</sup> Proposed 12 CFR \_\_.42(b)(1).

<sup>84</sup> Proposed 12 CFR \_\_.42(b)(2).

<sup>85</sup> Proposed 12 CFR \_\_.42(b)(3).

<sup>86</sup> See HMDA Loan/Application Register (FR HMDA LAR; OMB No. 7100-0247 (Board) and OMB No. 3170-0008 (Consumer Financial Protection Bureau [CFPB])).

community development test or an approved strategic plan, would be required to collect, maintain, and report for those loans the data that the bank would have collected, maintained, and reported pursuant to proposed § \_\_.42(a)–(c) had the loans been originated or purchased by the bank. For home mortgage loans, the bank would also be required to be prepared to identify the home mortgage loans reported under Regulation C by the affiliate.<sup>87</sup>

**§ \_\_.42(e) - Data on lending by a consortium or a third party.** A bank that elects to have the appropriate Federal banking agency consider community development loans made by a consortium or a third party, for purposes of the lending test or the community development test or an approved strategic plan, must report for those loans the data that the bank would have reported under proposed § \_\_.42(b)(2) had the loans been originated or purchased by the bank.<sup>88</sup>

**§ \_\_.42(f) - Small banks electing evaluation under the lending, investment, and service tests.** A bank that qualifies for evaluation under the small bank performance standards but elects evaluation under the lending, investment, and service test would be required to collect, maintain, and report the data required for other banks pursuant to proposed § \_\_.42(a)–(b).

**§§ \_\_.41 and \_\_.42(g) - Assessment area delineation.** Each bank would be required to delineate one or more assessment areas within which the appropriate Federal banking agency would evaluate its record of helping to meet the credit needs of its community.<sup>89</sup> A bank, except a small bank or bank that was a small bank during the prior calendar year, would also be required to collect and report to the appropriate Federal banking agency by March 1 of each year a list for each assessment area showing the geographies within the area.<sup>90</sup> Assessment areas for wholesale or limited purpose banks would be required to consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous

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<sup>87</sup> Proposed 12 CFR \_\_.42(d).

<sup>88</sup> Proposed 12 CFR \_\_.42(e).

<sup>89</sup> Proposed 12 CFR \_\_.41(a).

<sup>90</sup> Proposed 12 CFR \_\_.42(g).

political subdivisions, such as counties, cities, or towns.<sup>91</sup> Assessment areas for a bank other than a wholesale or limited purpose bank would be required to consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns.<sup>92</sup> Assessment areas for a bank other than a wholesale or limited purpose bank would also be required to include the geographies in which a bank has its main office, branches, and deposit-taking automated teller machines, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans.<sup>93</sup> Each bank's assessment area would be required to consist only of whole geographies, not reflect illegal discrimination, not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition, and not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA.<sup>94</sup>

#### Recordkeeping Requirements

§ \_\_.42(a) - **Loan information required to be collected and maintained.** A bank, except a small bank, would be required to collect and maintain, in machine-readable form (as prescribed by the appropriate Federal banking agency), until the completion of its next CRA examination, the following data for each small business or small farm loan originated or purchased by the bank:

- a unique number or alphanumeric symbol used to identify the relevant loan file;
- the loan amount at origination;
- the loan location; and
- an indicator whether the loan was to a business or a farm with gross annual revenues of \$1

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<sup>91</sup> Proposed 12 CFR \_\_.41(b).

<sup>92</sup> Proposed 12 CFR \_\_.41(c)(1).

<sup>93</sup> Proposed 12 CFR \_\_.41(c)(2).

<sup>94</sup> Proposed 12 CFR \_\_.41(e).

million or less.<sup>95</sup>

**§ \_\_.42(c)(1) - Optional data collection and maintenance- Consumer loans.** A bank could collect and maintain in machine-readable form (as prescribed by the appropriate Federal banking agency) data for consumer loans originated or purchased by the bank for consideration under the lending test.<sup>96</sup> A bank could maintain data for one or more of the following categories of consumer loans: motor vehicle; credit card; other secured; and other unsecured.<sup>97</sup> If the bank maintains data for loans in a certain category, it would be required to maintain data for all loans originated or purchased within that category.<sup>98</sup> The bank would be required to maintain data separately for each category and must include for each loan:

- a unique number or alphanumeric symbol used to identify the relevant loan file;
- the loan amount at origination or purchase;
- the loan location; and
- the gross annual income of the borrower that the bank considered in making its credit decision.<sup>99</sup>

**§ \_\_.42(c)(2) - Optional data collection and maintenance- Other loan data.** At its option, a bank could also provide other information concerning its lending performance, including additional loan distribution data.<sup>100</sup>

#### *Disclosure Requirements*

**§ \_\_.43 - Content and availability of public file.** Banks would be required to maintain and make available to the public a file containing 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 community credit needs, and any response to the comments by

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<sup>95</sup> Proposed 12 CFR \_\_.42(a).

<sup>96</sup> Proposed 12 CFR \_\_.42(c)(1).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> Proposed 12 CFR \_\_.42(c)(2).

the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law.<sup>101</sup> The public file would also be required to contain a copy of the public section of the bank's most recent CRA performance evaluation prepared by the appropriate Federal banking agency, which the bank would be required to place in the public file within 30 days after its receipt from the agency.<sup>102</sup> The public file would also be required to include: a list of the bank's branches, street addresses, and geographies; a list of bank branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses, and geographies; a list of the services generally offered at the bank's branches, descriptions of material differences in the availability or cost of services at particular branches, and at the bank's option, information regarding the availability of alternative systems for delivering retail banking services; and a map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list.<sup>103</sup> The bank could include in the file any other information that it chooses.<sup>104</sup>

A bank, except a small bank or bank that was a small bank during the prior calendar year, would also be required to include in the public file the following information pertaining to the bank and its affiliates, if applicable for each of the prior two calendar years.<sup>105</sup> If the bank elects to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans: to low-, moderate-, middle-, and upper-income individuals; located in low-, moderate-, middle-, and upper-income census tracts; and located inside the bank's assessment area(s) and outside the bank's assessment area(s).<sup>106</sup> The bank would also be required to place its CRA Disclosure Statement in the public file within three business

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<sup>101</sup> Proposed 12 CFR \_\_.43(a)(1).

<sup>102</sup> Proposed 12 CFR \_\_.43(a)(2).

<sup>103</sup> Proposed 12 CFR \_\_.43(a)(3)–(6).

<sup>104</sup> Proposed 12 CFR \_\_.43(a)(7).

<sup>105</sup> Proposed 12 CFR \_\_.43(b)(1).

<sup>106</sup> Proposed 12 CFR \_\_.43(b)(1)(i).

days of its receipt from the appropriate Federal banking agency.<sup>107</sup> Banks required to report data pursuant to Regulation C would be required to include in the public file a written notice that the institution's HMDA Disclosure Statement may be obtained on the CFPB's website at [www.consumerfinance.gov/hmda](http://www.consumerfinance.gov/hmda).<sup>108</sup> In addition, a bank that elects to have the appropriate Federal banking agency consider home mortgage lending of an affiliate would be required to include in the public file the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the CFPB's website.<sup>109</sup> The bank would also be required to place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the disclosure statement(s) availability.<sup>110</sup>

A small bank or a bank that was a small bank during the prior calendar year would be required to include in its public file the bank's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio.<sup>111</sup> The bank would also be required to include in its public file the information required for other banks by proposed § \_\_\_\_.43(b)(1), if the bank has elected to be evaluated under the lending, investment, and service tests.<sup>112</sup> A bank that has been approved to be assessed under a strategic plan would be required to include in its public file a copy of that plan but would not be required to include information submitted to the appropriate Federal banking agency on a confidential basis in conjunction with the plan.<sup>113</sup> A bank that received a less than satisfactory rating during its most recent examination would be required to 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 and would be required to update the description quarterly.<sup>114</sup>

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<sup>107</sup> Proposed 12 CFR \_\_.43(b)(1)(ii).

<sup>108</sup> Proposed 12 CFR \_\_.43(b)(2).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Proposed 12 CFR \_\_.43(b)(3)(i).

<sup>112</sup> Proposed 12 CFR \_\_.43(b)(3)(ii).

<sup>113</sup> Proposed 12 CFR \_\_.43(b)(4).

<sup>114</sup> Proposed 12 CFR \_\_.43(b)(5).

A bank would be required to make available to the public for inspection upon request and at no cost the information required in proposed § \_\_.43 as follows.<sup>115</sup> At the main office and, if an interstate bank, at one branch office in each state, all information in the public file.<sup>116</sup> At each branch, a copy of the public section of the bank's most recent CRA Performance Evaluation and a list of services provided by the branch as well as, within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.<sup>117</sup> Upon request, a bank would be required to provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file and the bank may charge a reasonable fee not to exceed the cost of copying and mailing (if applicable).<sup>118</sup> Except as otherwise provided in proposed § \_\_.43, a bank would be required to ensure that the information required by this section is current as of April 1 of each year.<sup>119</sup>

**§ \_\_.44 - Public notice by banks.** A bank must provide in the public lobby of its main office and in each of its branches the appropriate notice set forth in appendix B (CRA Notice) of, as applicable, 12 CFR part 25, 12 CFR part 228, or 12 CFR part 345.<sup>120</sup>

**Burden Estimates:**

Source and Type of Burden	Description	Estimated Number of Respondents	Frequency of Response	Average Estimated Time per Response	Total Estimated Annual Burden
<b>Reporting</b>					
§§ __.41 and __.42(g)	<i>Assessment area delineation.</i>				
	OCC	173	1	2	346
	Board	152	1	2	304
	FDIC	313	1	2	626
§ __.42(b)(1)	<i>Loan data: Small business and small farm.</i>				
	OCC	154	1	8	1,232

<sup>115</sup> Proposed 12 CFR \_\_.43(c).

<sup>116</sup> Proposed 12 CFR \_\_.43(c)(1).

<sup>117</sup> Proposed 12 CFR \_\_.43(c)(2).

<sup>118</sup> Proposed 12 CFR \_\_.43(d).

<sup>119</sup> Proposed 12 CFR \_\_.43(e).

<sup>120</sup> Proposed 12 CFR \_\_.44.

Source and Type of Burden	Description	Estimated Number of Respondents	Frequency of Response	Average Estimated Time per Response	Total Estimated Annual Burden
	Board	148	1	8	1,184
	FDIC	313	1	8	2,504
§ __.42(b)(2)	<i>Loan data: Community development.</i>				
	OCC	173	1	13	2,249
	Board	152	1	13	1,976
	FDIC	313	1	13	4,069
§ __.42(b)(3)	<i>Loan data: Home mortgage loans.</i>				
	OCC	173	1	253	43,769
	Board	140	1	253	35,420
	FDIC	349	1	253	88,297
<b>Optional Reporting</b>					
§ __.25(b)	<i>Request for designation as a wholesale bank or a limited purpose bank.</i>				
	OCC	19	1	4	76
	Board	1	1	4	4
	FDIC	1	1	4	4
§ __.27	<i>Strategic plan.</i>				
	OCC	14	1	275	3,850
	Board	2	1	275	550
	FDIC	10	1	400	4,000
§ __.42(d)	<i>Data on affiliate lending data.</i>				
	OCC	25	1	38	950
	Board	5	1	38	190
	FDIC	304	1	38	11,552
§ __.42(e)	<i>Data on lending by a consortium or a third party.</i>				
	OCC	16	1	17	272
	Board	12	1	17	204
	FDIC	115	1	17	1,955
§ __.42(f)	<i>Small banks electing evaluation under the lending, investment, and service tests</i>	Covered by	Burden in	§§ 25.42(a) & (b)	
	OCC	-	-	-	-
	Board	-	-	-	-
	FDIC	-	-	-	-
<b>Recordkeeping</b>					
§ __.42(a)	<i>Small business and small farm loan register.</i>				

Source and Type of Burden	Description	Estimated Number of Respondents	Frequency of Response	Average Estimated Time per Response	Total Estimated Annual Burden
	OCC	173	1	219	37,887
	Board	148	1	219	32,412
	FDIC	313	1	219	68,547
<b>Optional Recordkeeping</b>					
§ __.42(c)(1)	<i>Consumer loan data.</i>				
	OCC	5	1	326	1,630
	Board	36	1	326	11,736
	FDIC	10	1	326	3,260
§ __.42(c)(2)	<i>Other loan data.</i>				
	OCC	25	1	25	625
	Board	26	1	25	650
	FDIC	1	1	25	25
<b>Disclosure</b>					
§§ __.43 and __.44	<i>Public file and public notice.</i>				
	OCC	990	1	10	9,900
	Board	704	1	10	7,040
	FDIC	2,854	1	10	28,540
<b>Total Estimated Annual Burden</b>					
	OCC				102,786
	Board				91,670
	FDIC				213,379

**Comments are invited on:**

- (a) Whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information has practical utility;
- (b) The accuracy of the agencies' estimate of the burden of the collection of information;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected;
- (d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and
- (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Commenters may submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to the addresses listed in the ADDRESSES caption in the proposed rule. All comments will become a matter of public record. A copy of the comments may also be submitted to the OMB desk officer for the agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; or by email to: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov), Attention, Federal Banking Agency Desk Officer.

### *Providing Accountability Through Transparency Act of 2023*

The Providing Accountability Through Transparency Act of 2023, 12 U.S.C. 553(b)(4), requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website [www.regulations.gov](http://www.regulations.gov).

In summary, the agencies propose to amend their CRA regulations by rescinding the final rule titled “Community Reinvestment Act” published in the *Federal Register* on February 1, 2024, and replacing it with the agencies’ CRA rule in effect on March 29, 2024, with certain conforming and technical amendments. The agencies are also proposing technical amendments to their regulations implementing the CRA sunshine requirements of the Federal Deposit Insurance Act, and the OCC is proposing technical amendments to its Public Welfare Investments regulation.

The proposal and the required summary can be found for the OCC at <https://www.regulations.gov> by searching for Docket ID OCC-2025-0005; for the Board at <https://www.federalreserve.gov/apps/proposals>, and for the FDIC at <https://www.fdic.gov/resources/regulations/federal-register-publications/index.html>.

### **List of Subjects**

**12 CFR Part 24**

Community development, Credit, Investments, Low and moderate income housing, Manpower, National banks, Reporting and recordkeeping requirements, Rural areas, Small businesses.

**12 CFR Part 25**

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

**12 CFR Part 35**

Community development, Credit, Freedom of information, Investments, National banks, Savings associations, Reporting and recordkeeping requirements.

**12 CFR Part 207**

Banks, Banking, Community development, Holding companies, Reporting and recordkeeping requirements.

**12 CFR Part 228**

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

**12 CFR Part 345**

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

**12 CFR Part 346**

Banks, banking, Savings associations.

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Chapter I**

**Authority and Issuance**

For the reasons set forth in the common preamble and under the authority of 12 U.S.C. 93a and 2905, the Office of the Comptroller of the Currency proposes to amend chapter I of title 12, Code of Federal Regulations as follows:

**PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES,  
COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE  
INVESTMENTS**

1. The authority citation for part 24 is revised to read as follows:

**Authority:** 12 U.S.C. 24(Eleventh), 93a, 481, and 1818.

**§ 24.2 [Amended]**

2. Amend § 24.2 by:

- a. In the introductory text of paragraph (c), removing “§ 25.23 of appendix G to 12 CFR part 25” and adding “12 CFR 25.23” in its place.

- b. In paragraph (f), removing “§ 25.12(m) of appendix G to 12 CFR part 25” and adding “12 CFR 25.12(m)” in its place.

**§ 24.3 [Amended]**

3. Amend § 24.3 by removing “§ 25.23 of appendix G to 12 CFR part 25” and adding in its place “12 CFR 25.23”.

**§ 24.7 [Amended]**

4. Amend § 24.7 in paragraph (b) by removing “§ 25.23 of appendix G to 12 CFR part 25” and adding in its place “12 CFR 25.23”.

5. Part 25 is revised to read as follows:

**PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT  
PRODUCTION REGULATIONS**

**Subpart A—General**

Sec.

25.11 Authority, purposes, and scope.

25.12 Definitions.

**Subpart B—Standards for Assessing Performance**

Sec.

25.21 Performance tests, standards, and ratings, in general.

25.22 Lending test.

- 25.23 Investment test.
- 25.24 Service test.
- 25.25 Community development test for wholesale or limited purpose banks and savings associations.
- 25.26 Small bank and savings association performance standards.
- 25.27 Strategic plan.
- 25.28 Assigned ratings.
- 25.29 Effect of CRA performance on applications.

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

Sec.

- 25.41 Assessment area delineation.
- 25.42 Data collection, reporting, and disclosure.
- 25.43 Content and availability of public file.
- 25.44 Public notice by banks and savings associations.
- 25.45 Publication of planned examination schedule.

### **Subpart D—Transition Provisions**

Sec.

- 25.51 Consideration of Bank Activities
- 25.52 Strategic Plan Retention

### **Subpart E—Prohibition Against Use of Interstate Branches Primarily for Deposit Production**

Sec.

- 25.61 Purpose and scope.
- 25.62 Definitions.
- 25.63 Loan-to-deposit ratio screen.
- 25.64 Credit needs determination.
- 25.65 Sanctions.

Appendix A to Part 25—Ratings

Appendix B to Part 25—CRA Notice

**Authority:** 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1828(c), 1835a, 2901 through 2908, and 3101 through 3111, and 5412(b)(2)(B).

### **Subpart A—General**

#### **§ 25.11 Authority, purposes, and scope.**

(a) *Authority and OMB control number* —(1) *Authority.* The authority for subparts A, B, C, D, and E is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1828(c), 1835a, 2901 through 2908, 3101 through 3111, and 5412(b)(2)(B).

(2) *OMB control number.* The information collection requirements contained in this part were approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 1557–0160.

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), the Congress required each appropriate Federal financial supervisory agency to assess an institution’s record of helping

to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Office of the Comptroller of the Currency (OCC) or the Federal Deposit Insurance Corporation (FDIC), as appropriate, assesses a bank's or savings association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank or savings association; and

(2) Providing that the OCC takes that record into account in considering certain applications.

(c) *Scope* —(1) *General*. (i) Subparts A, B, C, and D, and Appendices A and B, apply to all banks and savings associations except as provided in paragraphs (c)(2) and (3) of this section. Subpart E only applies to banks.

(ii) With respect to subparts A, B, C, and D, and Appendices A and B—

(A) The OCC has the authority to prescribe these regulations for national banks, Federal savings associations, and State savings associations and has the authority to enforce these regulations for national banks and Federal savings associations.

(B) The FDIC has the authority to enforce these regulations for State savings associations.

(iii) With respect to subparts A, B, C, and D, and appendix A, references to appropriate Federal banking agency will mean the OCC when the institution is a national bank or Federal savings association and the FDIC when the institution is a State savings association.

(2) *Federal branches and agencies*. (i) This part applies to all insured Federal branches and to any Federal branch that is uninsured that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(ii) Except as provided in paragraph (c)(2)(i) of this section, this part does not apply to Federal branches that are uninsured, limited Federal branches, or Federal agencies, as those terms are defined in part 28 of this chapter.

(3) *Certain special purpose banks and savings associations.* This part does not apply to special purpose banks or special purpose savings associations that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These banks or savings associations include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks or savings associations that engage only in one or more of the following activities: Providing cash management controlled disbursement services or serving as correspondent banks or savings associations, trust companies, or clearing agents.

#### **§ 25.12 Definitions.**

For purposes of subparts A, B, C, and D, and appendices A and B, 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. 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:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 25.41.

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

(e) (1) *Bank or savings association* means, except as provided in § 25.11(c), a national bank (including a Federal branch as defined in part 28 of this chapter) with Federally insured deposits or a savings association;

(2) *Bank and savings association* means, except as provided in § 25.11(c), a national bank (including a Federal branch as defined in part 28 of this chapter) with Federally insured deposits and a savings association.

(f) *Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of \$1 million or less; or

(4) Activities that revitalize or stabilize—

(i) Low-or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, FDIC, and the OCC, based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

(h) *Community development loan* means a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose bank or savings association:

(i) Has not been reported or collected by the bank or savings association or an affiliate for consideration in the bank's or savings association's assessment as a home mortgage, small business, small farm, or consumer loan, unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title); and

(ii) Benefits the bank's or savings association's assessment area(s) or a broader statewide or regional area(s) that includes the bank's or savings association's assessment area(s).

(i) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the bank's or savings association's retail banking services under § 25.24(d).

(j) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) *Motor vehicle loan*, which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) *Credit card loan*, which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a "credit card," as this term is defined in § 1026.2 of this title;

(3) *Other secured consumer loan*, which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(4) *Other unsecured consumer loan*, which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

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

(l) *Home mortgage loan* means a closed-end mortgage loan or an open-end line of credit as these terms are defined under § 1003.2 of this title, and that is not an excluded transaction under § 1003.3(c)(1) through (10) and (13) of this title.

(m) *Income level* includes:

(1) *Low-income*, which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

(2) *Moderate-income*, which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 and less than 80 percent, in the case of a geography.

(3) *Middle-income*, which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 and less than 120 percent, in the case of a geography.

(4) *Upper-income*, which means an individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more, in the case of a geography.

(n) *Limited purpose bank* or savings association means a bank or savings association that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose bank or savings association is in effect, in accordance with § 25.25(b).

(o) *Loan location.* A loan is located as follows:

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

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

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

(p) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

(t) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(u) *Small bank or savings association*—(1) *Definition.* *Small bank or savings association* means a bank or savings association that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.609 billion. *Intermediate small bank or savings association* means a small bank or savings association with assets of at least \$402 million as of December 31 of both of the prior two calendar years and less than \$1.609 billion as of December 31 of either of the prior two calendar years. The dollar figures in this paragraph are applicable to banks and savings associations for calendar year 2025 and are updated annually pursuant to paragraph (u)(2).

(2) *Adjustment.* The OCC adjusts and publishes the dollar figures in paragraph (u)(1) of this section annually on its website, [www.OCC.gov](http://www.OCC.gov). This adjustment is based on the year-to-year

change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

(v) *Small business loan* means a loan included in “loans to small businesses” as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(w) *Small farm loan* means a loan included in “loans to small farms” as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(x) *Wholesale bank or savings association* means a bank or savings association that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale bank or savings association is in effect, in accordance with § 25.25(b).

## **Subpart B—Standards for Assessing Performance**

### **§ 25.21 Performance tests, standards, and ratings, in general.**

(a) *Performance tests and standards.* The appropriate Federal banking agency assesses the CRA performance of a bank or savings association in an examination as follows:

(1) *Lending, investment, and service tests.* The appropriate Federal banking agency applies the lending, investment, and service tests, as provided in §§ 25.22 through 25.24, in evaluating the performance of a bank or savings association, except as provided in paragraphs (a)(2), (3), and (4) of this section.

(2) *Community development test for wholesale or limited purpose banks and savings associations.* The appropriate Federal banking agency applies the community development test for a wholesale or limited purpose bank or savings association, as provided in § 25.25, except as provided in paragraph (a)(4) of this section.

(3) *Small bank and savings association performance standards.* The appropriate Federal banking agency applies the small bank or savings association performance standards as provided in § 25.26 in evaluating the performance of a small bank or savings association or a bank or

savings association that was a small bank or savings association during the prior calendar year, unless the bank or savings association elects to be assessed as provided in paragraphs (a)(1), (2), or (4) of this section. The bank or savings association may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks or savings associations under § 25.42.

(4) *Strategic plan.* The appropriate Federal banking agency evaluates the performance of a bank or savings association under a strategic plan if the bank or savings association submits, and the appropriate Federal banking agency approves, a strategic plan as provided in § 25.27.

(b) *Performance context.* The appropriate Federal banking agency applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(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 or savings association's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the bank's or savings association's assessment area(s) maintained by the bank or savings association or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

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

(4) Institutional capacity and constraints, including the size and financial condition of the bank or savings association, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the bank's or savings association's ability to provide lending, investments, or services in its assessment area(s);

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

(6) The bank's or savings association's public file, as described in § 25.43, and any written comments about the bank's or savings association's CRA performance submitted to the bank or savings association or the appropriate Federal banking agency; and

(7) Any other information deemed relevant by the appropriate Federal banking agency.

(c) *Assigned ratings.* The appropriate Federal banking agency assigns to a bank or savings association one of the following four ratings pursuant to § 25.28 and appendix A of this part: “outstanding”; “satisfactory”; “needs to improve”; or “substantial noncompliance” as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the appropriate Federal banking agency reflects the bank's or savings association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank or savings association.

(d) *Safe and sound operations.* This part and the CRA do not require a bank or savings association to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the appropriate Federal banking agency anticipates banks and savings associations can meet the standards of this part with safe and sound loans, investments, and services on which the banks and savings associations expect to make a profit. Banks and savings associations are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a bank or savings association under this part, the appropriate Federal banking agency considers, as a factor, low-cost education loans originated by the bank or savings association to borrowers, particularly in its assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, “low-cost education loans” means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a State or local education loan

program), originated by the bank or savings association for a student at an “institution of higher education,” as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank or savings association under this part, the appropriate Federal banking agency considers as a factor capital investment, loan participation, and other ventures undertaken by the bank or savings association in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank’s or savings association’s assessment area(s) or the broader statewide or regional area(s) that includes the bank’s or savings association’s assessment area(s).

#### **§ 25.22 Lending test.**

(a) *Scope of test.* (1) The lending test evaluates a bank’s or savings association’s record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank’s or savings association’s home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank’s or savings association’s business, the appropriate Federal banking agency will evaluate the bank’s or savings association’s consumer lending in one or more of the following categories: motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a bank’s or savings association’s option, the appropriate Federal banking agency will evaluate one or more categories of consumer lending, if the bank or savings association has collected and maintained,

as required in § 25.42(c)(1), the data for each category that the bank or savings association elects to have the appropriate Federal banking agency evaluate.

(2) The appropriate Federal banking agency considers originations and purchases of loans. The appropriate Federal banking agency will also consider any other loan data the bank or savings association may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A bank or savings association may ask the appropriate Federal banking agency to consider loans originated or purchased by consortia in which the bank or savings association participates or by third parties in which the bank or savings association has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The appropriate Federal banking agency will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The appropriate Federal banking agency evaluates a bank's or savings association's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the bank's or savings association's home mortgage, small business, small farm, and consumer loans, if applicable, in the bank's or savings association's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the bank's or savings association's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the bank's or savings association's lending in the bank's or savings association's assessment area(s);

(ii) The dispersion of lending in the bank's or savings association's assessment area(s); and

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

(3) *Borrower characteristics.* The distribution, particularly in the bank's or savings association's assessment area(s), of the bank's or savings association's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The bank's or savings association's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The bank's or savings association's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a bank's or savings association's option, the appropriate Federal banking agency will consider loans by an affiliate of the bank or savings association, if the bank or savings association provides data on the affiliate's loans pursuant to § 25.42.

(2) The appropriate Federal banking agency considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a bank or savings association elects to have the appropriate Federal banking agency consider loans within a particular lending category made by one or more of the bank's or savings association's affiliates in a particular assessment area, the bank or savings association shall elect

to have the appropriate Federal banking agency consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the bank's or savings association's affiliates.

(3) The appropriate Federal banking agency does not consider affiliate lending in assessing a bank's or savings association's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the bank or savings association participates or by a third party in which the bank or savings association has invested:

(1) Will be considered, at the bank's or savings association's option, if the bank or savings association reports the data pertaining to these loans under § 25.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The appropriate Federal banking agency rates a bank's or savings association's lending performance as provided in appendix A of this part.

### **§ 25.23 Investment test.**

(a) *Scope of test.* The investment test evaluates a bank's or savings association's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's or savings association's assessment area(s).

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

(c) *Affiliate investment.* At a bank's or savings association's option, the appropriate Federal banking agency will consider, in its assessment of a bank's or savings association's investment performance, a qualified investment made by an affiliate of the bank or savings association, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the bank or savings association that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The appropriate Federal banking agency evaluates the investment performance of a bank or savings association pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs;

and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The appropriate Federal banking agency rates a bank's or savings association's investment performance as provided in appendix A of this part.

#### **§ 25.24 Service test.**

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

(b) *Area(s) benefitted.* Community development services must benefit a bank's or savings association's assessment area(s) or a broader statewide or regional area that includes the bank's or savings association's assessment area(s).

(c) *Affiliate service.* At a bank's or savings association's option, the appropriate Federal banking agency will consider, in its assessment of a bank's or savings association's service performance, a community development service provided by an affiliate of the bank or savings association, if the community development service is not claimed by any other institution.

(d) *Performance criteria—retail banking services.* The appropriate Federal banking agency evaluates the availability and effectiveness of a bank's or savings association's systems for delivering retail banking services, pursuant to the following criteria:

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

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

(3) The availability and effectiveness of alternative systems for delivering retail banking services (*e.g.*, ATMs, ATMs not owned or operated by or exclusively for the bank or savings association, banking by telephone or computer, loan production offices, and bank-at-work or bank-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.

(e) *Performance criteria—community development services.* The appropriate Federal banking agency evaluates community development services pursuant to the following criteria:

(1) The extent to which the bank or savings association provides community development services; and

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

(f) *Service performance rating.* The appropriate Federal banking agency rates a bank's or savings association's service performance as provided in appendix A of this part.

**§ 25.25 Community development test for wholesale or limited purpose banks and savings associations.**

(a) *Scope of test.* The appropriate Federal banking agency assesses a wholesale or limited purpose bank's or savings association's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose bank or savings association.* In order to receive a designation as a wholesale or limited purpose bank or savings association, a bank or savings association shall file a request, in writing, with the appropriate Federal banking agency, at least three months prior to the proposed effective date of the designation. If the appropriate Federal banking agency approves the designation, it remains in effect until the bank or savings association requests revocation of the designation or until one year after the appropriate Federal banking agency notifies the bank or savings association that it has revoked the designation on its own initiative.

(c) *Performance criteria.* The appropriate Federal banking agency evaluates the community development performance of a wholesale or limited purpose bank or savings association pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the bank or savings association, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's or savings association's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a bank's or savings association's option, the appropriate Federal banking agency will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank or savings association, if the investments 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 § 25.22(c) and (d).

(e) *Benefit to assessment area(s)*—(1) *Benefit inside assessment area(s).* The appropriate Federal banking agency considers all qualified investments, community development loans, and community development services that benefit areas within the bank's or savings association's assessment area(s) or a broader statewide or regional area that includes the bank's or savings association's assessment area(s).

(2) *Benefit outside assessment area(s).* The appropriate Federal banking agency considers the qualified investments, community development loans, and community development services that benefit areas outside the bank's or savings association's assessment area(s), if the bank or savings association has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating.* The appropriate Federal banking agency rates a bank's or savings association's community development performance as provided in appendix A of this part.

## **§ 25.26 Small bank and savings association performance standards.**

(a) *Performance criteria*—(1) *Small banks and savings associations that are not intermediate small banks or savings associations.* The appropriate Federal banking agency evaluates the record of a small bank or savings association that is not, or that was not during the prior calendar year, an intermediate small bank or savings association, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks and savings associations.* The appropriate Federal banking agency evaluates the record of a small bank or savings association that is, or that was during the prior calendar year, an intermediate small bank or savings association, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's or savings association's lending performance is evaluated pursuant to the following criteria:

(1) The bank's or savings association'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, community development loans, or qualified investments;

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

(3) The bank's or savings association'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 or savings association's loans; and

(5) The bank's or savings association's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small bank's or savings association's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank or savings association provides community development services; and

(4) The bank's or savings association's responsiveness through such activities to community development lending, investment, and services needs.

(d) *Small bank or savings association performance rating.* The appropriate Federal banking agency rates the performance of a bank or savings association evaluated under this section as provided in appendix A of this part.

#### **§ 25.27 Strategic plan.**

(a) *Alternative election.* The appropriate Federal banking agency will assess a bank's or savings association's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank or savings association has submitted the plan to the appropriate Federal banking agency as provided for in this section;

(2) The appropriate Federal banking agency has approved the plan;

(3) The plan is in effect; and

(4) The bank or savings association has been operating under an approved plan for at least one year.

(b) *Data reporting.* The appropriate Federal banking agency's approval of a plan does not affect the bank's or savings association's obligation, if any, to report data as required by § 25.42.

(c) *Plans in general* —(1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the appropriate Federal banking agency will evaluate the bank's or savings association's performance.

(2) *Multiple assessment areas.* A bank or savings association with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

(d) *Public participation in plan development.* Before submitting a plan to the appropriate Federal banking agency for approval, a bank or savings association shall:

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;

(2) Once the bank or savings association has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the bank or savings association in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The bank or savings association shall submit its plan to the appropriate Federal banking agency at least three months prior to the proposed effective date of the plan. The bank or savings association shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content* —(1) *Measurable goals.* (i) A bank or savings association shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by

the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A bank or savings association shall address in its plan all three performance categories and, unless the bank or savings association has been designated as a wholesale or limited purpose bank or savings association, 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 assessment area(s), considering public comment and the bank's or savings association's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A bank or savings association may submit additional information to the appropriate Federal banking agency on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the appropriate Federal banking agency to judge the merits of the plan.

(3) *Satisfactory and outstanding goals.* A bank or savings association shall specify in its plan measurable goals that constitute "satisfactory" performance. A plan may specify measurable goals that constitute "outstanding" performance. If a bank or savings association submits, and the appropriate Federal banking agency approves, both "satisfactory" and "outstanding" performance goals, the appropriate Federal banking agency will consider the bank or savings association eligible for an "outstanding" performance rating.

(4) *Election if satisfactory goals not substantially met.* A bank or savings association may elect in its plan that, if the bank or savings association fails to meet substantially its plan goals for a satisfactory rating, the appropriate Federal banking agency will evaluate the bank's or savings association's performance under the lending, investment, and service tests, the community development test, or the small bank or savings association performance standards, as appropriate.

(g) *Plan approval*—(1) *Timing*. The appropriate Federal banking agency will act upon a plan within 60 calendar days after the appropriate Federal banking agency receives the complete plan and other material required under paragraph (e) of this section. If the appropriate Federal banking agency fails to act within this time period, the plan shall be deemed approved unless the appropriate Federal banking agency extends the review period for good cause.

(2) *Public participation*. In evaluating the plan's goals, the appropriate Federal banking agency considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the bank or savings association to public comment on the plan.

(3) *Criteria for evaluating plan*. The appropriate Federal banking agency evaluates 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 or savings association's qualified investments; and

(iii) The availability and effectiveness of the bank's or savings association's systems for delivering retail banking services and the extent and innovativeness of the bank's or savings association's community development services.

(h) *Plan amendment*. During the term of a plan, a bank or savings association may request the appropriate Federal banking agency to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank or savings association shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment*. The appropriate Federal banking agency approves the goals and assesses performance under a plan as provided for in appendix A of this part.

## § 25.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the appropriate Federal banking agency assigns to a bank or savings association a rating of “outstanding,” “satisfactory,” “needs to improve,” or “substantial noncompliance” based on the bank’s or savings association’s performance under the lending, investment and service tests, the community development test, the small bank or savings association performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The appropriate Federal banking agency assigns a rating for a bank or savings association assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A bank or savings association that receives an “outstanding” rating on the lending test receives an assigned rating of at least “satisfactory”;

(2) A bank or savings association 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 receives an assigned rating of “outstanding”; and

(3) No bank or savings association may receive an assigned rating of “satisfactory” or higher 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.* (1) The appropriate Federal banking agency’s evaluation of a bank’s or savings association’s CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or savings association or in any assessment area by any affiliate whose loans have been considered as part of the bank’s or savings association’s lending performance. In connection with any type of lending activity described in § 25.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's or savings association's assigned rating, the appropriate Federal banking agency considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank or savings association (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank or savings association (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

**§ 25.29 Effect of CRA performance on applications.**

(a) *CRA performance.* Among other factors, the appropriate Federal banking agency takes into account the record of performance under the CRA of each applicant bank or savings association, and for applications under 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)), of each proposed subsidiary savings association, in considering an application for:

- (1) The establishment of:
- (i) A domestic branch for insured national banks; or
  - (ii) A domestic branch or other facility that would be authorized to take deposits for savings associations;
- (2) The relocation of the main office or a branch;

(3) The merger or consolidation with or the acquisition of assets or assumption of liabilities of an insured depository institution requiring approval under the Bank Merger Act (12 U.S.C. 1828(c)); and

(4) The conversion of an insured depository institution to a national bank or Federal savings association charter; and

(5) Acquisitions subject to section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)).

(b) *Charter application.* (1) An applicant (other than an insured depository institution) for a national bank charter shall submit with its application a description of how it will meet its CRA objectives. The OCC takes the description into account in considering the application and may deny or condition approval on that basis.

(2) An applicant for a Federal savings association charter shall submit with its application a description of how it will meet its CRA objectives. The appropriate Federal banking agency takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The appropriate Federal banking agency takes into account any views expressed by interested parties that are submitted in accordance with the applicable comment procedures in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

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

(e) *Insured depository institution.* For purposes of this section, the term "insured depository institution" has the meaning given to that term in 12 U.S.C. 1813.

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

### **§ 25.41 Assessment area delineation.**

(a) *In general.* A bank or savings association shall delineate one or more assessment areas within which the appropriate Federal banking agency evaluates the bank's or savings association's record of helping to meet the credit needs of its community. The appropriate Federal banking agency does not evaluate the bank's or savings association's delineation of its assessment area(s) as a separate performance criterion, but the appropriate Federal banking agency reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose banks or savings associations.* The assessment area(s) for a wholesale or limited purpose bank or savings association must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank or savings association has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other banks and savings association.* The assessment area(s) for a bank or savings association other than a wholesale or limited purpose bank or savings association must:

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the bank or savings association has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the bank or savings association has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the bank or savings association chooses, such as those consumer loans on which the bank or savings association elects to have its performance assessed).

(d) *Adjustments to geographic area(s)*. A bank or savings association may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area*. Each bank's or savings associations assessment area(s):

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's or savings association's size and financial condition; and

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank or savings association serves a geographic area that extends substantially beyond a state boundary, the bank or savings association shall delineate separate assessment areas for the areas in each state. If a bank or savings association serves a geographic area that extends substantially beyond an MSA boundary, the bank or savings association shall delineate separate assessment areas for the areas inside and outside the MSA.

(f) *Banks and savings association serving military personnel*. Notwithstanding the requirements of this section, a bank or savings association 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 assessment area.

(g) *Use of assessment area(s)*. The appropriate Federal banking agency uses the assessment area(s) delineated by a bank or savings association in its evaluation of the bank's or savings association's CRA performance unless the appropriate Federal banking agency determines that the assessment area(s) do not comply with the requirements of this section.

**§ 25.42 Data collection, reporting, and disclosure.**

(a) *Loan information required to be collected and maintained.* A bank or savings association, except a small bank or savings association, shall collect, and maintain in machine readable form (as prescribed by the appropriate Federal banking agency) until the completion of its next CRA examination, the following data for each small business or small farm loan originated or purchased by the bank or savings association:

- (1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- (2) The loan amount at origination;
- (3) The loan location; and
- (4) An indicator whether the loan was to a business or farm with gross annual revenues of \$1 million or less.

(b) *Loan information required to be reported.* A bank or savings association, except a small bank or savings association or a bank or savings association that was a small bank or savings association during the prior calendar year, shall report annually by March 1 to the appropriate Federal banking agency in machine readable form (as prescribed by the appropriate Federal banking agency) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the bank or savings association originated or purchased a small business or small farm loan, the aggregate number and amount of loans:

- (i) With an amount at origination of \$100,000 or less;
- (ii) With amount at origination of more than \$100,000 but less than or equal to \$250,000;
- (iii) With an amount at origination of more than \$250,000; and
- (iv) To businesses and farms with gross annual revenues of \$1 million or less (using the revenues that the bank or savings association considered in making its credit decision);

(2) *Community development loan data.* The aggregate number and aggregate amount of community development loans originated or purchased; and

(3) *Home mortgage loans.* If the bank or savings association is subject to reporting under part 1003 of this title, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the bank or savings association has a home or branch office (or outside any MSA) in accordance with the requirements of part 1003 of this title.

(c) *Optional data collection and maintenance—(1) Consumer loans.* A bank or savings association may collect and maintain in machine readable form (as prescribed by the appropriate Federal banking agency) data for consumer loans originated or purchased by the bank or savings association for consideration under the lending test. A bank or savings association may maintain data for one or more of the following categories of consumer loans: Motor vehicle, credit card, other secured, and other unsecured. If the bank or savings association maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The bank or savings association shall maintain data separately for each category, including for each loan:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

(iv) The gross annual income of the borrower that the bank or savings association considered in making its credit decision.

(2) *Other loan data.* At its option, a bank or savings association may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending.* A bank or savings association that elects to have the appropriate Federal banking agency consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for

those loans the data that the bank or savings association would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the bank or savings association. For home mortgage loans, the bank or savings association shall also be prepared to identify the home mortgage loans reported under part 1003 of this title by the affiliate.

(e) *Data on lending by a consortium or a third party.* A bank or savings association that elects to have the appropriate Federal banking agency consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the bank or savings association would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the bank or savings association.

(f) *Small banks and savings associations electing evaluation under the lending, investment, and service tests.* A bank or savings association that qualifies for evaluation under the small bank or savings association performance standards but elects evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other banks or savings association pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A bank or savings association, except a small bank or savings association or a bank or savings association that was a small bank or savings association during the prior calendar year, shall collect and report to the appropriate Federal banking agency by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The appropriate Federal banking agency prepares annually for each bank or savings association that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the bank or savings association reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the bank or savings association reported a small business or small farm loan; and

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

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank or savings association reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies with median income relative to the area median income of less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list grouping each geography in the county or assessment area according to whether the median income in the geography relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(iii) A list showing each geography in which the bank or savings association reported a small business or small farm loan; and

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

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank or savings association and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the bank or savings association; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The OCC, in conjunction with the Board of Governors of the Federal Reserve System and the FDIC, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 228 or 345 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the appropriate Federal banking agency may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

(j) *Central data depositories.* The appropriate Federal banking agency makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual bank or savings association CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The appropriate Federal banking agency publishes a list of the depositories at which the statements are available.

#### **§ 25.43 Content and availability of public file.**

(a) *Information available to the public.* A bank or savings association shall maintain a public file that includes the following information:

(1) All 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 or savings association's performance in helping to meet community credit needs, and any response to the comments by the bank or savings association, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or savings association or publication of which would violate specific provisions of law;

(2) A copy of the public section of the bank's or savings association's most recent CRA Performance Evaluation prepared by the appropriate Federal banking agency. The bank or savings association shall place this copy in the public file within 30 business days after its receipt from the appropriate Federal banking agency;

(3) A list of the bank's or savings association's branches, their street addresses, and geographies;

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

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's or savings association's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a bank or savings association may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.*, ATMs, ATMs not owned or operated by or exclusively for the bank or savings association, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the bank or savings association chooses.

(b) *Additional information available to the public* —(1) *Banks and savings associations other than small banks or savings associations.* A bank or savings association, except a small bank or savings association or a bank or savings association that was a small bank or savings association during the prior calendar year, shall include in its public file the following information pertaining to the bank or savings association and its affiliates, if applicable, for each of the prior two calendar years:

(i) If the bank or savings association has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the bank's or savings association's assessment area(s) and outside the bank's or savings association's assessment area(s); and

(ii) The bank's or savings association's CRA Disclosure Statement. The bank or savings association shall place the statement in the public file within three business days of its receipt from the appropriate Federal banking agency.

(2) *Banks and savings associations required to report Home Mortgage Disclosure Act (HMDA) data.* A bank or savings association required to report home mortgage loan data pursuant part 1003 of this title shall include in its public file a written notice that the institution's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (Bureau's) website at [www.consumerfinance.gov/hmda](http://www.consumerfinance.gov/hmda). In addition, a bank or savings association that elected to have the appropriate Federal banking agency consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the Bureau's website. The bank or savings association shall place the written notice(s) in the public file within three

business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

(3) *Small banks and savings associations.* A small bank or savings association or a bank or savings association that was a small bank or savings association during the prior calendar year shall include in its public file:

(i) The bank's or savings association's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio; and

(ii) The information required for other banks or savings associations by paragraph (b)(1) of this section, if the bank or savings association has elected to be evaluated under the lending, investment, and service tests.

(4) *Banks and savings associations with strategic plans.* A bank or savings association that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A bank or savings association need not include information submitted to the appropriate Federal banking agency on a confidential basis in conjunction with the plan.

(5) *Banks and savings associations with less than satisfactory ratings.* A bank or savings association that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank or savings association shall update the description quarterly.

(c) *Location of public information.* A bank or savings association shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate bank or savings association, at one branch office in each state, all information in the public file; and

(2) At each branch:

(i) A copy of the public section of the bank's or savings association's most recent CRA Performance Evaluation and a list of services provided by the branch; and

(ii) Within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a bank or savings association shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The bank or savings association may charge a reasonable fee not to exceed the cost of copying and mailing (if applicable).

(e) *Updating.* Except as otherwise provided in this section, a bank or savings association shall ensure that the information required by this section is current as of April 1 of each year.

#### **§ 25.44 Public notice by banks and savings associations.**

A bank or savings association shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in appendix B of this part. Only a branch of a bank or savings association having more than one assessment area shall include the bracketed material in the notice for branch offices. Only an insured national bank that is an affiliate of a holding company shall include the next to the last sentence of the notices. An insured national bank shall include the last sentence of the notices only if it is an affiliate of a holding company that is not prevented by statute from acquiring additional banks. Only a savings association that is an affiliate of a holding company shall include the last two sentences of the notices.

#### **§ 25.45 Publication of planned examination schedule.**

The appropriate Federal banking agency publishes at least 30 days in advance of the beginning of each calendar quarter a list of banks and savings associations scheduled for CRA examinations in that quarter.

### **Subpart D—Transition Provisions**

#### **§ 25.51 Consideration of Bank or Savings Association Activities.**

(a) In assessing a bank's or savings association's CRA performance, the appropriate Federal banking agency will consider any loan, investment, or service that was eligible for CRA consideration at the time the bank or savings association conducted the activity.

(b) Notwithstanding paragraph (a), in assessing a bank's or savings association's CRA performance, the appropriate Federal banking agency will consider any loan or investment that was eligible for CRA consideration at the time the bank or savings association entered into a legally binding commitment to make the loan or investment.

### **§ 25.52 Strategic Plan Retention.**

A bank or savings association strategic plan approved by the appropriate Federal banking agency and in effect as of December 31, 2021, remains in effect, except that provisions of the plan that are not consistent with this part in effect as of January 1, 2022, are void, unless amended pursuant to § 25.27.

## **Subpart E—Prohibition Against Use of Interstate Branches Primarily for Deposit Production**

### **§ 25.61 Purpose and scope.**

(a) *Purpose.* The purpose of this subpart is to implement section 109 (12 U.S.C. 1835a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act).

(b) *Scope.* (1) This subpart applies to any national bank that has operated a covered interstate branch for a period of at least one year, and any foreign bank that has operated a covered interstate branch that is a Federal branch for a period of at least one year.

(2) This subpart describes the requirements imposed under 12 U.S.C. 1835a, which requires the appropriate Federal banking agencies (the OCC, the Board of Governors of the Federal Reserve System, and the FDIC) to prescribe uniform rules that prohibit a bank from using any authority to engage in interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other provision of law, primarily for the purpose of deposit production.

## § 25.62 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Bank* means, unless the context indicates otherwise:

(1) A national bank; and

(2) A foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 28.11(i).

(b) *Covered interstate branch* means:

(1) Any branch of a national bank, and any Federal branch of a foreign bank, that:

(i) Is established or acquired outside the bank's home State pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(ii) Could not have been established or acquired outside of the bank's home State but for the establishment or acquisition of a branch described in paragraph (b)(1)(i) of this section; and

(2) Any bank or branch of a bank controlled by an out-of-State bank holding company.

(c) *Federal branch* means Federal branch as that term is defined in 12 U.S.C. 3101(6) and 12 CFR 28.11(h).

(d) *Home State* means:

(1) With respect to a State bank, the State that chartered the bank;

(2) With respect to a national bank, the State in which the main office of the bank is located;

(3) With respect to a bank holding company, the State in which the total deposits of all banking subsidiaries of such company are the largest on the later of:

(i) July 1, 1966; or

(ii) The date on which the company becomes a bank holding company under the Bank Holding Company Act;

(4) With respect to a foreign bank:

(i) For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home State of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 28.11(n); and

(ii) For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the State in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:

(A) July 1, 1966; or

(B) The date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

(e) *Host State* means a State in which a covered interstate branch is established or acquired.

(f) *Host state loan-to-deposit ratio* generally means, with respect to a particular host state, the ratio of total loans in the host state relative to total deposits from the host state for all banks (including institutions covered under the definition of “bank” in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as determined and updated periodically by the appropriate Federal banking agencies and made available to the public.

(g) *Out-of-State bank holding company* means, with respect to any State, a bank holding company whose home State is another State.

(h) *State* means state as that term is defined in 12 U.S.C. 1813(a)(3).

(i) *Statewide loan-to-deposit ratio* means, with respect to a bank, the ratio of the bank’s loans to its deposits in a state in which the bank has one or more covered interstate branches, as determined by the OCC.

### **§ 25.63 Loan-to-deposit ratio screen.**

(a) *Application of screen.* Beginning no earlier than one year after a covered interstate branch is acquired or established, the OCC will consider whether the bank’s statewide loan-to-deposit ratio is less than 50 percent of the relevant host State loan-to-deposit ratio.

(b) *Results of screen.* (1) If the OCC determines that the bank's statewide loan-to-deposit ratio is 50 percent or more of the host state loan-to-deposit ratio, no further consideration under this subpart is required.

(2) If the OCC determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, or if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio, the OCC will make a credit needs determination for the bank as provided in § 25.64.

#### **§ 25.64 Credit needs determination.**

(a) *In general.* The OCC will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities in the host state that are served by the bank.

(b) *Guidelines.* The OCC will use the following considerations as guidelines when making the determination pursuant to paragraph (a) of this section:

(1) Whether covered interstate branches were formerly part of a failed or failing depository institution;

(2) Whether covered interstate branches were acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(3) Whether covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state;

(4) The CRA ratings received by the bank, if any;

(5) Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;

(6) The safe and sound operation and condition of the bank; and

(7) The OCC's CRA regulations (subparts A through D of this part) and interpretations of those regulations.

### **§ 25.65 Sanctions.**

(a) *In general.* If the OCC determines that a bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state, and that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, the OCC:

(1) May order that a bank's covered interstate branch or branches be closed unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank has an acceptable plan under which the bank will reasonably help to meet the credit needs of the communities served by the bank in the host state; and

(2) Will not permit the bank to open a new branch in the host state that would be considered to be a covered interstate branch unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(b) *Notice prior to closure of a covered interstate branch.* Before exercising the OCC's authority to order the bank to close a covered interstate branch, the OCC will issue to the bank a notice of the OCC's intent to order the closure and will schedule a hearing within 60 days of issuing the notice.

(c) *Hearing.* The OCC will conduct a hearing scheduled under paragraph (b) of this section in accordance with the provisions of 12 U.S.C. 1818(h) and 12 CFR part 19.

### **Appendix A to Part 25—Ratings**

(a) *Ratings in general.* (1) In assigning a rating, the appropriate Federal banking agency evaluates a bank's or savings association's performance under the applicable performance criteria in this part, in accordance with §§ 25.21 and 25.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with

minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(2) A bank's or savings association'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 or savings association's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Banks and savings associations evaluated under the lending, investment, and service tests*—(1) *Lending performance rating.* The appropriate Federal banking agency assigns each bank's or savings association's lending performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a bank's or savings association's lending performance "outstanding" if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

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

(C) An excellent geographic distribution of loans in its assessment area(s);

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

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

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner 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 appropriate Federal banking agency rates a bank's or savings association's lending performance "high satisfactory" if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

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

(C) A good geographic distribution of loans in its assessment area(s);

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

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

(F) Use of innovative or flexible lending practices in a safe and sound manner 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 appropriate Federal banking agency rates a bank's or savings association's lending performance "low satisfactory" if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

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

(C) An adequate geographic distribution of loans in its assessment area(s);

(D) An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank or savings association;

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

(F) Limited use of innovative or flexible lending practices in a safe and sound manner 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 appropriate Federal banking agency rates a bank's or savings association's lending performance "needs to improve" if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

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

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

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

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

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

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

(v) *Substantial noncompliance.* The appropriate Federal banking agency rates a bank's or savings association's lending performance as being in "substantial noncompliance" if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

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

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

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

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

(F) No use of innovative or flexible lending practices in a safe and sound manner 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 appropriate Federal banking agency assigns each bank's or savings association's investment performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a bank's or savings association's investment performance "outstanding" if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

B) Extensive use of innovative or complex qualified investments; and

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

(ii) *High satisfactory.* The appropriate Federal banking agency rates a bank's or savings association's investment performance "high satisfactory" if, in general, it demonstrates:

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

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

(iii) *Low satisfactory*. The appropriate Federal banking agency rates a bank's or savings association's investment performance "low satisfactory" if, in general, it demonstrates:

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

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

(iv) *Needs to improve*. The appropriate Federal banking agency rates a bank's or savings association's investment performance "needs to improve" if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

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

(v) *Substantial noncompliance*. The appropriate Federal banking agency rates a bank's or savings association's investment performance as being in "substantial noncompliance" if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

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

(3) *Service performance rating*. The appropriate Federal banking agency assigns each bank's or savings association's service performance one of the five following ratings.

(i) *Outstanding*. The appropriate Federal banking agency rates a bank's or savings association's service performance "outstanding" if, in general, the bank or savings association demonstrates:

(A) Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);

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

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment 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 appropriate Federal banking agency rates a bank's or savings association's service performance "high satisfactory" if, in general, the bank or savings association demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches 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) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment 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 appropriate Federal banking agency rates a bank's or savings association's service performance "low satisfactory" if, in general, the bank or savings association demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches 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) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment 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 appropriate Federal banking agency rates a bank's or savings association's service performance "needs to improve" if, in general, the bank or savings association demonstrates:

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

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

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment 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 appropriate Federal banking agency rates a bank's or savings association's service performance as being in "substantial noncompliance" if, in general, the bank or savings association demonstrates:

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

(B) To the extent changes have been made, its record of opening and closing branches 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) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

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

(c) *Wholesale or limited purpose banks.* The appropriate Federal banking agency assigns each wholesale or limited purpose bank's or savings association's community development performance one of the four following ratings.

(1) *Outstanding.* The appropriate Federal banking agency rates a wholesale or limited purpose bank's or savings association's community development performance "outstanding" if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

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

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

(2) *Satisfactory*. The appropriate Federal banking agency rates a wholesale or limited purpose bank's or savings association's community development performance "satisfactory" if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

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

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

(3) *Needs to improve*. The appropriate Federal banking agency rates a wholesale or limited purpose bank's or savings association's community development performance as "needs to improve" if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

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

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

(4) *Substantial noncompliance*. The appropriate Federal banking agency rates a wholesale or limited purpose bank's or savings association's community development performance in "substantial noncompliance" if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

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

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

(d) *Banks and savings associations evaluated under the small bank and savings association performance standards* —(1) *Lending test ratings.* (i) *Eligibility for a satisfactory lending test rating.* The appropriate Federal banking agency rates a small bank's or savings association's lending performance "satisfactory" if, in general, the bank or savings association demonstrates:

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

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

(C) 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 or savings association's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's or savings association's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's or savings association's assessment area(s).

(ii) *Eligibility for an "outstanding" lending test rating.* A small bank or savings association that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds

some or all of those standards may warrant consideration for a lending test rating of “outstanding.”

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank or savings association may also receive a lending test rating of “needs to improve” or “substantial noncompliance” depending on the degree to which its performance has failed to meet the standard for a “satisfactory” rating.

(2) *Community development test ratings for intermediate small banks and savings associations—(i) Eligibility for a satisfactory community development test rating.* The appropriate Federal banking agency rates an intermediate small bank’s or savings association’s community development performance “satisfactory” if the bank or savings association demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank’s or savings association’s response will depend on its capacity for such community development activities, its assessment area’s need for such community development activities, and the availability of such opportunities for community development in the bank’s or savings association’s assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The appropriate Federal banking agency rates an intermediate small bank’s or savings association’s community development performance “outstanding” if the bank or savings association demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank’s or savings association’s capacity and the need and availability of such opportunities for community development in the bank’s or savings association’s assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank or savings association may also receive a community development test 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.

(3) *Overall rating* —(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank or savings association may receive an assigned overall rating of “satisfactory” unless it receives a rating of at least “satisfactory” on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank or savings association that receives an “outstanding” rating on one test and at least “satisfactory” on the other test may receive an assigned overall rating of “outstanding.”

(B) A small bank or savings association that is not an intermediate small bank or savings association that meets each of the standards for a “satisfactory” rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of “outstanding.” In assessing whether a bank’s or savings association’s performance is “outstanding,” the appropriate Federal banking agency considers the extent to which the bank or savings association exceeds each of the performance standards for a “satisfactory” rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank or savings association may also 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 appropriate Federal banking agency approves as “satisfactory” measurable goals that adequately help to meet the credit needs of the bank’s or savings association’s assessment area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as “satisfactory,” the appropriate Federal banking agency will approve those goals as “outstanding.”

(3) *Rating.* The appropriate Federal banking agency assesses the performance of a bank or savings association operating under an approved plan to determine if the bank or savings association has met its plan goals:

(i) If the bank or savings association substantially achieves its plan goals for a satisfactory rating, the appropriate Federal banking agency will rate the bank’s or savings association’s performance under the plan as “satisfactory.”

(ii) If the bank or savings association exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the appropriate Federal banking agency will rate the bank’s or savings association’s performance under the plan as “outstanding.”

(iii) If the bank or savings association fails to meet substantially its plan goals for a satisfactory rating, the appropriate Federal banking agency will rate the bank or savings association as either “needs to improve” or “substantial noncompliance,” depending on the extent to which it falls short of its plan goals, unless the bank or savings association elected in its plan to be rated otherwise, as provided in § 25.27(f)(4).

#### **Appendix B to Part 25—CRA Notice**

(a) *Notice for main offices and, if an interstate bank and savings association, one branch office in each state.*

#### **Community Reinvestment Act Notice**

Under the Federal Community Reinvestment Act (CRA), the [Office of the Comptroller of the Currency (OCC) or Federal Deposit Insurance Corporation (FDIC), as appropriate] evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or FDIC, as appropriate] also takes this record into account when deciding on certain applications submitted by us.

## **Your Involvement is Encouraged**

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the [OCC or FDIC, as appropriate]; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the [OCC or FDIC, as appropriate] publishes a nationwide list of the banks and savings associations that are scheduled for CRA examination in that quarter. This list is available from the [OCC or FDIC, as appropriate], at [address]. You may send written comments about our performance in helping to meet community credit needs to [name and address of official at bank or savings association] and to the [OCC or FDIC, as appropriate], at [address]. Your letter, together with any response by us, will be considered by the [OCC or FDIC, as appropriate] in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the [OCC or FDIC, as appropriate]. You may also request from the [OCC or FDIC, as appropriate] an announcement of our applications covered by the CRA filed with the [OCC or FDIC, as appropriate]. We are an affiliate of [name of holding company], a [bank holding company or savings and loan holding company, as appropriate]. You may request from the [title of responsible official], Federal Reserve Bank of [ ] [address] an announcement of applications covered by the CRA filed by [bank holding companies or savings and loan holding companies, as appropriate].

*(b) Notice for branch offices.*

## **Community Reinvestment Act Notice**

Under the Federal Community Reinvestment Act (CRA), the [Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC), as appropriate] evaluates our record

of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or FDIC, as appropriate] also takes this record into account when deciding on certain applications submitted by us.

### **Your Involvement is Encouraged**

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the [OCC or FDIC, as appropriate], and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) A map showing the assessment area containing this branch, which is the area in which the [OCC or FDIC, as appropriate] evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire [bank or savings association, as appropriate] is available at [name of office located in state], located at [address].]

At least 30 days before the beginning of each quarter, the [OCC or FDIC, as appropriate] publishes a nationwide list of the banks and savings associations that are scheduled for CRA examination in that quarter. This list is available from the [OCC or FDIC, as appropriate] at [address]. You may send written comments about our performance in helping to meet community credit needs to [name and address of official at bank or savings association, as appropriate] and to the [OCC or FDIC, as appropriate] at [address]. Your letter, together with

any response by us, will be considered by the [OCC or FDIC, as appropriate] in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the [OCC or FDIC, as appropriate]. You may also request from the [OCC or FDIC, as appropriate] an announcement of our applications covered by the CRA filed with the [OCC or FDIC, as appropriate]. We are an affiliate of [name of holding company], a [bank holding company or savings and loan holding company, as appropriate]. You may request from the [title of responsible official], Federal Reserve Bank of [ ], [address], an announcement of applications covered by the CRA filed by [bank holding companies or savings and loan holding companies, as appropriate].

## **PART 35—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS**

6. The authority citation for part 35 continues to read as follows:

**Authority:** 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 1831y, and 5412(b)(2)(B).

7. Amend § 35.4(a)(2) by:

a. In paragraph (i), removing “§ 25.22 of appendix G to 12 CFR part 25” and adding in its place “12 CFR 25.22”.

b. In paragraph (ii), removing “§ 25.23 of appendix G to 12 CFR part 25” and adding in its place “12 CFR 25.23”.

c. In paragraph (iii), removing “§ 25.24(d) of appendix G to 12 CFR part 25” and adding in its place “12 CFR 25.24(d)”.

d. In paragraph (iv), removing “§ 25.24(e) of appendix G to 12 CFR part 25” and adding in its place “12 CFR 25.24(e)”.

e. In paragraph (v), removing “§ 25.25(c) of appendix G to 12 CFR part 25” and adding in its place “12 CFR 25.25(c)”.

f. In paragraph (vi), removing “§ 25.26(a) of appendix G to 12 CFR part 25” and adding in its place “12 CFR 25.26(a)”.

g. In paragraph (vii), removing “§ 25.27(f) of appendix G to 12 CFR part 25” and adding in its place “12 CFR 25.27(f)”.

#### **§ 35.6 [Amended]**

8. Amend § 35.6 in paragraph (b)(7) by removing “§ 25.43 of appendix G to 12 CFR part 25” and adding “12 CFR 25.43” in its place.

#### **§ 35.11 [Amended]**

9. Amend § 35.11 in paragraph (d) by removing “§ 25.43 of appendix G to 12 CFR part 25” and adding in its place “12 CFR 25.43”.

### **FEDERAL RESERVE SYSTEM 12 CFR Chapter II**

#### **Authority and Issuance**

For the reasons discussed in the preamble, the Board of Governors of the Federal Reserve System proposes to amend of chapter II of title 12 of the Code of Federal Regulations as follows:

#### **PART 207—DISCLOSURE AND REPORTING OF CRA-RELATED**

#### **AGREEMENTS (REGULATION G)**

10. The authority citation for part 207 continues to read as follows:

**Authority:** 12 U.S.C. 1831y.

#### **§ 207.4 [Amended]**

11. Amend § 207.4 by:

a. In paragraph (a)(2)(i), removing “appendix G to 12 CFR part 228” and adding “Regulation BB (12 CFR 228.22)” in its place;

b. In paragraph (a)(2)(ii), removing “appendix G to 12 CFR part 228” and adding “Regulation BB (12 CFR 228.23)” in its place;

c. In paragraph (a)(2)(iii), removing “appendix G to 12 CFR part 228” and adding “Regulation BB (12 CFR 228.24(d))” in its place;

d. In paragraph (a)(2)(iv), removing “appendix G to 12 CFR part 228” and adding “Regulation BB (12 CFR 228.24(e))” in its place;

- e. In paragraph (a)(2)(v), removing “appendix G to 12 CFR part 228” and adding “Regulation BB (12 CFR 228.25(c))” in its place;
- f. In paragraph (a)(2)(vi), removing “appendix G to 12 CFR part 228” and adding “Regulation BB (12 CFR 228.26(a))” in its place; and
- g. In paragraph (a)(2)(vii), removing “appendix G to 12 CFR part 228” and adding “Regulation BB (12 CFR 228.27(f))” in its place.

#### **§ 207.6 [Amended]**

12. Amend § 207.6 in paragraph (b)(7) by removing “appendix G to 12 CFR part 228” and adding “Regulation BB (12 CFR 228.43)” in its place.

#### **§ 207.11 [Amended]**

13. Amend § 207.11 in paragraph (d) by removing “appendix G to 12 CFR part 228” and adding “Regulation BB (12 CFR 228.43)” in its place.

14. Part 228 is revised to read as follows:

### **PART 228 COMMUNITY REINVESTMENT (REGULATION BB)**

#### **Sec.**

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228.11 Authority, purposes, and scope.

228.12 Definitions.

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

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228.45 Publication of planned examination schedule.

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

**§§ 228.1-228.2 [Reserved]**

**Subpart A—General**

**§ 228.11 Authority, 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 comprising 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 savings and loan holding companies and their subsidiaries (12 U.S.C. 1467a); and

(3) To consider applications for:

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

(ii) Mergers in which the resulting bank would be a State member bank (12 U.S.C. 1828(c));

(iii) Formations of, acquisitions of banks by, and mergers of, bank holding companies (12 U.S.C. 1842);

(iv) The acquisition of savings associations by bank holding companies (12 U.S.C. 1843);  
and

(v) Formations of, acquisitions of savings associations by, conversions of, and mergers of, savings and loan holding companies (12 U.S.C. 1467a).

(b) *Purposes.* In enacting the CRA, the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound

operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Board assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank; and

(2) Providing that the Board takes that record into account in considering certain applications.

(c) *Scope*—(1) *General*. This part applies to all banks except as provided in paragraph (c)(3) of this section.

(2) *Foreign bank acquisitions*. This part also applies to an uninsured State branch (other than a limited branch) of a foreign bank that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)). The terms “State branch” and “foreign bank” have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*); the term “uninsured State branch” means a State branch the deposits of which are not insured by the Federal Deposit Insurance Corporation; the term “limited branch” means a State branch that accepts only deposits that are permissible for a corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).

(3) *Certain special purpose banks*. This part does not apply to special purpose banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These banks include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks that engage only in one or more of the following activities: providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

## **§ 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. 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:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 228.41.

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

(e) *Bank* means a State member bank as that term is defined in section 3(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(d)(2)), except as provided in § 228.11(c)(3), and includes an uninsured State branch (other than a limited branch) of a foreign bank described in § 228.11(c)(2).

(f) *Branch* means a staffed banking facility approved as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of \$1 million or less; or

(4) Activities that revitalize or stabilize—

(i) Low-or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

(h) *Community development loan* means a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose bank:

(i) Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment as a home mortgage, small business, small farm, or consumer loan, unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title); and

(ii) Benefits the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(i) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the bank's retail banking services under § 228.24(d).

(j) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) *Motor vehicle loan*, which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) *Credit card loan*, which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a "credit card," as this term is defined in § 1026.2 of this chapter;

(3) *Other secured consumer loan*, which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(4) *Other unsecured consumer loan*, which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

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

(l) *Home mortgage loan* means a closed-end mortgage loan or an open-end line of credit as these terms are defined under § 1003.2 of this title and that is not an excluded transaction under § 1003.3(c)(1) through (10) and (13) of this title.

(m) *Income level* includes:

(1) *Low-income*, which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

(2) *Moderate-income*, which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 and less than 80 percent, in the case of a geography.

(3) *Middle-income*, which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 and less than 120 percent, in the case of a geography.

(4) *Upper-income*, which means an individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more, in the case of a geography.

(n) *Limited purpose bank* means a bank that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § 228.25(b).

(o) *Loan location*. A loan is located as follows:

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

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

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

(p) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

(t) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(u) *Small bank*—(1) *Definition*. *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.609 billion. *Intermediate small bank* means a small bank with assets of at least \$402 million as of December 31 of both of the prior two calendar years and less than \$1.609 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment*. The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the Board, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

(v) *Small business loan* means a loan included in “loans to small businesses” as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(w) *Small farm loan* means a loan included in “loans to small farms” as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(x) *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 for which a designation as a wholesale bank is in effect, in accordance with § 228.25(b).

## **Subpart B—Standards for Assessing Performance**

### **§ 228.21 Performance tests, standards, and ratings, in general.**

(a) *Performance tests and standards*. The Board assesses the CRA performance of a bank in an examination as follows:

(1) *Lending, investment, and service tests*. The Board applies the lending, investment, and service tests, as provided in §§ 228.22 through 228.24, in evaluating the performance of a bank, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose banks*. The Board applies the community development test for a wholesale or limited purpose bank, as provided in § 228.25, except as provided in paragraph (a)(4) of this section.

(3) *Small bank performance standards.* The Board applies the small bank performance standards as provided in § 228.26 in evaluating the performance of a small bank or a bank that was a small bank during the prior calendar year, unless the bank elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The bank may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks under § 228.42.

(4) *Strategic plan.* The Board evaluates the performance of a bank under a strategic plan if the bank submits, and the Board approves, a strategic plan as provided in § 228.27.

(b) *Performance context.* The Board applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(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 assessment area(s);

(2) Any information about lending, investment, and service opportunities in the bank's assessment area(s) maintained by the bank or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(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 bank, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment 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, and any 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 assigns to a bank one of the following four ratings pursuant to § 228.28 and appendix A of this part: “outstanding”; “satisfactory”; “needs to improve”; or “substantial noncompliance” as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the Board reflects the bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

(d) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the Board anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a bank under this part, the Board considers, as a factor, low-cost education loans originated by the bank to borrowers, particularly in its assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, “low-cost education loans” means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a state or local education loan program), originated by the bank for a student at an “institution of higher education,” as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the Board considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

**§ 228.22 Lending test.**

(a) *Scope of test.* (1) The lending test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the Board will evaluate the bank's consumer lending in one or more of the following categories: motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a bank's option, the Board will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in § 228.42(c)(1), the data for each category that the bank elects to have the Board evaluate.

(2) The Board considers originations and purchases of loans. The Board will also consider any other loan data the bank may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A bank may ask the Board to consider loans originated or purchased by consortia in which the bank participates or by third parties in which the bank has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The Board will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The Board evaluates a bank's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, in the bank's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

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

(ii) The dispersion of lending in the bank's assessment area(s); and

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

(3) *Borrower characteristics.* The distribution, particularly in the bank's assessment area(s), of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The bank's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a bank's option, the Board will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to § 228.42.

(2) The Board considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a bank elects to have the Board consider loans within a particular lending category made by one or more of the bank's affiliates in a particular assessment area, the bank shall elect to have the Board consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the bank's affiliates.

(3) The Board does not consider affiliate lending in assessing a bank's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the bank participates or by a third party in which the bank has invested:

(1) Will be considered, at the bank's option, if the bank reports the data pertaining to these loans under § 228.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The Board rates 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 a bank's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

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

(c) *Affiliate investment.* At a bank's option, the Board will consider, in its assessment of a bank's investment performance, a qualified investment made by an affiliate of the bank, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the bank that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The Board evaluates the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The Board rates 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 its assessment area(s) by analyzing both the availability and effectiveness of a bank's

systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Area(s) benefitted.* Community development services must benefit a bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(c) *Affiliate service.* At a bank's option, the Board will consider, in its assessment of a bank's service performance, a community development service provided by an affiliate of the bank, if the community development service is not claimed by any other institution.

(d) *Performance criteria—retail banking services.* The Board evaluates the availability and effectiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:

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

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

(3) The availability and effectiveness of alternative systems for delivering retail banking services (*e.g.*, ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-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.

(e) *Performance criteria—community development services.* The Board evaluates community development services pursuant to the following criteria:

- (1) The extent to which the bank provides community development services; and
- (2) The innovativeness and responsiveness of community development services.

(f) *Service performance rating.* The Board rates 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.* The Board assesses a wholesale or limited purpose bank's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose bank.* In order to receive a designation as a wholesale or limited purpose bank, a bank shall file a request, in writing, with the Board, at least three months prior to the proposed effective date of the designation. If the Board approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the Board notifies the bank that the Board has revoked the designation on its own initiative.

(c) *Performance criteria.* The Board evaluates 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 (including originations and purchases of loans and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a bank's option, the Board will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank, if the investments 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) and (d).

(e) *Benefit to assessment area(s)*—(1) *Benefit inside assessment area(s)*. The Board considers all qualified investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(2) *Benefit outside assessment area(s)*. The Board considers the qualified investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating*. The Board rates a bank's community development performance as provided in appendix A of this part.

#### **§ 228.26 Small bank performance standards.**

(a) *Performance criteria*—(1) *Small banks that are not intermediate small banks*. The Board evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks*. The Board evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test*. A small bank's lending performance is evaluated 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, community development loans, or qualified investments;

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

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

(c) *Community development test.* An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

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

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

(d) *Small bank performance rating.* The Board rates the performance of a bank evaluated under this section as provided in appendix A of this part.

#### **§ 228.27 Strategic plan.**

(a) *Alternative election.* The Board will assess a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the Board as provided for in this section;

(2) The Board has approved the plan;

(3) The plan is in effect; and

(4) The bank has been operating under an approved plan for at least one year.

(b) *Data reporting.* The Board's approval of a plan does not affect the bank's obligation, if any, to report data as required by § 228.42.

(c) *Plans in general—(1) Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the Board will evaluate the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

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

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan 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 at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the bank in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *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 a description of its informal efforts to seek suggestions from members of the public, any written

public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content*—(1) *Measurable goals*. (i) A bank shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A bank shall address in its plan 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 assessment area(s), considering public comment and the bank's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information*. A bank may submit additional information to the Board on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the Board to judge 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. If a bank submits, and the Board approves, both “satisfactory” and “outstanding” performance goals, the Board will consider the bank eligible for an “outstanding” performance rating.

(4) *Election if satisfactory goals not substantially met*. A bank may elect in its plan that, if the bank fails to meet substantially its plan goals for a satisfactory rating, the Board will evaluate the bank's performance under the lending, investment, and service tests, the community development test, or the small bank performance standards, as appropriate.

(g) *Plan approval*—(1) *Timing*. The Board will act upon a plan within 60 calendar days after the Board receives the complete plan and other material required under paragraph (e) of this

section. 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 considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the bank to public comment on the plan.

(3) *Criteria for evaluating plan.* The Board evaluates 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; and

(iii) The availability and effectiveness of the bank's systems for delivering retail banking services and the extent and innovativeness of the bank's community development services.

(h) *Plan amendment.* During the term of a plan, a bank may request the Board to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment.* The Board approves the goals and assesses performance under a plan as provided for in appendix A of this part.

#### **§ 228.28 Assigned ratings.**

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the Board assigns 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 performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The Board assigns a rating for a bank assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A bank that receives an “outstanding” rating on the lending test receives an assigned rating of at least “satisfactory”;

(2) 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 receives an assigned rating of “outstanding”; and

(3) No bank may receive an assigned rating of “satisfactory” or higher 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.* (1) The Board's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance. In connection with any type of lending activity described in § 228.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the Board considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

**§ 228.29 Effect of CRA performance on applications.**

(a) *CRA performance.* Among other factors, the Board takes into account the record of performance under the CRA of:

(1) Each applicant bank for the:

(i) Establishment of a domestic branch by a State member bank; and

(ii) Merger, consolidation, acquisition of assets, or assumption of liabilities requiring approval under the Bank Merger Act (12 U.S.C. 1828(c)) if the acquiring, assuming, or resulting bank is to be a State member bank; and

(2) Each insured depository institution (as defined in 12 U.S.C. 1813) controlled by an applicant and subsidiary bank or savings association proposed to be controlled by an applicant:

(i) To become a bank holding company in a transaction that requires approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842);

(ii) To acquire ownership or control of shares or all or substantially all of the assets of a bank, to cause a bank to become a subsidiary of a bank holding company, or to merge or consolidate a bank holding company with any other bank holding company in a transaction that requires approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842);

(iii) To own, control or operate a savings association in a transaction that requires approval under section 4 of the Bank Holding Company Act (12 U.S.C. 1843);

(iv) To become a savings and loan holding company in a transaction that requires approval under section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a); and

(v) To acquire ownership or control of shares or all or substantially all of the assets of a savings association, to cause a savings association to become a subsidiary of a savings and loan holding company, or to merge or consolidate a savings and loan holding company with any other savings and loan holding company in a transaction that requires approval under section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

(b) *Interested parties.* In considering CRA performance in an application described in paragraph (a) of this section, the Board takes into account any views expressed by interested parties that 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 or savings association's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(d) *Definitions.* For purposes of paragraphs (a)(2)(i), (ii), and (iii) of this section, “bank,” “bank holding company,” “subsidiary,” and “savings association” have the meanings given to those terms in section 2 of the Bank Holding Company Act (12 U.S.C. 1841). For purposes of paragraphs (a)(2)(iv) and (v) of this section, “savings and loan holding company” and “subsidiary” has the meaning given to that term in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

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

### **§ 228.41 Assessment area delineation.**

(a) *In general.* A bank shall delineate one or more assessment areas within which the Board evaluates the bank's record of helping to meet the credit needs of its community. The Board does not evaluate the bank's delineation of its assessment area(s) as a separate performance criterion, but the Board reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs or

metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other banks.* The assessment area(s) for a bank other than a wholesale or limited purpose bank must:

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the bank has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the bank chooses, such as those consumer loans on which the bank elects to have its performance assessed).

(d) *Adjustments to geographic area(s).* A bank may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area.* Each bank's assessment area(s):

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition; and

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state boundary, the bank shall delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends substantially beyond an MSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the MSA.

(f) *Banks serving military personnel.* Notwithstanding the requirements 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 assessment area.

(g) *Use of assessment area(s).* The Board uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the Board determines that the assessment area(s) do not comply with the requirements of this section.

**§ 228.42 Data collection, reporting, and disclosure.**

(a) *Loan information required to be collected and maintained.* A bank, except a small bank, shall collect, and maintain in machine readable form (as prescribed by the Board) until the completion of its next CRA examination, the following data for each small business or small farm loan originated or purchased by the bank:

(1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(2) The loan amount at origination;

(3) The loan location; and

(4) An indicator whether the loan was to a business or farm with gross annual revenues of \$1 million or less.

(b) *Loan information required to be reported.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall report annually by March 1 to the Board in

machine readable form (as prescribed by the Board) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the bank originated or purchased a small business or small farm loan, the aggregate number and amount of loans:

- (i) With an amount at origination of \$100,000 or less;
- (ii) With amount at origination of more than \$100,000 but less than or equal to \$250,000;
- (iii) With an amount at origination of more than \$250,000; and
- (iv) To businesses and farms with gross annual revenues of \$1 million or less (using the revenues that the bank considered in making its credit decision);

(2) *Community development loan data.* The aggregate number and aggregate amount of community development loans originated or purchased; and

(3) *Home mortgage loans.* If the bank is subject to reporting under part 1003 of this chapter, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the bank has a home or branch office (or outside any MSA) in accordance with the requirements of part 1003 of this chapter.

(c) *Optional data collection and maintenance—(1) Consumer loans.* A bank may collect and maintain in machine readable form (as prescribed by the Board) data for consumer loans originated or purchased by the bank for consideration under the lending test. A bank may maintain data for one or more of the following categories of consumer loans: motor vehicle, credit card, other secured, and other unsecured. If the bank maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The bank shall maintain data separately for each category, including for each loan:

- (i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- (ii) The loan amount at origination or purchase;

(iii) The loan location; and

(iv) The gross annual income of the borrower that the bank considered in making its credit decision.

(2) *Other loan data.* At its option, a bank may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending.* A bank that elects to have the Board consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the bank would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the bank. For home mortgage loans, the bank shall also be prepared to identify the home mortgage loans reported under part 1003 of this chapter by the affiliate.

(e) *Data on lending by a consortium or a third party.* A bank that elects to have the Board consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the bank would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the bank.

(f) *Small banks electing evaluation under the lending, investment, and service tests.* A bank that qualifies for evaluation under the small bank performance standards but elects evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other banks pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall collect and report to the Board by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The Board prepares annually for each bank that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

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

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies with median income relative to the area median income of less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list grouping each geography in the county or assessment area according to whether the median income in the geography relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

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

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the bank; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The Board, in conjunction with the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 25, 195, or 345 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the Board may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

(j) *Central data depositories.* The Board makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual bank CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The Board publishes a list of the depositories at which the statements are available.

#### **§ 228.43 Content and availability of public file.**

(a) *Information available to the public.* A bank shall maintain a public file that includes the following information:

(1) All 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 community credit needs, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;

(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 bank's branches, their street addresses, and geographies;

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

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.*, ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) *Additional information available to the public*—(1) *Banks other than small banks.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall include in its public file the following information pertaining to the bank and its affiliates, if applicable, for each of the prior two calendar years:

(i) If the bank has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the bank's assessment area(s) and outside the bank's assessment area(s);

and

(ii) The bank's CRA Disclosure Statement. The bank shall place the statement in the public file within three business days of its receipt from the Board.

(2) *Banks required to report Home Mortgage Disclosure Act (HMDA) data.* A bank required to report home mortgage loan data pursuant part 1003 of this title shall include in its public file a written notice that the institution's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (Bureau's) Web site at [www.consumerfinance.gov/hmda](http://www.consumerfinance.gov/hmda). In addition, a bank that elected to have the Board consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the Bureau's Web site. The bank shall place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

(3) *Small banks.* A small bank or a bank that was a small bank during the prior calendar year shall include in its public file:

(i) The bank's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio; and

(ii) The information required for other banks by paragraph (b)(1) of this section, if the bank has elected to be evaluated under the lending, investment, and service tests.

(4) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A bank need not include information submitted to the Board on a confidential basis in conjunction with the plan.

(5) *Banks with less than satisfactory ratings.* A 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. The bank shall update the description quarterly.

(c) *Location of public information.* A bank shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate bank, at one branch office in each state, all information in the public file; and

(2) At each branch:

(i) A copy of the public section of the bank's most recent CRA Performance Evaluation and a list of services provided by the branch; and

(ii) Within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a bank shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The bank may charge a reasonable fee not to exceed the cost of copying and mailing (if applicable).

(e) *Updating.* Except as otherwise provided in this section, a bank shall ensure that the information required by this section is current as of April 1 of each year.

#### **§ 228.44 Public notice by banks.**

A bank shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in appendix B of this part. Only a branch of a bank having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a bank that is an affiliate of a holding company shall include the next to the last sentence of the notices. A bank shall include the last sentence of the notices only if it is an affiliate of a holding company that is not prevented by statute from acquiring additional banks.

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

The Board publishes at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations in that quarter.

### **Appendix A to Part 228—Ratings**

(a) *Ratings in general.* (1) In assigning a rating, the Board evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 228.21 and 228.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(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, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Banks evaluated under the lending, investment, and service tests—*(1) *Lending performance rating.* The Board assigns each bank's lending performance one of the five following ratings.

(i) *Outstanding.* The Board rates a bank's lending performance “outstanding” if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

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

(C) An excellent geographic distribution of loans in its assessment area(s);

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

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

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner 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 rates a bank's lending performance "high satisfactory" if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

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

(C) A good geographic distribution of loans in its assessment area(s);

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

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

(F) Use of innovative or flexible lending practices in a safe and sound manner 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 rates a bank's lending performance “low satisfactory” if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

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

(C) An adequate geographic distribution of loans in its assessment area(s);

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

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

(F) Limited use of innovative or flexible lending practices in a safe and sound manner 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 rates a bank's lending performance “needs to improve” if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

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

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

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

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

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

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

(v) *Substantial noncompliance*. The Board rates 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 assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

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

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

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

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

(F) No use of innovative or flexible lending practices in a safe and sound manner 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 assigns each bank's investment performance one of the five following ratings.

(i) *Outstanding.* The Board rates a bank's investment performance “outstanding” if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

(B) Extensive use of innovative or complex qualified investments; and

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

(ii) *High satisfactory.* The Board rates a bank's investment performance “high satisfactory” if, in general, it demonstrates:

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

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

(iii) *Low satisfactory.* The Board rates a bank's investment performance “low satisfactory” if, in general, it demonstrates:

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

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

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

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

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

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

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

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

(3) *Service performance rating*. The Board assigns each bank's service performance one of the five following ratings.

(i) *Outstanding*. The Board rates a bank's service performance “outstanding” if, in general, the bank demonstrates:

(A) Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);

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

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment 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 rates a bank's service performance “high satisfactory” if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches 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) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment 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 rates a bank's service performance “low satisfactory” if, in general, the bank demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches 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) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment 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 rates a bank's service performance “needs to improve” if, in general, the bank demonstrates:

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

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

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment 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 rates a bank's service performance as being in “substantial noncompliance” if, in general, the bank demonstrates:

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

(B) To the extent changes have been made, its record of opening and closing branches 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) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

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

(c) *Wholesale or limited purpose banks*. The Board assigns each wholesale or limited purpose bank's community development performance one of the four following ratings.

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

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

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

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

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

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

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

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

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

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

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

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

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

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

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

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

(d) *Banks evaluated under the small bank performance standards—(1) Lending test ratings.*

(i) *Eligibility for a satisfactory lending test rating.* The Board rates a small bank's lending performance “satisfactory” if, in general, the bank demonstrates:

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

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

(C) 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 assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an “outstanding” lending test 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 a lending test rating of “outstanding.”

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of “needs to improve” or “substantial noncompliance” depending on the degree to which its performance has failed to meet the standard for a “satisfactory” rating.

(2) *Community development test ratings for intermediate small banks—(i) Eligibility for a satisfactory community development test rating.* The Board rates an intermediate small bank's community development performance “satisfactory” if the bank demonstrates adequate

responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The Board rates an intermediate small bank's community development performance “outstanding” if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test 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.

(3) *Overall rating—(i) Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of “satisfactory” unless it receives a rating of at least “satisfactory” on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating. (A)* An intermediate small bank that receives an “outstanding” rating on one test and at least “satisfactory” on the other test may receive an assigned overall rating of “outstanding.”

(B) A small bank that is not an intermediate small bank that meets each of the standards for a “satisfactory” rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of “outstanding.” In assessing whether a bank's performance is “outstanding,” the Board considers the extent to which the bank exceeds each of

the performance standards for a “satisfactory” rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also 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 approves as “satisfactory” measurable goals that adequately help to meet the credit needs of the bank's assessment 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 will approve those goals as “outstanding.”

(3) *Rating.* The Board assesses 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 will 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 will rate the bank's performance under the plan as “outstanding.”

(iii) If the bank fails to meet substantially its plan goals for a satisfactory rating, the Board will rate the bank as either “needs to improve” or “substantial noncompliance,” depending on the extent to which it falls short of its plan goals, unless the bank elected in its plan to be rated otherwise, as provided in § 228.27(f)(4).

#### **Appendix B to Part 228—CRA Notice**

(a) Notice for main offices and, if an interstate bank, one branch office in each state.

Under the Federal Community Reinvestment Act (CRA), the Federal Reserve Board (Board) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Board also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the Federal Reserve Bank of \_\_\_\_ (Reserve Bank); and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the Federal Reserve System publishes a list of the banks that are scheduled for CRA examination by the Reserve Bank in that quarter. This list is available from (title of responsible official), Federal Reserve Bank of \_\_\_\_ (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and (title of responsible official), 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 Reserve Bank. You may also request from the Reserve Bank an announcement of our applications covered by the CRA filed with the Reserve Bank. We are an affiliate of (name of holding company), a bank holding company. You may request from (title of responsible official), Federal Reserve Bank of \_\_\_\_ (address) an announcement of applications covered by the CRA filed by bank holding companies.

(b) Notice for branch offices.

COMMUNITY REINVESTMENT ACT NOTICE

Under the Federal Community Reinvestment Act (CRA), the Federal Reserve Board (Board) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Board also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the Federal Reserve Bank of \_\_\_\_ (address), and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) a map showing the assessment area containing this branch, which is the area in which the Board evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the Federal Reserve System publishes a list of the banks that are scheduled for CRA examination by the Reserve Bank in that quarter. This list is available from (title of responsible official), Federal Reserve Bank of \_\_\_\_ (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and (title of responsible official), 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 Reserve Bank. You may also request from the Reserve Bank an announcement of our applications covered by the CRA filed with the Reserve Bank. We are an affiliate of (name of holding company), a bank holding company. You may request from (title of responsible official), Federal Reserve Bank of \_\_\_\_ (address) an announcement of applications covered by the CRA filed by bank holding companies.

## **FEDERAL DEPOSIT INSURANCE CORPORATION**

### **12 CFR Chapter III**

#### **Authority and Issuance**

For the reasons discussed in the preamble, the Federal Deposit Insurance Corporation proposes to revise 12 CFR parts 345 and 346 to read as follows:

15. Part 345 is revised to read as follows:

#### **PART 345—COMMUNITY REINVESTMENT**

##### **Subpart A—General**

Sec.

345.11 Authority, purposes, and scope.

345.12 Definitions.

##### **Subpart B—Standards for Assessing Performance**

Sec.

345.21 Performance tests, standards, and ratings, in general.

345.22 Lending test.

345.23 Investment test.

345.24 Service test.

345.25 Community development test for wholesale or limited purpose banks.

345.26 Small bank performance standards.

345.27 Strategic plan.

345.28 Assigned ratings.

345.29 Effect of CRA performance on applications.

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

Sec.

345.41 Assessment area delineation.

345.42 Data collection, reporting, and disclosure.

345.43 Content and availability of public file.

345.44 Public notice by banks.

345.45 Publication of planned examination schedule.

Appendix A to Part 345—Ratings

Appendix B to Part 345—CRA Notice

AUTHORITY: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2908, 3103–3104, and 3108(a).

## **Subpart A—General**

### **§ 345.11 Authority, purposes, and scope.**

(a) *Authority and OMB control number* —

(1) *Authority.* The authority for this part is 12 U.S.C. 1814-1817, 1819-1820, 1828, 1831u and 2901-2907, 3103-3104, and 3108(a).

(2) *OMB control number.* The information collection requirements contained in this part were approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 et seq. and have been assigned OMB control number 3064-0092.

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), the Congress required each appropriate Federal financial supervisory agency to assess an institution’s record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency’s evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Federal Deposit Insurance Corporation (FDIC) assesses a bank’s record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank; and

(2) Providing that the FDIC takes that record into account in considering certain applications.

(c) *Scope* —

(1) *General.* Except for certain special purpose banks described in paragraph (c)(3) of this section, this part applies to all insured State nonmember banks, including insured State branches as described in paragraph (c)(2) of this section and any uninsured State branch that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(2) *Insured State branches.* Insured State branches are branches of a foreign bank established and operating under the laws of any State, the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act. In the case of insured State branches, references in this part to “main office” mean the principal branch within the United States and the term “branch” or “branches” refers to any insured State branch or branches located within the United States. The “assessment area” of an insured State branch is the community or communities located within the United States served by the branch as described in § 345.41.

(3) *Certain special purpose banks.* This part does not apply to special purpose banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These banks include banker's banks, as defined in 12 U.S.C. 24(Seventh), and banks that engage only in one or more of the following activities: providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

### **§ 345.12 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. 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:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 345.41.

(d) *Remote Service Facility (RSF)* means an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the bank, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispersed, or money lent.

(e) *Bank* means a State nonmember bank, as that term is defined in section 3(e)(2) of the Federal Deposit Insurance Act, as amended (FDIA) (12 U.S.C. 1813(e)(2)), with federally insured deposits, except as provided in § 345.11(c). The term “bank” also includes an insured State branch as defined in § 345.11(c).

(f) *Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization. The term “branch” only includes a “domestic branch” as that term is defined in section 3(o) of the FDIA (12 U.S.C. 1813(o)).

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of \$1 million or less; or

(4) Activities that revitalize or stabilize—

(i) Low-or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, FDIC, and Office of the Comptroller of the Currency, based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

(h) *Community development loan* means a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose bank:

(i) Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment as a home mortgage, small business, small farm, or consumer loan, unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title); and

(ii) Benefits the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(i) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the bank's retail banking services under § 345.24(d).

(j) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) Motor vehicle loan, which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) Credit card loan, which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a "credit card," as this term is defined in § 1026.2 of this title;

(3) Other secured consumer loan, which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(4) Other unsecured consumer loan, which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

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

(l) *Home mortgage loan* means a closed-end mortgage loan or an open-end line of credit as these terms are defined under § 1003.2 of this title and that is not an excluded transaction under § 1003.3(c)(1) through (10) and (13) of this title.

(m) *Income level* includes:

(1) Low-income, which means an individual income that is less than 50 percent of the area median income or a median family income that is less than 50 percent in the case of a geography.

(2) Moderate-income, which means an individual income that is at least 50 percent and less than 80 percent of the area median income or a median family income that is at least 50 and less than 80 percent in the case of a geography.

(3) Middle-income, which means an individual income that is at least 80 percent and less than 120 percent of the area median income or a median family income that is at least 80 and less than 120 percent in the case of a geography.

(4) Upper-income, which means an individual income that is 120 percent or more of the area median income or a median family income that is 120 percent or more in the case of a geography.

(n) *Limited purpose bank* means a bank that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § 345.25(b).

(o) *Loan location*. A loan is located as follows:

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

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

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

(p) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

(t) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(u) *Small bank* —

(1) *Definition*. *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.609 billion. *Intermediate small bank* means a small bank with assets of at least \$402 million as of December 31 of both of the prior two calendar years and less than \$1.609 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment*. The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the FDIC, based on the year-to-year change in the average of the

Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

(v) *Small business loan* means a loan included in “loans to small businesses” as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(w) *Small farm loan* means a loan included in “loans to small farms” as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(x) *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 for which a designation as a wholesale bank is in effect, in accordance with § 345.25(b).

## **Subpart B—Standards for Assessing Performance**

### **§ 345.21 Performance tests, standards, and ratings, in general.**

(a) *Performance tests and standards.* The FDIC assesses the CRA performance of a bank in an examination as follows:

(1) *Lending, investment, and service tests.* The FDIC applies the lending, investment, and service tests, as provided in §§ 345.22 through 345.24, in evaluating the performance of a bank, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose banks.* The FDIC applies the community development test for a wholesale or limited purpose bank, as provided in § 345.25, except as provided in paragraph (a)(4) of this section.

(3) *Small bank performance standards.* The FDIC applies the small bank performance standards as provided in § 345.26 in evaluating the performance of a small bank or a bank that was a small bank during the prior calendar year, unless the bank elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The bank may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks under § 345.42.

(4) *Strategic plan.* The FDIC evaluates the performance of a bank under a strategic plan if the bank submits, and the FDIC approves, a strategic plan as provided in § 345.27.

(b) *Performance context.* The FDIC applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(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 assessment area(s);

(2) Any information about lending, investment, and service opportunities in the bank's assessment area(s) maintained by the bank or obtained from community organizations, State, local, and tribal governments, economic development agencies, or other sources;

(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 bank, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment area(s);

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

(6) The bank's public file, as described in § 345.43, and any written comments about the bank's CRA performance submitted to the bank or the FDIC; and

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

(c) *Assigned ratings.* The FDIC assigns to a bank one of the following four ratings pursuant to § 345.28 and appendix A of this part: "outstanding," "satisfactory," "needs to improve," or "substantial noncompliance" as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the FDIC reflects the bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

(d) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the FDIC anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a bank under this part, the FDIC considers, as a factor, low-cost education loans originated by the bank to borrowers, particularly in its assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, “low-cost education loans” means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a State or local education loan program), originated by the bank for a student at an “institution of higher education,” as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the FDIC considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need

not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

**§ 345.22 Lending test.**

*(a) Scope of test.*

(1) The lending test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the FDIC will evaluate the bank's consumer lending in one or more of the following categories: motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a bank's option, the FDIC will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in § 345.42(c)(1), the data for each category that the bank elects to have the FDIC evaluate.

(2) The FDIC considers originations and purchases of loans. The FDIC will also consider any other loan data the bank may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A bank may ask the FDIC to consider loans originated or purchased by consortia in which the bank participates or by third parties in which the bank has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The FDIC will not consider these loans under any criterion of the lending test except the community development lending criterion.

*(b) Performance criteria.* The FDIC evaluates a bank's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, in the bank's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

- (i) The proportion of the bank's lending in the bank's assessment area(s);
- (ii) The dispersion of lending in the bank's assessment area(s); and
- (iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the bank's assessment area(s), of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

- (i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;
- (ii) Small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less;
- (iii) Small business and small farm loans by loan amount at origination; and
- (iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The bank's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.*

(1) At a bank's option, the FDIC will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to § 345.42.

(2) The FDIC considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a bank elects to have the FDIC consider loans within a particular lending category made by one or more of the bank's affiliates in a particular assessment area, the bank shall elect to have the FDIC consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the bank's affiliates.

(3) The FDIC does not consider affiliate lending in assessing a bank's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the bank participates or by a third party in which the bank has invested:

(1) Will be considered, at the bank's option, if the bank reports the data pertaining to these loans under § 345.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The FDIC rates a bank's lending performance as provided in appendix A of this part.

### **§ 345.23 Investment test.**

(a) *Scope of test.* The investment test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

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

(c) *Affiliate investment.* At a bank's option, the FDIC will consider, in its assessment of a bank's investment performance, a qualified investment made by an affiliate of the bank, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the bank that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The FDIC evaluates the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs;

and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The FDIC rates a bank's investment performance as provided in appendix A of this part.

#### **§ 345.24 Service test.**

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

(b) *Area(s) benefited.* Community development services must benefit a bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(c) *Affiliate service.* At a bank's option, the FDIC will consider, in its assessment of a bank's service performance, a community development service provided by an affiliate of the bank, if the community development service is not claimed by any other institution.

(d) *Performance criteria—retail banking services.* The FDIC evaluates the availability and effectiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:

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

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

(3) The availability and effectiveness of alternative systems for delivering retail banking services (e.g., RSFs, RSFs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-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.

(e) *Performance criteria—community development services.* The FDIC evaluates community development services pursuant to the following criteria:

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

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

(f) *Service performance rating.* The FDIC rates a bank's service performance as provided in appendix A of this part.

**§ 345.25 Community development test for wholesale or limited purpose banks.**

(a) *Scope of test.* The FDIC assesses a wholesale or limited purpose bank's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose bank.* In order to receive a designation as a wholesale or limited purpose bank, a bank shall file a request, in writing, with the FDIC, at least three months prior to the proposed effective date of the designation. If the FDIC approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the FDIC notifies the bank that the FDIC has revoked the designation on its own initiative.

(c) *Performance criteria.* The FDIC evaluates 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 (including originations and purchases of loans and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a bank's option, the FDIC will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank, if the investments 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 § 345.22 (c) and (d).

(e) *Benefit to assessment area(s)* —

(1) *Benefit inside assessment area(s)*. The FDIC considers all qualified investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(2) *Benefit outside assessment area(s)*. The FDIC considers the qualified investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating*. The FDIC rates a bank's community development performance as provided in appendix A of this part.

#### **§ 345.26 Small bank performance standards.**

(a) *Performance criteria* —

(1) *Small banks that are not intermediate small banks*. The FDIC evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks*. The FDIC evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test*. A small bank's lending performance is evaluated 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, community development loans, or qualified investments;

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

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

(c) *Community development test.* An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

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

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

(d) *Small bank performance rating.* The FDIC rates the performance of a bank evaluated under this section as provided in appendix A of this part.

### **§ 345.27 Strategic plan.**

(a) *Alternative election.* The FDIC will assess a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the FDIC as provided for in this section;

(2) The FDIC has approved the plan;

(3) The plan is in effect; and

(4) The bank has been operating under an approved plan for at least one year.

(b) *Data reporting.* The FDIC's approval of a plan does not affect the bank's obligation, if any, to report data as required by § 345.42.

(c) *Plans in general* —

(1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the FDIC will evaluate the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

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

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan 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 at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the bank in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The bank shall submit its plan to the FDIC at least three months prior to the proposed effective date of the plan. The bank shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content* —

(1) *Measurable goals.*

(i) A bank shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A bank shall address in its plan 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 assessment area(s), considering public comment and the bank's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A bank may submit additional information to the FDIC on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the FDIC to judge 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. If a bank submits, and the FDIC approves, both "satisfactory" and "outstanding" performance goals, the FDIC will consider the bank eligible for an "outstanding" performance rating.

(4) *Election if satisfactory goals not substantially met.* A bank may elect in its plan that, if the bank fails to meet substantially its plan goals for a satisfactory rating, the FDIC will evaluate the bank's performance under the lending, investment, and service tests, the community development test, or the small bank performance standards, as appropriate.

(g) *Plan approval* —

(1) *Timing.* The FDIC will act upon a plan within 60 calendar days after the FDIC receives the complete plan and other material required under paragraph (e) of this section. If the FDIC fails to act within this time period, the plan shall be deemed approved unless the FDIC extends the review period for good cause.

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

(3) *Criteria for evaluating plan.* The FDIC evaluates 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; and

(iii) The availability and effectiveness of the bank's systems for delivering retail banking services and the extent and innovativeness of the bank's community development services.

(h) *Plan amendment.* During the term of a plan, a bank may request the FDIC to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment.* The FDIC approves the goals and assesses performance under a plan as provided for in appendix A of this part.

#### **§ 345.28 Assigned ratings.**

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the FDIC assigns 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 performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The FDIC assigns a rating for a bank assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A bank that receives an “outstanding” rating on the lending test receives an assigned rating of at least “satisfactory”;

(2) 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 receives an assigned rating of “outstanding”; and

(3) No bank may receive an assigned rating of “satisfactory” or higher 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.*

(1) The FDIC’s evaluation of a bank’s CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank’s lending performance. In connection with any type of lending activity described in § 345.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the FDIC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

#### **§ 345.29 Effect of CRA performance on applications.**

(a) *CRA performance.* Among other factors, the FDIC takes into account the record of performance under the CRA of each applicant bank in considering an application for approval of:

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

(2) The relocation of the bank's main office or a branch;

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

(4) Deposit insurance for a newly chartered financial institution.

(b) *New financial institutions.* A newly chartered financial institution shall submit with its application for deposit insurance a description of how it will meet its CRA objectives. The FDIC takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The FDIC takes into account any views expressed by interested parties that are submitted in accordance with the FDIC's procedures set forth in part 303 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

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

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

#### **§ 345.41 Assessment area delineation.**

(a) *In general.* A bank shall delineate one or more assessment areas within which the FDIC evaluates the bank's record of helping to meet the credit needs of its community. The FDIC does not evaluate the bank's delineation of its assessment area(s) as a separate performance criterion, but the FDIC reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other banks.* The assessment area(s) for a bank other than a wholesale or limited purpose bank must:

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the bank has its main office, its branches, and its deposit-taking RSFs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the bank chooses, such as those consumer loans on which the bank elects to have its performance assessed).

(d) *Adjustments to geographic area(s).* A bank may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area.* Each bank's assessment area(s):

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition; and

(4) May not extend substantially beyond an MSA boundary or beyond a State boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a State boundary, the bank shall delineate separate assessment areas for the areas in each State. If a bank serves a geographic area that extends substantially beyond an MSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the MSA.

(f) *Banks serving military personnel.* Notwithstanding the requirements 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 assessment area.

(g) *Use of assessment area(s).* The FDIC uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the FDIC determines that the assessment area(s) do not comply with the requirements of this section.

### **§ 345.42 Data collection, reporting, and disclosure.**

(a) *Loan information required to be collected and maintained.* A bank, except a small bank, shall collect, and maintain in machine readable form (as prescribed by the FDIC) until the completion of its next CRA examination, the following data for each small business or small farm loan originated or purchased by the bank:

(1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(2) The loan amount at origination;

(3) The loan location; and

(4) An indicator whether the loan was to a business or farm with gross annual revenues of \$1 million or less.

(b) *Loan information required to be reported.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall report annually by March 1 to the FDIC in machine readable form (as prescribed by the FDIC) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the bank originated or purchased a small business or small farm loan, the aggregate number and amount of loans:

(i) With an amount at origination of \$100,000 or less;

(ii) With an amount at origination of more than \$100,000 but less than or equal to \$250,000;

(iii) With an amount at origination of more than \$250,000; and

(iv) To businesses and farms with gross annual revenues of \$1 million or less (using the revenues that the bank considered in making its credit decision);

(2) *Community development loan data.* The aggregate number and aggregate amount of community development loans originated or purchased; and

(3) *Home mortgage loans.* If the bank is subject to reporting under part 1003 of this title, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the bank has a home or branch office (or outside any MSA) in accordance with the requirements of part 1003 of this title.

(c) *Optional data collection and maintenance* —

(1) *Consumer loans.* A bank may collect and maintain in machine readable form (as prescribed by the FDIC) data for consumer loans originated or purchased by the bank for consideration under the lending test. A bank may maintain data for one or more of the following categories of consumer loans: motor vehicle, credit card, other secured, and other unsecured. If

the bank maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The bank shall maintain data separately for each category, including for each loan:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

(iv) The gross annual income of the borrower that the bank considered in making its credit decision.

(2) *Other loan data.* At its option, a bank may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending.* A bank that elects to have the FDIC consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the bank would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the bank. For home mortgage loans, the bank shall also be prepared to identify the home mortgage loans reported under part 1003 of this title by the affiliate.

(e) *Data on lending by a consortium or a third party.* A bank that elects to have the FDIC consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the bank would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the bank.

(f) *Small banks electing evaluation under the lending, investment, and service tests.* A bank that qualifies for evaluation under the small bank performance standards but elects evaluation

under the lending, investment, and service tests shall collect, maintain, and report the data required for other banks pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall collect and report to the FDIC by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The FDIC prepares annually for each bank that reports data pursuant to this section a CRA Disclosure Statement that contains, on a State-by-State basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

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

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies with median income relative to the area median income of less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list grouping each geography in the county or assessment area according to whether the median income in the geography relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

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

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the bank; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The FDIC, in conjunction with the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a State boundary) and the nonmetropolitan portion of each State, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 25, 195, or 228 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the FDIC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

(j) *Central data depositories.* The FDIC makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual bank CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The FDIC publishes a list of the depositories at which the statements are available.

**§ 345.43 Content and availability of public file.**

(a) *Information available to the public.* A bank shall maintain a public file that includes the following information:

(1) All 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 community credit needs, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;

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

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

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

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (e.g., RSFs, RSFs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) *Additional information available to the public* —

(1) *Banks other than small banks.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall include in its public file the following information pertaining to the bank and its affiliates, if applicable, for each of the prior two calendar years:

(i) If the bank has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the bank's assessment area(s) and outside the bank's assessment area(s);

and

(ii) The bank's CRA Disclosure Statement. The bank shall place the statement in the public file within three business days of its receipt from the FDIC.

(2) *Banks required to report Home Mortgage Disclosure Act (HMDA) data.* A bank required to report home mortgage loan data pursuant part 1003 of this title shall include in its public file a written notice that the institution's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (Bureau) website at [www.consumerfinance.gov/hmda](http://www.consumerfinance.gov/hmda). In addition, a bank that elected to have the FDIC consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the Bureau's website. The bank shall place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

(3) *Small banks.* A small bank or a bank that was a small bank during the prior calendar year shall include in its public file:

(i) The bank's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio; and

(ii) The information required for other banks by paragraph (b)(1) of this section, if the bank has elected to be evaluated under the lending, investment, and service tests.

(4) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A bank need not include information submitted to the FDIC on a confidential basis in conjunction with the plan.

(5) *Banks with less than satisfactory ratings.* A 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. The bank shall update the description quarterly.

(c) *Location of public information.* A bank shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate bank, at one branch office in each State, all information in the public file; and

(2) At each branch:

(i) A copy of the public section of the bank's most recent CRA Performance Evaluation and a list of services provided by the branch; and

(ii) Within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a bank shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The bank may charge a reasonable fee not to exceed the cost of copying and mailing (if applicable).

(e) *Updating.* Except as otherwise provided in this section, a bank shall ensure that the information required by this section is current as of April 1 of each year.

#### **§ 345.44 Public notice by banks.**

A bank shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in appendix B of this part. Only a branch of a bank having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a bank that is an affiliate of a holding company shall include the next to the last sentence of the notices. A bank shall include the last sentence of the notices only if it is an affiliate of a holding company that is not prevented by statute from acquiring additional banks.

#### **§ 345.45 Publication of planned examination schedule.**

The FDIC publishes at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations in that quarter.

#### **Appendix A to Part 345—Ratings**

##### *(a) Ratings in general.*

(1) In assigning a rating, the FDIC evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 345.21 and 345.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(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, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

##### *(b) Banks evaluated under the lending, investment, and service tests —*

(1) *Lending performance rating.* The FDIC assigns each bank's lending performance one of the five following ratings.

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

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

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

(C) An excellent geographic distribution of loans in its assessment area(s);

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

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

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner 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 FDIC rates a bank's lending performance "high satisfactory" if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

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

(C) A good geographic distribution of loans in its assessment area(s);

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

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

(F) Use of innovative or flexible lending practices in a safe and sound manner 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 FDIC rates a bank's lending performance "low satisfactory" if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

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

(C) An adequate geographic distribution of loans in its assessment area(s);

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

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

(F) Limited use of innovative or flexible lending practices in a safe and sound manner 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 FDIC rates a bank's lending performance "needs to improve" if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

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

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

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

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

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

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

(v) *Substantial noncompliance*. The FDIC rates 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 assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

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

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

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

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

(F) No use of innovative or flexible lending practices in a safe and sound manner 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 FDIC assigns each bank's investment performance one of the five following ratings.

(i) *Outstanding.* The FDIC rates a bank's investment performance "outstanding" if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

(B) Extensive use of innovative or complex qualified investments; and

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

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

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

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

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

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

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

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

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

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

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

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

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

(3) *Service performance rating*. The FDIC assigns each bank's service performance one of the five following ratings.

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

(A) Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);

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

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment 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 FDIC rates a bank's service performance "high satisfactory" if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches 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) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment 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 FDIC rates a bank's service performance "low satisfactory" if, in general, the bank demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches 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) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment 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 FDIC rates a bank's service performance "needs to improve" if, in general, the bank demonstrates:

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

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

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment 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 FDIC rates a bank's service performance as being in "substantial noncompliance" if, in general, the bank demonstrates:

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

(B) To the extent changes have been made, its record of opening and closing branches 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) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

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

(c) *Wholesale or limited purpose banks*. The FDIC assigns each wholesale or limited purpose bank's community development performance one of the four following ratings.

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

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

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

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

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

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

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

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

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

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

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

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

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

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

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

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

(d) *Banks evaluated under the small bank performance standards —*

(1) *Lending test ratings —*

(i) *Eligibility for a satisfactory lending test rating.* The FDIC rates a small bank's lending performance "satisfactory" if, in general, the bank demonstrates:

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

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

(C) 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 assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an "outstanding" lending test 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 a lending test rating of "outstanding."

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

(2) *Community development test ratings for intermediate small banks —*

(i) *Eligibility for a satisfactory community development test rating.* The FDIC rates an intermediate small bank's community development performance "satisfactory" if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The FDIC rates an intermediate small bank's community development performance "outstanding" if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test 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.

(3) *Overall rating —*

(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of “satisfactory” unless it receives a rating of at least “satisfactory” on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.*

(A) An intermediate small bank that receives an “outstanding” rating on one test and at least “satisfactory” on the other test may receive an assigned overall rating of “outstanding.”

(B) A small bank that is not an intermediate small bank that meets each of the standards for a “satisfactory” rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of “outstanding.” In assessing whether a bank’s performance is “outstanding,” the FDIC considers the extent to which the bank exceeds each of the performance standards for a “satisfactory” rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also 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 FDIC approves as “satisfactory” measurable goals that adequately help to meet the credit needs of the bank’s assessment area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as “satisfactory,” the FDIC will approve those goals as “outstanding.”

(3) *Rating.* The FDIC assesses 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 FDIC will 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 FDIC will rate the bank’s performance under the plan as “outstanding.”

(iii) If the bank fails to meet substantially its plan goals for a satisfactory rating, the FDIC will rate the bank as either “needs to improve” or “substantial noncompliance,” depending on the extent to which it falls short of its plan goals, unless the bank elected in its plan to be rated otherwise, as provided in § 345.27(f)(4).

## **Appendix B to Part 345—CRA Notice**

*(a) Notice for main offices and, if an interstate bank, one branch office in each state.*

### Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Deposit Insurance Corporation (FDIC) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The FDIC also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the FDIC; and comments received from the public relating to our performance in helping to

meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the FDIC publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Regional Director, FDIC (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and FDIC Regional Director. You may also submit comments electronically through the FDIC's website at [www.fdic.gov/regulations/cra](http://www.fdic.gov/regulations/cra). Your letter, together with any response by us, will be considered by the FDIC in evaluating our CRA performance and may be made public.

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

*(b) Notice for branch offices.*

#### Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Deposit Insurance Corporation (FDIC) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The FDIC also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the FDIC, and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five

calendar days after you make a request to us: (1) a map showing the assessment area containing this branch, which is the area in which the FDIC evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the FDIC publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Regional Director, FDIC (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and the FDIC Regional Director. You may also submit comments electronically through the FDIC's website at [www.fdic.gov/regulations/cra](http://www.fdic.gov/regulations/cra). Your letter, together with any response by us, will be considered by the FDIC in evaluating our CRA performance and may be made public.

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

#### **PART 346—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS**

16. The authority citation for part 346 continues to read as follows:

**Authority:** 12 U.S.C. 1831y.

#### **§ 346.4 [Amended]**

17. Amend § 346.4 by:

a. In paragraph (a)(2)(i), removing “§ 345.22 of appendix G to 12 CFR part 345” and adding in its place “§ 345.22 of this chapter”.

b. In paragraph (a)(2)(ii), removing “§ 345.23 of appendix G to 12 CFR part 345” and adding in its place “§ 345.23 of this chapter”.

c. In paragraph (a)(2)(iii), removing “§ 345.24(d) of appendix G to 12 CFR part 345” and adding in its place “§ 345.24(d) of this chapter”.

d. In paragraph (a)(2)(iv), removing “§ 345.24(e) of appendix G to 12 CFR part 345” and adding in its place “§ 345.24(e) of this chapter”.

e. In paragraph (a)(2)(v), removing “§ 345.25(c) of appendix G to 12 CFR part 345” and adding in its place “§ 345.25(c) of this chapter”.

f. In paragraph a(2)(vi), removing “§ 345.26(a) of appendix G to 12 CFR part 345” and adding in its place “§ 345.26(a) of this chapter”.

g. In paragraph (a)(2)(vii), removing “§ 345.27(f) of appendix G to 12 CFR part 345” and adding in its place “§ 345.27(f) of this chapter”.

#### **§ 346.6 [Amended]**

18. Amend § 346.6(b)(7) by removing “§ 345.43 of appendix G to 12 CFR part 345” and adding in its place “§ 345.43 of this chapter”.

#### **§ 346.11 [Amended]**

19. Amend § 346.11(d) by removing “§ 345.43 of appendix G to 12 CFR part 345” and adding in its place “§ 345.43 of this chapter”.

Dated: July 15, 2025.

**Rodney E. Hood,**

*Acting Comptroller of the Currency.*

Dated: July 15, 2025.

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

**Ann E. Misback,**

*Secretary of the Board.*

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on July 15, 2025.

**Jennifer M. Jones,**

*Deputy Executive Secretary.*

**BILLING CODES:**

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