

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Parts 25 and 195**

**[Docket ID OCC-2021-0014]**

**RIN 1557–AF12**

**Community Reinvestment Act Regulations**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Comptroller of the Currency proposes to replace the current Community Reinvestment Act rule with rules based on the 1995 Community Reinvestment Act (CRA) rules, as revised, issued by the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC). The proposal would replace the existing rule in 12 CFR part 25 and reinstate 12 CFR part 195 (for savings associations). Such action would effectively rescind the CRA final rule published by the Office of the Comptroller of the Currency on June 5, 2020, and facilitate the issuance of joint CRA rules with the Board and FDIC.

**DATES:** Comments must be received on or before October 29, 2021.

**ADDRESSES:** 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-2021-0014” 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, 9am-5pm ET 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 7<sup>th</sup> Street, SW., suite 3E-218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7<sup>th</sup> Street, SW., suite 3E-218, Washington, DC 20219.

*Instructions:* You must include “OCC” as the agency name and “Docket ID OCC-2021-0014” 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-2021-0014” 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, 9am-5pm ET 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.

**FOR FURTHER INFORMATION CONTACT:**

Emily Boyes, Counsel, Chief Counsel’s Office, (202) 649-5490; Vonda Eanes, Director for CRA and Fair Lending Policy, Bobbie K. Kennedy, Technical Expert for CRA and Fair Lending, or Karen Bellesi, Director for Community Development, Bank Supervision Policy, (202) 649-5470, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

## SUPPLEMENTARY INFORMATION:

### I. Introduction

The Office of the Comptroller of the Currency (OCC)<sup>1</sup> proposes to rescind and replace its rule implementing the Community Reinvestment Act (CRA)<sup>2</sup> for national banks and savings associations<sup>3</sup> (collectively, banks),<sup>4</sup> that was published on June 5, 2020 (June 2020 Rule).<sup>5</sup> The OCC would replace the June 2020 Rule with rules largely based on those adopted by the OCC, Federal Deposit Insurance Corporation (FDIC), and Board of Governors of the Federal Reserve System (Board) (collectively, the Agencies)

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<sup>1</sup> The OCC is the primary regulator for national banks and Federal savings associations.

<sup>2</sup> Pub. L. 95-128, 91 Stat. 1147 (1977), *codified at* 12 U.S.C. 2901 *et seq.* The CRA was enacted to promote access to credit by encouraging insured depository institutions to serve their entire communities. During this period, Congress also enacted fair lending laws to address fairness and access to housing and credit. For example, in 1968, Congress passed the Fair Housing Act, 42 U.S.C. 3601 *et seq.*, to prohibit discrimination in renting or buying a home. In 1974, Congress passed the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* (amended in 1976), to prohibit creditors from discriminating against an applicant on the basis of race, color, religion, national origin, sex, marital status, or age. These fair lending laws provide a legal basis for prohibiting discriminatory lending practices, such as redlining. *Interagency Fair Lending Examination Procedures*, p. iv (Aug. 2009), available at <https://www.ffiec.gov/PDF/fairlend.pdf>.

<sup>3</sup> The Office of Thrift Supervision (OTS) and its predecessor agency, the Federal Home Loan Bank Board, also were charged with implementing the CRA. The rulemaking authority of OTS with respect to CRA transferred to the OCC in Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376, 1520 (2010). *See also* 12 U.S.C. 2905. The OCC has responsibility for examining Federal savings associations for CRA while the FDIC examines State savings associations for CRA.

<sup>4</sup> As used throughout this notice, the term “bank” or “banks” also includes uninsured Federal branches that result from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)) and State savings associations.

<sup>5</sup> 85 FR 34734 (June 5, 2020).

and the former Office of Thrift Supervision on May 4, 1995, as revised (1995 Rules).<sup>6</sup> The proposal would align the OCC's CRA rules with the current Board and FDIC CRA rules to facilitate on-going interagency work to modernize the CRA rules<sup>7</sup> and create consistency for all insured depository institutions (IDIs).<sup>8</sup>

As explained in greater detail below, under this proposal, the June 2020 Rule would remain in effect until replaced by final rules based on this proposal. The OCC proposes to apply a transition for replacing certain aspects of the June 2020 Rule (*e.g.*, bank type changes, approved strategic plans, and qualifying activities). Subsequently, as part of the ongoing interagency CRA rulemaking, the OCC would propose a joint revised CRA rule to replace the rules in this proposal. The proposed transition considerations are described in more detail in Section IV.

## **II. Background**

Congress enacted the CRA in 1977 to encourage IDIs to help meet the credit needs of their entire communities, including low- and moderate-income (LMI) neighborhoods, consistent with safe and sound lending practices. Specifically, Congress found 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 as well as deposit services; and (3) regulated financial institutions have

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<sup>6</sup> 60 FR 22156 (May 4, 1995). As used herein, the 1995 Rules refer to the regulatory framework adopted by the Agencies in 1995 and any revisions the Agencies have made to that regulatory framework, except for the changes made by the OCC in the June 2020 Rule. *E.g.*, 70 FR 44256 (Aug. 2, 2005).

<sup>7</sup> NR 2021-77, Interagency Statement on Community Reinvestment Act Joint Agency Action (July 20, 2021).

<sup>8</sup> 12 U.S.C. 1813(c)(2).

continuing and affirmative obligation[s] to help meet the credit needs of the local communities in which they are chartered.”<sup>9</sup>

The Agencies first issued rules to implement the CRA in 1978.<sup>10</sup> Between 1978 and 2018, the Agencies revised and sought to clarify the CRA rules numerous times, most significantly in 1995.<sup>11</sup> On September 5, 2018, the OCC published an Advance Notice of Proposed Rulemaking (ANPR) as part of its renewed efforts to modernize the CRA regulatory framework.<sup>12</sup> Subsequently, on January 9, 2020, the OCC and FDIC published a joint CRA Notice of Proposed Rulemaking (January 2020 NPR),<sup>13</sup> and on June 5, 2020, the OCC issued the June 2020 Rule in an effort to modernize its CRA rules.

The June 2020 Rule took effect October 1, 2020; however, several provisions have delayed compliance dates of either January 1, 2023, or January 1, 2024.<sup>14</sup> To implement certain provisions of the June 2020 Rule with a January 1, 2023, compliance date, the OCC published a Notice of Proposed Rulemaking on December 4, 2020 (December 2020 NPR), that proposed an approach to determine the benchmarks, thresholds, and minimums in the June 2020 Rule’s new performance standards.<sup>15</sup> In connection with the December 2020 NPR, the OCC published a CRA information collection survey (Information Collection)<sup>16</sup> to obtain data necessary to calibrate the June

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

<sup>10</sup> 43 FR 47144 (Oct. 12, 1978). The CRA rules of the Agencies were codified in 12 CFR parts 25, 563e (recodified as 195), 228, and 345.

<sup>11</sup> 60 FR 22156 (May 4, 1995).

<sup>12</sup> The OCC, along with the Board and the FDIC, worked together on an ANPR, which the OCC published on September 5, 2018. 83 FR 45053 (September 5, 2018).

<sup>13</sup> 85 FR 1204 (January 9, 2020).

<sup>14</sup> 12 CFR 25.01(c)(4).

<sup>15</sup> 85 FR 78258 (Dec. 4, 2020).

<sup>16</sup> 85 FR 81270 (Dec. 15, 2020).

2020 Rule’s new performance standards. Subsequently, on May 18, 2021, the OCC announced that it was reconsidering the June 2020 Rule, did not plan to finalize the December 2020 NPR, and was discontinuing the Information Collection.<sup>17</sup> The OCC took these steps to provide for an orderly reconsideration of the June 2020 Rule and provide banks with the flexibility to deploy resources in response to the COVID-19 pandemic.<sup>18</sup>

While the June 2020 Rule and the subsequent December 2020 NPR and Information Collection represent the OCC’s most recent efforts to modernize the CRA regulatory framework, the Agencies’ efforts at reform have spanned the past decade. For example, in 2014, pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),<sup>19</sup> the Agencies began a decennial review of all of their regulations, with input from the public, to identify outdated, unnecessary, or unduly burdensome regulations and consider how to reduce regulatory burden on IDIs—while, at the same time, ensuring the safety and soundness of these institutions and of the financial system. In 2017, the Agencies issued a report to Congress that included a summary of the public comments and recommendations received during the EGRPRA review, including those that addressed the CRA regulatory framework.<sup>20</sup> Among the most frequently raised CRA-related issues were (1) the assessment area definition; (2)

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<sup>17</sup> See OCC Bulletin 2021-24, Community Reinvestment Act: Implementation of the June 2020 Final Rule (May 18, 2021), available at <https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-24.html>.

<sup>18</sup> *Id.*

<sup>19</sup> Pub. L. 104-208, 110 Stat. 3001 (1996) (codified at 12 U.S.C. 3311).

<sup>20</sup> See Federal Financial Institutions Examination Council, Joint Report to Congress. Economic Growth and Regulatory Paperwork Reduction Act, pp. 41–48 (March 3, 2017), available at [https://www.ffiec.gov/pdf/2017\\_FFIEC\\_EGRPRA\\_Joint-Report\\_to\\_Congress.pdf](https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf).

incentives for banks to serve LMI, unbanked, underbanked, and rural communities; (3) regulatory burdens associated with the recordkeeping and reporting requirements and the asset thresholds for the various CRA examination methods; (4) the need for clarity regarding performance measures and better examiner training to ensure consistency and rigor in CRA examinations; and (5) the refinement of the CRA ratings methodology.

On April 3, 2018, the U.S. Department of the Treasury released a report on the implementation of the CRA, which included recommendations for modernizing the CRA rules based on stakeholder input.<sup>21</sup> Starting in 2018, the Agencies also engaged with stakeholders, including civil rights organizations, community groups, members of Congress, academics, and IDIs, to obtain their perspectives and feedback on the CRA and potential improvements to the CRA regulatory framework. Throughout all phases of the OCC's recent CRA modernization efforts, including prior to the issuance and during the implementation of the June 2020 Rule, many stakeholders objected to the OCC independently issuing a CRA rule and stressed the importance of the Agencies working together to issue consistent CRA rules.

*A. Board ANPR*

Separately from the OCC, the Board has explored ways to modernize the CRA regulatory framework to address changes in the banking industry, including the increased use of technology to deliver banking services. Specifically, the Board conducted

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<sup>21</sup> See Memorandum from the U.S. Department of the Treasury to the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, Community Reinvestment Act— Findings and Recommendations (April 3, 2018), available at <https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf>.

stakeholder outreach through a series of roundtable discussions<sup>22</sup> and published a CRA ANPR on October 19, 2021 (Board ANPR),<sup>23</sup> that invited public comment on an approach to modernize its CRA rule. The Board ANPR described its objectives as including:

- Increasing the clarity, consistency, and transparency regarding where, how, and what activities receive CRA consideration, while minimizing data burden;
- Tailoring CRA supervision to reflect differences in bank sizes and business models, local market needs and opportunities, and expectations across business cycles;
- Updating performance standards to address changes in the banking industry, particularly the increased use of mobile and internet delivery channels;
- Promoting community engagement;
- Strengthening the special treatment of minority depository institutions; and
- Recognizing that CRA and fair lending responsibilities are mutually reinforcing.

The Board ANPR invited public comment on different policy options to address its objectives. For example, the Board invited comment on how to delineate assessment areas around physical locations. It also sought public comment on deposit-based and lending-based assessment areas for IDIs that conduct a significant amount of lending and deposit collection outside assessment areas around physical locations. In addition, the Board ANPR invited comment on nationwide assessment areas for internet banks.

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<sup>22</sup> See, e.g., Perspectives from Main Street: Stakeholder Feedback on Modernizing the Community Reinvestment Act (June 2019) available at <https://www.federalreserve.gov/publications/files/stakeholder-feedback-on-modernizing-the-community-reinvestment-act-201906.pdf>.

<sup>23</sup> 85 FR 66410.

The Board ANPR suggested a framework for evaluating CRA performance based on a retail test (comprised of retail lending and retail services subtests) and a community development (CD) test (comprised of CD financing and CD services subtests) that would be applicable to Board-regulated IDIs, depending on their size or business model. In addition, the Board ANPR sought feedback on an evaluation framework based on IDI-asset-size thresholds of \$750 million or \$1 billion. Under this framework, smaller IDIs would be subject to a retail lending test but would have the option to be evaluated based on their retail services and CD activities, while larger IDIs would be evaluated under all four subtests. The suggested framework would base CRA examinations for wholesale and limited purpose IDIs on the CD test. The Board ANPR generally suggested a metric-based approach for the retail lending and CD financing subtests and a qualitative approach to evaluating retail and CD services under their respective subtests. In addition, the Board ANPR suggested a strategic plan option that would provide more clarity and flexibility for establishing bank specific standards to assess activities.

The Board ANPR also discussed ways to update the State, multistate metropolitan statistical area (MSA), and institution ratings by basing these ratings on local assessment area performance. The Board ANPR suggested that the Board could consider certain activities outside of IDIs' assessment areas at the institution level to achieve an "outstanding" rating. The Board also indicated it could revise how it would consider discriminatory or other illegal credit practices (DOICP) to both align that consideration with the Uniform Interagency Consumer Compliance Rating System and include

consideration of the Military Lending Act (MLA),<sup>24</sup> the Servicemembers Civil Relief Act (SCRA),<sup>25</sup> and the Prohibition Against Unfair, Deceptive, or Abusive Acts or Practices.<sup>26</sup>

The Board further sought feedback on potential revisions to CRA data collection and reporting requirements. The Board ANPR acknowledged that an increased use of metrics would result in an increased need for data collection and reporting and noted that the Board prioritized using both existing data where possible and exempting small IDIs from new data collection requirements.

*B. OCC December 2020 NPR*

The OCC's June 2020 Rule included new performance standards meant to provide large banks with incentives to achieve specific performance goals and to make CRA evaluations more consistent, reproducible, and comparable over time. These performance standards included the CRA evaluation measure, retail lending distribution tests, and CD minimums. However, the June 2020 Rule did not include the specific benchmarks, thresholds, and minimum values proposed in the January 2020 NPR because the OCC believed that it was appropriate to gather more information to further calibrate these measures. To do so, the OCC undertook an Information Collection<sup>27</sup> and issued the

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<sup>24</sup> 10 U.S.C. 987 *et seq.*

<sup>25</sup> 50 U.S.C. 3901 *et seq.*

<sup>26</sup> 12 U.S.C. 5531.

<sup>27</sup> *See supra* note 16.

December 2020 NPR, in which it proposed processes to calibrate the benchmark, threshold, and minimum values more precisely.

The OCC received 13 comments on the December 2020 NPR.<sup>28</sup> Although one commenter generally supported the December 2020 NPR's approach to setting the benchmarks, thresholds, and minimums, most commenters expressed concerns with the proposal. These concerns included that the proposed approach would (1) lead to inflated ratings; (2) set arbitrary limits on ratings; (3) not account for local market conditions, which could penalize banks that operate in high-cost markets; (4) not adequately consider the innovative, rapid, and flexible funding solutions offered by internet-based banks with national footprints; and (5) be speculative and complicated.

One commenter stated that there should be hundreds of ratios as opposed to the proposed 26 calibrated values. Another commenter favored an approach where the OCC would take into consideration surpassing a threshold, but it would not initially grant a presumption of a specific rating. The commenter asserted that this would be a more incremental change from the evaluation approach codified in the 1995 Rules and could be used until more data was available for a presumption-based approach. Other commenters stated that a one-size-fits-all model would not work, with one commenter suggesting that the OCC should tie benchmarks to historical, local bank performance data, and community demographics, rather than set them at a nationwide level.<sup>29</sup>

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<sup>28</sup> The OCC received eight comments from the banking industry or industry trade associations, two comment from community groups, two comments from the general public, and one comment from a state government.

<sup>29</sup> Stakeholders also offered comments on other aspects of the December 2020 NPR, including the OCC's proposed approach for addressing declines in CRA performance and the proposed technical changes. Comments on the approach for

Commenters also generally expressed concern with the Information Collection, stating that (1) it would result in substantial burden and costs for the banks responding to the survey; (2) the data requested were not routinely available or did not exist; and (3) the collection would likely yield inaccurate results. Due to these concerns, several commenters requested that the OCC pause or rescind the Information Collection.

Given the specific concerns with the December 2020 NPR and the related Information Collection, the majority of commenters reiterated the request that the Agencies work together to create a consistent CRA framework. After considering these comments, the OCC announced that it would not finalize the December 2020 NPR and would discontinue the Information Collection.<sup>30</sup> In addition, as noted, the OCC later announced that it would work with the Board and FDIC on joint rules to modernize the CRA.<sup>31</sup>

### *C. June 2020 Rule Implementation*

Following publication of the June 2020 Rule, the OCC began its implementation by developing transition policies and procedures to address the phased compliance dates provided in the rule. In addition, the OCC (1) issued guidance on implementation of key provisions of the June 2020 Rule; (2) provided training and outreach for examiners, community groups, and the banking industry; and (3) instituted the CRA illustrative list and Qualifying Activities Confirmation Request Form.

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addressing declines in CRA performance questioned how the OCC would measure declines in activities and whether the proposed ten percent decline was appropriate. Comments regarding the technical changes generally sought additional clarifications.

<sup>30</sup> See *supra* note 17.

<sup>31</sup> See *supra* note 7.

To implement the June 2020 Rule between the October 1, 2020, effective date and the January 1, 2023, or January 1, 2024, compliance dates, the OCC leveraged the flexibility provided by the June 2020 Rule’s transition provision.<sup>32</sup> It is the OCC’s intention that the June 2020 Rule and associated guidance would continue to apply until such time as the OCC modifies the rule. A summary of the guidance issued related to the transition provision in the June 2020 Rule includes the following:

- *Definitions.*<sup>33</sup>
  - *Compensation* – The OCC issued guidance on the calculation of the median hourly compensation value for the banking industry for use in quantifying CD services. Effective October 1, 2020, through December 31, 2021, the median hourly compensation value is \$39.03.<sup>34</sup>
  - *Partially* – The OCC advised that OCC-regulated banks may receive consideration in CRA evaluations that begin on or after October 1, 2020, for the full or partial value of qualifying CD activities, as applicable, based on the qualifying activities criteria set forth in the June 2020 Rule (*e.g.*, affordable housing for LMI individuals, community support services for LMI individuals, financial education, essential community facilities, and economic development) if those activities are conducted on or after October 1, 2020. For activities conducted before October 1, 2020, the

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<sup>32</sup> 12 CFR 25.01(c)(5).

<sup>33</sup> 12 CFR 25.03.

<sup>34</sup> OCC Bulletin 2021-5, Community Reinvestment Act: Bank Type Determinations, Distressed and Underserved Areas, and Banking Industry Compensation Provisions of the June 2020 CRA (January 29, 2021) available at <https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-5.html>.

OCC explained that the 1995 Rules and Interagency Questions and Answers Regarding Community Reinvestment (Q&As)<sup>35</sup> will continue to apply and provide partial credit for the portion of mixed-income housing that provides affordable housing to LMI individuals.<sup>36</sup>

- *Retail lending activities and related definitions (i.e., home mortgage loans, consumer loans, small loans to businesses, small loans to farms, CRA-eligible businesses, and CRA-eligible farms)* – In order to provide OCC-regulated banks with sufficient time to update systems for data collection, recordkeeping, and reporting, the OCC advised that examiners will conduct CRA examinations of performance under the applicable retail lending test criteria using the 1995 Rules’ definitions of home mortgage loan, small business loan, small farm loan, and consumer loan and the business and farm gross annual revenue threshold of \$1 million or less during the transition period. However, the OCC also provided that, at an OCC-regulated bank’s option, the OCC also will consider retail loans, as defined in the June 2020 Rule, as “other loan data,” or “other lending-related activities,” as applicable, if those loans are not otherwise considered under the 1995 Rules’ applicable lending test.<sup>37</sup>
- *Distressed areas and underserved areas* – The June 2020 Rule expanded the definition of what were termed “distressed or underserved

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<sup>35</sup> See Q&A § \_\_\_\_.12(h)—8, 81 FR 48506 (July 25, 2016).

<sup>36</sup> OCC Bulletin 2020-99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020), available at <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-99.html>.

<sup>37</sup> *Id.*

nonmetropolitan middle-income geographies” under the 1995 Rules to include census tracts that met those definitions in MSAs and added to the definition of underserved area census tracts that did not have a branch within specified distances. On January 29, 2021 the OCC published a list of census tracts that meet the revised definitions.<sup>38</sup>

- *Small banks and intermediate banks* – The OCC applied the asset-size thresholds in the June 2020 Rule’s small bank and intermediate bank definitions to determine bank type in December 2020 and communicated the revised bank types for OCC-regulated banks on January 29, 2021.<sup>39</sup> OCC-regulated banks that transitioned from large banks under the 1995 Rules to intermediate banks under the June 2020 Rule are not required to collect data required under the 1995 Rules for calendar years 2021 forward or report data for calendar years 2022 forward.<sup>40</sup>
- *CD loans, CD investments, and CD services.*<sup>41</sup> The OCC advised that during the June 2020 Rule transition period, examiners will consider all CD activities under the June 2020 Rule that are conducted by OCC-regulated banks on or after October 1, 2020. Further, during the transition period, examiners also will consider all CD activities defined in 12 CFR 25.12(g) of the 1995 Rules<sup>42</sup> that are

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<sup>38</sup> OCC Bulletin 2021-5, Community Reinvestment Act: Bank Type Determinations, Distressed and Underserved Areas, and Banking Industry Compensation Provisions of the June 2020 CRA (January 29, 2021).

<sup>39</sup> *Id.*

<sup>40</sup> OCC Bulletin 2020-99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

<sup>41</sup> 12 CFR 25.04(c).

<sup>42</sup> See 12 CFR part 25, Appendix C.

- conducted by OCC-regulated banks during the transition period to the extent there are gaps between the 1995 Rules' CD activities and the qualifying activities criteria in the June 2020 Rule in evaluating performance under the applicable lending, investment, service, or CD test.<sup>43</sup>
- *Qualifying activities confirmation and illustrative list.*<sup>44</sup> As of October 1, 2020, banks and interested parties may elect to submit confirmation requests using the CRA Qualifying Activities Confirmation Request Form to determine whether an activity is consistent with the qualifying activities criteria in the June 2020 Rule.<sup>45</sup> The OCC also published the illustrative list on [www.OCC.gov](http://www.OCC.gov) to provide examples of activities that meet the qualifying activities criteria in the June 2020 Rule.<sup>46</sup>
  - *Small and intermediate bank performance standards*<sup>47</sup> and *wholesale and limited purpose bank performance standards.*<sup>48</sup> The OCC explained that under the June 2020 Rule, the performance standards for small and intermediate banks and wholesale and limited purpose banks would apply beginning on October 1, 2020. The OCC further explained that examiners would apply the Q&As and 1995 Rules' examination procedures, as supplemented by the transition guidance issued

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<sup>43</sup> OCC Bulletin 2020-99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

<sup>44</sup> 12 CFR 25.05.

<sup>45</sup> CRA Qualifying Activities Confirmation Request Guidance and Form is available at <https://www.occ.gov/topics/consumers-and-communities/cra/qualifying-activity-confirmation-request/index-cra-qualifying-activities-confirmation-request.html>.

<sup>46</sup> The CRA Illustrative List of Qualifying Activities is available at <https://www.occ.gov/topics/consumers-and-communities/cra/cra-illustrative-list-of-qualifying-activities.pdf>.

<sup>47</sup> 12 CFR 25.14.

<sup>48</sup> 12 CFR 25.15.

by the OCC, to evaluate CRA activities conducted between October 1, 2020, and the effective date of new guidance or examination procedures applicable to the particular activities.<sup>49</sup> The OCC has not issued new guidance replacing the Q&As or examination procedures applicable to the June 2020 Rule.

- *Consideration of performance context.*<sup>50</sup> With regard to performance context (*i.e.*, information about a bank, its community, and its competitors), the OCC stated that it would continue to develop and consider a bank's performance context according to the 1995 Rules' performance context procedures during CRA evaluations until the OCC develops and implements a system for electronic bank submission of performance context under the June 2020 Rule.<sup>51</sup> The OCC has not implemented an electronic system and is still considering performance context as provided in the 1995 Rules.
- *DOICP.*<sup>52</sup> The June 2020 Rule added violations of SCRA and the MLA to the list of enumerated credit-related violations considered when assessing a bank's CRA performance. The addition of these violations codified existing policy under the 1995 Rules, and, therefore, did not substantively alter requirements for OCC-regulated bank CRA examinations.<sup>53</sup>

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<sup>49</sup> OCC Bulletin 2020-99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

<sup>50</sup> 12 CFR 25.16.

<sup>51</sup> OCC Bulletin 2020-99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

<sup>52</sup> 12 CFR 25.17.

<sup>53</sup> SM 2019-03, Supervisory Policies and Processes for Community Reinvestment Act Performance Evaluations (April 12, 2019), available at <https://el.occ/news-issuances/memorandums/sm-2019-3.pdf>.

- *Strategic plans.*<sup>54</sup> As of October 1, 2020, OCC-regulated banks operating under a strategic plan and those that submitted new strategic plans for approval could create one or more target market assessment areas, as permitted in 12 CFR 25.18(g)(2) of the June 2020 Rule, in addition to the bank’s assessment areas delineated under 12 CFR 25.41 of the 1995 Rules.<sup>55</sup>
- *Activity location.*<sup>56</sup> The June 2020 Rule provided for the allocation of the dollar value of qualifying activities across multiple assessment areas in 12 CFR 25.24(b)(2). This provision of the June 2020 Rule took effect October 1, 2020.<sup>57</sup>
- *Content and availability of the public file.*<sup>58</sup> As of October 1, 2020, the OCC required OCC-regulated banks to make the public file information required by the June 2020 Rule available to the public in a paper or electronic form. The OCC advised that OCC-regulated banks could comply with this requirement by making the public file available solely on their websites.<sup>59</sup>
- *Public notice by banks.*<sup>60</sup> The OCC required OCC-regulated banks to comply with the June 2020 Rule’s public notice requirements by March 1, 2021. To comply with the public notice requirements, OCC guidance permitted these banks to display the notice in their main office and branch office locations in either

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<sup>54</sup> 12 CFR 25.18.

<sup>55</sup> OCC Bulletin 2020-99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

<sup>56</sup> 12 CFR 25.24.

<sup>57</sup> OCC Bulletin 2020-99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

<sup>58</sup> 12 CFR 25.28.

<sup>59</sup> OCC Bulletin 2020-99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

<sup>60</sup> 12 CFR 25.30.

paper or an electronic format, such as a digital display. In addition to the requirement for display of the public notice in one of these formats, OCC guidance also permitted these banks to post the notice on their websites.<sup>61</sup>

As noted, it is the intention of the OCC that the June 2020 Rule and related guidance will remain in effect until such time as the OCC issues replacement rules associated with this proposal.

In addition to providing guidance on the above provisions that took effect October 1, 2020, the OCC also provided guidance on other issues, including the circumstances under which OCC-regulated banks would receive credit for activities outside of their assessment areas, the definition of disaster area (a term the June 2020 Rule did not define), and consideration of affiliate activities through April 1, 2022.

In considering these and other issues, the OCC identified areas where the June 2020 Rule would benefit from clarification and revision, some of which the December 2020 NPR addressed.

While the OCC's June 2020 CRA Rule was an important step in modernizing the CRA regulatory framework, its implementation revealed to the OCC some of the rule's complexities and demonstrated where there were opportunities for improvement. In particular, the partial implementation of the June 2020 Rule and the responses to the December 2020 NPR made clear the extent of the burden and complexities associated with the data collection and reporting integral to the June 2020 Rule. Moreover, the disproportionate effect of the COVID-19 pandemic on minorities and rural and LMI

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<sup>61</sup> OCC Bulletin 2020-99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

communities provided further evidence of the need to revisit the June 2020 Rule with the goal of better addressing the financial services needs of vulnerable communities coming out of the pandemic.

In addition, through comment letters, stakeholders have identified specific opportunities for improvement of the June 2020 Rule in areas where the rule was not as clear and transparent as intended. For example, stakeholders have stated that the change in the treatment of affiliate activities was not clear because those activities are not mentioned explicitly in the rule. Rather, stakeholders stated that the lack of consideration for affiliate activities under the June 2020 Rule is inferred from the definition of “activity,” which is “a loan, investment, or service by a bank.”<sup>62</sup> Stakeholders also said that the rule is not clear on how the OCC would treat qualifying activities outside of banks’ assessment areas or the broader statewide or regional areas that includes a bank’s assessment areas for banks that are not evaluated under the general performance standards. A third example of where the June 2020 Rule could benefit from additional clarity involves the “CRA desert” definition, which as defined in the June 2020 Rule could encompass the vast majority of geographic areas in the country and may be too general to ensure consistent application.

Stakeholder feedback on the lack of clarity with certain aspects of the June 2020 Rule and the OCC’s experience with its partial implementation highlight that opportunities exist for improvements to a modernized CRA regulatory framework. Such improvements could be achieved through a joint rulemaking that leverages these lessons

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<sup>62</sup> 12 CFR 25.03.

learned as well as the other feedback the Agencies have received since issuance of the June 2020 Rule.

The OCC has reviewed the June 2020 Rule with these considerations in mind. Based on this review, the OCC proposes to rescind the June 2020 Rule and replace it with rules based on the 1995 Rules (subject to a minor change explained below), while simultaneously working with the Board and FDIC on a joint proposal to modernize the CRA rules.<sup>63</sup> Both of these actions are discussed in more detail below.

### **III. June 2020 Rule Proposed Rescission and Replacement**

The OCC's initial reconsideration of the June 2020 Rule focused on (1) creating consistency and transparency in the rules applicable to IDIs; (2) limiting burden on banks, their communities, and examiners; and (3) ensuring that the OCC continues to advance the purpose of the CRA—to encourage banks to help meet the credit needs of their entire communities, including LMI neighborhoods, consistent with safe and sound operations. The OCC considered different options for a revised regulatory framework, including proposing a revised rule that retained aspects of the June 2020 Rule that stakeholders generally supported. The OCC determined, however, that proposing yet another regulatory framework would impose undue burden on banks, their communities, and examiners who would need to learn and implement a new framework that was neither the June 2020 Rule, the 1995 Rules, nor the prospective interagency CRA rules. Further, proposing a new rule that retained aspects of the June 2020 Rule would fail to harmonize the OCC's rule with those of the Board and FDIC, potentially complicating an interagency rulemaking process by introducing unique OCC considerations regarding

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<sup>63</sup> See *supra* note 7.

necessary changes to the regulatory framework and implementation of and transition to any prospective interagency final rules.

In contrast, rescinding and replacing the June 2020 Rule with rules based on the 1995 Rules would provide consistency throughout the banking industry with respect to the rules that apply by statute to all IDIs. A consistent regulatory framework would facilitate an interagency rulemaking process because it would allow all the Agencies to propose common solutions for the same issues. Further, replacing the June 2020 Rule with a regulatory framework that is familiar to all stakeholders would limit the burden associated with adapting to new rules. The partial implementation of the June 2020 Rule further limits the burden on stakeholders because much of the 1995 regulatory framework remains in effect. Specifically, for most banks, reverting to rules based on the 1995 Rules would result in little change to how their CRA performance is evaluated, whereas retaining the June 2020 Rule or some other regulatory framework would require continued implementation actions on the part of banks and the OCC. Finally, reverting to rules based on the 1995 Rules would enable the OCC to continue to meet the requirements of the CRA by ensuring that examiners are evaluating banks' CRA performance based on a proven framework that is focused on ensuring that banks meet the needs of LMI communities.

*A. Proposed 12 CFR Part 25*

The proposal would replace the June 2020 Rule with a revised 12 CFR part 25 based on the 1995 Rules. Under the proposal, 12 CFR part 25 would be applicable to national banks. The proposed 12 CFR part 25 would be substantively identical to the 1995 Rules. Consequently, all definitions, performance tests and standards, and related

data collection, recordkeeping, and reporting requirements would revert to those in place prior to the issuance of the June 2020 Rule. Further, the 1995 Rules' public file and public notice requirements would replace the existing requirements. Proposed Subpart E would correct the 1995 Rules' cross-referenced regulatory citation in 12 CFR 25.62(a)(2) to the definition of "foreign bank," which would read "12 CFR 28.11(i)."

*B. Proposed 12 CFR Part 195*

The proposal would reinstate 12 CFR part 195 for savings associations.<sup>64</sup> Under the proposal, the reinstated 12 CFR part 195 would apply to both Federal savings associations regulated by the OCC and State savings associations regulated by the FDIC. Reinstating part 195 would enable the OCC to consult with the FDIC on the integration of the CRA rules applicable to national banks and savings associations as part of the interagency rulemaking process to ensure that the interests of both regulatory agencies and their regulated entities are considered. As with the proposed revised 12 CFR part 25, the proposed 12 CFR part 195 would be substantively identical to the 1995 Rules.

In the alternative, the OCC is considering integrating parts 25 and 195 into a single rule in part 25 applicable to both national banks and savings associations. An integrated part 25 rule applicable to both national banks and savings associations would be substantively the same as the separate rules. In an integrated rule in part 25, proposed Subpart E (Prohibition Against Use of Interstate Branches Primarily for Deposit Production) would apply only to national banks. The OCC requests specific comment on whether:

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<sup>64</sup> The OCC has CRA rulewriting authority for both Federal and State savings associations, in addition to national banks. *See* 12 U.S.C. 2905.

*The OCC should reinstate separate rules for national banks and savings associations or integrate the rules so that part 25 is applicable to both national banks and savings associations.*

*C. Summary of Proposed Rules*

As with the 1995 Rules, the proposed rules would provide for different evaluation methods to respond to basic differences in banks' structures and operations. The proposed rules would provide (1) a streamlined assessment method for small banks that emphasizes lending performance; (2) an assessment method for intermediate small banks (ISB) that considers lending and CD activities; (3) an assessment method for large, retail banks that focuses on lending, investment, and service performance; and (4) an assessment method for wholesale and limited-purpose banks based on CD activities. Further, the proposed rules also would give any bank, regardless of size or business strategy, the choice to be evaluated under a strategic plan.

Under the proposed performance tests and standards, an examiner would consider a bank's performance context in assessing its CRA performance. Specifically, an examiner would review demographic and economic data about the bank's assessment area(s) and information about local economic conditions, the institution's major business products and strategies, and its financial condition, capacity, and ability to lend or invest in its community. The examiner also would review information a bank chooses to provide about lending, investment, and service opportunities in its assessment areas.

Banks would identify one or more assessment areas within which examiners would evaluate CRA performance. In most cases, a bank would delineate a town, municipality, county, some other political subdivision, or an MSA where its main office,

branches, and deposit-taking ATMs are located and a substantial portion of its loans are made as an assessment area. If a bank chooses, however, its assessment areas would not need to coincide with the boundaries of one or more political subdivisions (*e.g.*, counties, cities, and towns or MSAs), so long as the adjustments to those boundaries reflect the areas that the bank reasonably could serve, meet regulatory requirements, and do not arbitrarily exclude LMI census tracts.

Large banks, and in some circumstances, other banks, would need to collect, maintain, and report certain data related to the proposed performance tests and standards. The OCC would make bank CRA data available through individual and aggregate disclosure statements. Banks also would make CRA-related information available in their public files and inform the public through a CRA notice in specified locations.

For a more detailed description of the 1995 Rules, please see the **Supplemental Information** section of the *Federal Register* document at: 60 FR 22156 (May 4, 1995).<sup>65</sup> The following is a summary of key provisions of the proposed rules.

- *Performance tests and standards.*<sup>66</sup>
  - The proposed rules' small bank (*i.e.*, banks with less than \$330 million in assets) performance standards would establish a retail lending test for

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<sup>65</sup> The proposed rules also include the 2005 substantive revisions to the 1995 regulatory framework (*e.g.*, the small bank and ISB asset-size thresholds and associated changes and the inclusion of activities to revitalize and stabilize distressed or underserved rural areas and designated in the CD definition) as well as other revisions made to the 1995 Rules since they were adopted by the Agencies. *See* 70 FR 44256 (Aug. 2, 2005).

<sup>66</sup> The applicable proposed performance tests and standards would be based on the asset size of a bank. The asset-size thresholds for determining whether a bank is a large bank, ISB, or small bank would be adjusted annually based on the Consumer Price Index and be aligned with the current asset size thresholds in the Board and FDIC rules. *See* 12 CFR parts 228 and 345.

assessing CRA performance. The proposed small bank lending test may also consider CD loans. Qualified investments and CD services could be considered at the bank's option for an "outstanding" rating, but only if the bank meets or exceeds the lending test criteria in the small bank performance standards.

- The proposed rules' ISB (*i.e.*, banks with asset sizes of at least \$330 million and less than \$1.322 billion) performance standards would assess CRA performance under the small bank retail lending test and a CD test. The ISB CD test would evaluate all CD activities together.
- The proposed rules would establish lending, investment, and service tests applicable to large banks (*i.e.*, banks with \$1.322 billion or more in assets). The large bank lending and service tests would consider both retail and CD activity, while the investment test would focus on qualified investments as defined in the proposed rules.
- The proposed rules would evaluate wholesale and limited purpose banks under a CD test that considers activities in a bank's broader statewide or regional area as activities that benefit the bank's assessment area. Activities outside of the broader statewide or regional area also would be considered if the bank has been responsive to needs in its assessment area.
- All banks could elect to be evaluated under a strategic plan that sets out measurable goals for lending, investment, and services, as applicable, to achieve a "satisfactory" or "outstanding" rating. The bank would develop

a strategic plan with community input and the plan would be approved by the bank's primary regulator.

- *DOICP*. Under the proposal MLA and SCRA violations would not be included in the proposed rules' enumerated list of violations considered in evaluating banks' CRA performance. Nonetheless, examiners would continue to consider these violations in banks' CRA performance evaluations based on guidance that predated the June 2020 Rule.<sup>67</sup>
- *Retail and CD Activities*. Examiners would evaluate banks' CRA performance based on retail lending (*i.e.*, home mortgage loans, small business loans, small farm loans, and consumer loans, as applicable) and CD loans, qualified investments, and CD services as defined in the proposed rules and considered in the applicable performance tests and standards.
- *Assessment Areas*.
  - Banks would delineate assessment areas that generally
    - Include the geographies (*i.e.*, census tracts) where a bank has its main office, branches, and deposit-taking automated teller machines as well as the surrounding geographies where the bank has originated or purchased a substantial portion of its loans; and
    - Consist of one or more MSAs, metropolitan divisions, or political subdivisions with banks permitted to adjust the boundaries of their assessment areas to include only the portion of the political subdivision that banks can reasonably be expected to serve; and

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<sup>67</sup> See *supra* note 53.

- Assessment areas would be required to
  - Consist of whole geographies,
  - Not reflect illegal discrimination,
  - Not arbitrarily exclude LMI geographies, and
  - Not extend substantially beyond an MSA or State boundary unless the bank’s assessment area is in a multistate MSA.
- *Data collection, recordkeeping, and reporting.*
  - Banks other than small banks would collect, maintain, and report certain data related to small business loans, small farm loans, CD loans, and assessment areas. Banks subject to the Home Mortgage Disclosure Act (HMDA) reporting requirements<sup>68</sup> also would report home mortgage lending outside of the MSAs where the bank has a home or branch office. The proposed rules also would include certain optional data collection and reporting.
  - The proposal would reinstate additional public file and public notice requirements eliminated under the June 2020 Rule regarding the content of the public file and the location of the public file and public notices.
- *Ratings.* Examiners would determine ratings as provided in proposed Appendix A.

#### **IV. Transition Considerations**

As discussed above, the June 2020 Rule included a transition provision, effective October 1, 2020, to provide for an orderly move to the new regulatory framework. As a

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<sup>68</sup> 12 CFR part 1003.

result, many aspects of the 1995 Rules remain in effect, limiting the potential disruption associated with the proposed reversion to CRA rules based on the 1995 Rules. Therefore, the OCC is considering an effective date of January 1, 2022, for any final rules, provided they are published by December 1, 2021. A January 1, 2022, effective date would provide all stakeholders with certainty regarding the applicable rules and would eliminate the need for banks to continue to expend resources developing new systems necessary for compliance with the June 2020 Rule.

The OCC recognizes that banks have relied in part on the June 2020 Rule in planning for their ongoing compliance with the CRA. Following publication of any final rules pertaining to this proposal, banks would have a minimum of 30 days, as required by the Administrative Procedures Act,<sup>69</sup> before they would be required to comply with most of the provisions described in the proposed rules. However, given the partial implementation of the June 2020 Rule, its replacement would result in certain changes to the regulatory framework that impact, among other things, how banks would be evaluated and what activities would receive consideration in CRA examinations. The OCC proposes to address such considerations, as discussed below.<sup>70</sup> While the proposal does not include particular transition provisions in the proposed rule text, the OCC invites comment on whether, for purposes of any final rules the OCC should amend the proposed rule text to address any or all of the following transition issues.

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<sup>69</sup> Pub. L. 79-404, 60 Stat. 237 (1946), *codified at* 5 U.S.C. 500 *et seq.*

<sup>70</sup> Information related to the June 2020 Rule implementation is discussed in Section II.C.

### *A. Bank Type Changes*

The June 2020 Rule resulted in a change in bank type for some banks due to changes in the bank asset-size thresholds. For example, certain ISBs became small banks (*i.e.*, banks with assets between \$326 million and \$600 million) and certain large banks became intermediate banks (*i.e.*, banks with assets between \$1.305 billion and \$2.5 billion). These banks are subject to different performance standards for activities conducted on or after October 1, 2020, than they were prior to that date. In addition, OCC-regulated large banks under the 1995 Rules that became intermediate banks under the June 2020 Rule were no longer required to collect data for calendar years 2021 forward and report data for calendar years 2022 forward.

Under the proposed rules, many of these banks would transition back to their prior bank type based on the proposed asset-size thresholds (*i.e.*, small banks would be banks with less than \$330 million in assets, ISBs would be banks with at least \$330 million but less than \$1.322 billion, and large banks would be banks with assets of \$1.322 billion or more, as adjusted). As a result, reinstated data collection and reporting requirements would apply to banks redesignated as large banks under the proposed rules.

The OCC proposes to treat banks that would transition from ISBs to large banks under the proposed rules consistent with how the OCC has historically treated these banks. Under the 1995 Rules, the OCC would have required banks that transitioned from ISBs to large banks to begin collecting loan data as provided in proposed 12 CFR 25.42 one year after the bank type changed. Therefore, if the proposed rules take effect on January 1, 2022, the OCC would require newly classified large banks to begin collecting data on January 1, 2023, and reporting required and optional data the following year.

For banks that would transition from small bank to ISBs under the proposed rules, the OCC would not provide additional time to transition to the ISB performance standards; however, the OCC would consider the change in bank type as part of the bank's performance context when evaluating the bank's CRA performance. Additionally, the OCC intends to continue to issue bulletins to inform the public of the annual bank asset-size threshold adjustments based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).<sup>71</sup> The OCC requests specific comment on whether:

*The OCC should apply its historical policy for newly designated large banks' data collection, recordkeeping, and reporting requirements, with the result that certain large banks under the final rules would not collect data until January 2023 and would not report it until January 2024. In the alternative, should banks that were formerly large banks under the 1995 Rules and that return to large bank status as proposed begin data collection in 2022? Are there alternative transition policies related to data collection, recordkeeping, and reporting requirements that the OCC should consider?*

*The OCC's plan to consider changes from small bank to ISB bank type as part of performance context is a reasonable means of addressing the transition from the June 2020 Rule to the proposed rules' bank asset-size thresholds.*

*B. Qualifying Activities*

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<sup>71</sup> See OCC Bulletin 2021-5, Community Reinvestment Act: Bank Type Determinations, Distressed and Underserved Areas, and Banking Industry Compensation Provisions of the June 2020 CRA (January 29, 2021).

As of the effective date of the final rules, the OCC would rescind the qualifying activities criteria in the June 2020 Rule and replace it with the 1995 Rules' home mortgage loan, small business loan, small farm loan, consumer loan, and CD definitions. Also, as of the effective date of any final rules, the definitions related to the qualifying activities criteria in the June 2020 Rule, including the compensation, distressed area, underserved area, CRA-eligible business, CRA-eligible farm, small loans to businesses, small loans to farms, partially, and primarily definitions would revert to the applicable definitions under the 1995 Rules or be eliminated.

The OCC proposes to address these changes by explaining that OCC-regulated banks would receive consideration in their CRA examinations for activities that met the qualifying activities criteria or definitions that were in effect at the time that the bank conducted those activities. Consistent with the OCC's historical practice, the OCC also would apply this policy to legally binding commitments to lend or invest. For banks or interested parties that received confirmation letters for qualifying activities under the June 2020 Rule, those letters would be applicable while the June 2020 Rule was in effect but would not apply to activities conducted after any final rules' effective date. The OCC believes this policy is reasonable because it honors the qualified status of activities when conducted by the bank. The OCC requests specific comment on whether:

*The proposal to consider activities based on whether they qualified at the time the activities were conducted is a reasonable approach to addressing the changes to the type of activities that will receive consideration in CRA examinations.*

### *C. Affiliates*

As explained in a January 2021 interpretive letter, under the June 2020 Rule, generally, a bank would not receive CRA consideration for affiliate activities, including activities conducted by the nonbank parent and sister companies of the bank, unless the bank could demonstrate that it provided financing for or otherwise supported the qualifying activities of these affiliates.<sup>72</sup> This policy represented a significant change from how the OCC considered affiliate activities under the 1995 Rules, and, as such, the OCC used the flexibility provided by the transition provision to delay compliance with this aspect of the June 2020 Rule until April 1, 2022.<sup>73</sup>

The proposal would consider affiliate activities consistent with their treatment under the 1995 Rules and the guidance in the Q&As, which permit banks to elect to include affiliate activities in their CRA evaluations, subject to certain limitations. Consequently, the OCC would rescind the January 2021 interpretive letter regarding affiliate activities as of the effective date of any final rules.

### *D. Outside Assessment Area Activities*

Under the 1995 Rules, the agencies provided consideration for activities conducted outside banks' assessment areas in limited circumstances. Specifically, under the 1995 Rules, the performance tests and standards generally provided that the Agencies

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<sup>72</sup> OCC Senior Deputy Comptroller and Chief Counsel's Interpretation: Community Reinvestment Act Qualifying (CRA) Activities Conducted by a National Bank's or Savings Association's Subsidiaries and Affiliates, Including Nonbank Parent and Sister Companies of a National Bank or Savings Association Under Certain Circumstances, Can Receive CRA Credit Under the June 2020 CRA Final Rule (January 4, 2021), available at <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/interpretive-letter-affiliates.pdf>.

<sup>73</sup> OCC Bulletin 2020-99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

would evaluate an IDI's CRA performance in its assessment areas.<sup>74</sup> In addition, the 1995 Rules provided that the Agencies may consider CD activities that benefit the broader statewide or regional areas that include an IDI's assessment areas.<sup>75</sup> With respect to wholesale and limited purpose institutions, the 1995 Rules provided that the Agencies may consider CD activities nationwide if the IDI had adequately addressed the needs of its assessment areas.<sup>76</sup> The Q&As clarified the circumstances in which the Agencies would provide consideration for activities in the broader statewide or regional area but generally did not provide consideration for activities nationwide.<sup>77</sup>

In contrast, the June 2020 Rule provided nationwide consideration of qualifying activities for banks evaluated under the general performance standards. To provide consistency across bank type during the transition period, the OCC also explained in guidance that any OCC-regulated bank may receive consideration for qualifying activities outside of its assessment areas that do not directly or indirectly serve its assessment areas provided certain conditions were met.<sup>78</sup> The OCC requests specific comment on whether:

*The OCC should continue to provide consideration for activities that do not directly or indirectly serve a bank's assessment areas or the broader statewide or regional areas that include a bank's assessment areas under the proposed rules.*

*What conditions, if any, should be met in order for the OCC to provide*

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<sup>74</sup> See 12 CFR part 25, Appendix C.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Q&A § \_\_\_\_.12(h)—6; Q&A § \_\_\_\_.12(h)—7; and Q&A § \_\_\_\_.23(a)—2.

<sup>78</sup> See OCC Bulletin 2020-99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

*consideration for activities that do not directly or indirectly serve a bank's assessment areas or the broader statewide or regional areas that include a bank's assessment areas?*

*E. CD Activity Confirmation Process and Illustrative List.*

Stakeholders generally supported the creation of the qualifying activities confirmation process and illustrative list in the June 2020 Rule. These provisions clarified the activities that would receive consideration in an OCC-regulated bank's CRA examination. Because the qualifying activity confirmation process is procedural and applies facts regarding a potential qualifying activity to qualifying activity criteria set forth in the June 2020 Rule, the OCC could have interpreted and provided guidance on which activities would receive consideration in CRA examinations without codifying the process in the June 2020 Rule.

The OCC is considering whether to implement a qualifying activities confirmation process based on the CD definition in the 1995 Rules, as interpreted through the Q&As, while the OCC is working on the interagency CRA rulemaking process. Providing for a qualifying activities confirmation process outside of the CRA rules would be the least disruptive outcome for banks and interested parties that have found the process beneficial. Moreover, maintaining a confirmation process is not inconsistent with the Board ANPR, which included a suggestion related to a qualifying activities confirmation process. The OCC also would maintain the illustrative list of qualifying activities on its website as a reference for banks to determine whether activities that they conducted while the June 2020 Rule was in effect are eligible for CRA consideration; however, activities included on the illustrative list may not receive consideration if

conducted after the effective date of the final rules. The OCC requests specific comment on whether:

*The OCC should implement a CD activity confirmation process during the period between the rescission of the June 2020 Rule and the issuance of prospective joint interagency rules.*

*F. Strategic Plans*

The June 2020 Rule revised the requirements for requesting approval of a strategic plan. Among other things, the June 2020 Rule permitted banks requesting approval for a strategic plan to include target market assessment areas. For purposes of any final rules, the OCC proposes to maintain any strategic plans approved by the OCC under the June 2020 Rule and would not require these banks to amend their strategic plans. The OCC believes that permitting strategic plan banks to maintain their target market assessment areas is not inconsistent with proposed 12 CFR 25.41 and would cause the least disruption during the transition from the OCC's June 2020 Rule to any future interagency final rules. The OCC requests specific comment on whether:

*The OCC's proposed plan to maintain strategic plans approved under the June 2020 Rule with target market assessment areas is a reasonable way of addressing this transition consideration.*

*G. June 2020 Rule Subpart E*

Subpart E of the June 2020 Rule includes the data collection, recordkeeping, and reporting provisions. Most of these provisions were subject to a January 1, 2023, or January 1, 2024, compliance date, and, therefore, do not require any transition. However, the changes to the public file requirements took effect October 1, 2020. These changes

reduced the information required in the public file and changed the requirements for how an OCC-regulated bank makes the public file available to the public, including permitting these banks to make the public file available solely on their websites. Under the proposed rules, banks would need to include additional information in their public file and make the file available at their main office, and for interstate banks, at one branch in each State and more limited information at each branch. Since the proposed rules would impose additional public file content and availability requirements, the OCC expects to provide in the final rules that banks would comply with these requirements no later than three months after the effective date of the final rules. The OCC specifically requests comment on whether:

*Three months is sufficient time for banks to make the changes necessary to comply with the public file content and availability requirements of the proposed rules.*

*The OCC should enact a transition period for the public notice requirements that took effect on October 1, 2020.*

*H. Summary Chart of Proposed Transition Considerations*

<b><u>OCC Rescind and Replace Transition Considerations</u></b>	
<b>Description of the Proposed Provision</b>	<b>Proposed Transition Plan</b>
<i>Bank Type Changes</i>	

<p>Certain small banks (<i>i.e.</i>, banks with at least \$330 million but less than \$600 million in assets).</p>	<p>These small banks would become ISBs as of the effective date of any final rules.</p> <p>The change in bank type would be considered as part of performance context when evaluating the bank’s CRA performance. No additional transition time would be provided for adjusting to the ISB performance standards.</p>
<p>Certain ISBs (<i>i.e.</i>, banks with at least \$1.322 billion but not more than \$2.5 billion in assets).</p>	<p>These ISBs would become large banks as of the effective date of any final rules.</p> <p>The newly classified large banks would (1) begin collecting data to be evaluated under the large bank lending, investment, and service tests on January 1, 2023, and (2) report required and optional data the following year.</p>
<p><i>Qualifying Activities</i></p>	
<p>Consideration of retail lending (<i>i.e.</i>, home mortgage loans, small loans to businesses, small loans to farms, and consumer loans) and CD activities (<i>i.e.</i>, CD loans, CD investments, and CD services—including</p>	<p>The proposed rules’ revised definitions would apply as of the effective date of any final rules. Banks would receive consideration in their CRA examinations for activities that met the qualifying</p>

legally binding commitments to lend and invest) and their related definitions.	activities criteria or definitions that were in effect at the time the bank conducted these activities.
Qualifying activities confirmation letters issued under the June 2020 Rule.	Confirmation letters would be applicable while the June 2020 Rule was in effect but would not apply to activities conducted after any final rules' effective date.
<i>Affiliates</i>	
Affiliate activities conducted after the effective date of any final rules.	Banks may elect to include affiliate activities in their CRA evaluations, subject to certain limitations. The OCC also would rescind the January 2021 interpretive letter regarding affiliate activities as of the effective date of any final rules.
<i>Outside Assessment Area Activities</i>	
Consideration of activities conducted outside bank assessment areas.	The OCC is considering whether it should continue to provide consideration for activities that do not directly or indirectly serve a bank's assessment areas or the

	broader statewide or regional areas that include a bank's assessment areas.
<i>CD Activity Confirmation Process and Illustrative List</i>	
CD activities confirmation process.	The OCC is considering providing a process for qualifying activities confirmation outside of the CRA rules.
Qualifying activities illustrative list.	The OCC would maintain the qualifying activities illustrative list on its website as a reference for banks to determine whether activities conducted while the June 2020 Rule was in effect are eligible for CRA consideration.
<i>Strategic Plans</i>	
Strategic plans with target market assessment areas approved under the June 2020 Rule.	The OCC would maintain any strategic plans approved by the OCC under the June 2020 Rule and would not require these banks to amend their strategic plans.
<i>June 2020 Rule Subpart E</i>	
CRA public file content and location requirements.	Banks would comply with the additional public file content and availability

	requirements no later than three months after the effective date of any final rules.
CRA notice requirements.	The OCC would not provide additional time for banks to comply with the CRA notice requirements.

**V. Interagency Rulemaking**

As noted, on July 20, 2021, the Agencies announced they had initiated an interagency rulemaking, stating that they are “committed to working together to jointly strengthen and modernize rules implementing the [CRA].”<sup>79</sup> The Agencies’ announcement stated that “[j]oint agency action will best achieve a consistent, modernized framework across all banks to help meet the credit needs of the communities in which they do business, including [LMI] neighborhoods.”<sup>80</sup> A reinstatement of the 1995 Rules would allow for an orderly transition to future, modernized CRA rules.

**VI. Regulatory Analysis**

**A. Regulatory Flexibility Act**

In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration for purposes of the RFA to include commercial banks and savings institutions with total assets of \$600 million or less and trust companies with total

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<sup>79</sup> See *supra* note 7.

<sup>80</sup> See *supra* note 7.

assets of \$41.5 million or less). However, under section 605(b) of the RFA, this analysis is not required if the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises approximately 669 small entities, all of which may be impacted by the proposed rules. The OCC estimates the annual cost for small entities to comply with the proposed rules would be approximately \$1,824 per bank (\$114 per hour × 16 hours). In general, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense.

Based on these thresholds, the OCC estimates that, if implemented, the proposed rules would have a significant economic impact on zero small entities, which is not a substantial number. Therefore, the OCC certifies that the proposed rules would not have a significant economic impact on a substantial number of small entities.

#### **B. Paperwork Reduction Act**

Certain provisions of the proposed rules contain "collection of information" requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC reviewed the proposed rules and determined that it revises certain information collection requirements previously cleared by OMB under OMB

Control No. 1557-0160. The OCC has submitted the revised information collection to OMB for review under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR z 1320).

Under the proposed rules:

- 12 CFR 25.25(b) and 195.25(b) – Requests for designation as a wholesale or limited purpose bank would be made in writing with the OCC at least three months prior to the proposed effective date of the designation.
- 12 CFR 25.27 and 195.27 – Strategic plans would be submitted at least three months prior to proposed effective dates. Plans would include measurable goals and address all the performance categories. Plans would include a description of informal efforts to solicit public suggestions, any written public comments received, and if revised pursuant to public comment, a copy of the initial plan. Amendments to plans could be submitted in the case of a change in material circumstances.
- 12 CFR 25.42(a) and 195.42(a) – Large banks would collect and maintain certain small business and small farm loan data in a machine-readable form and report it annually pursuant to 12 CFR 25.42(b)(1) and 195.42(b)(1).
- 12 CFR 25.42(b)(2) and 195.42(b)(2) – Large banks would report annually in machine readable form the aggregate number and aggregate amount of community development loans originated or purchased.
- 12 CFR 25.42(b)(3) and 195.42(b)(3) – Large banks, if subject to reporting under HMDA, would report the location of each home mortgage loan application,

origination, or purchase outside the MSAs where the bank has a home or branch office.

- 12 CFR 25.42(c)(1) and 195.42(c)(1) – All banks could collect and maintain in machine readable form certain data for consumer loans originated or purchased by a bank for consideration under the lending test. Under 12 CFR 25.42(c)(2)-(4) and 195.42(c)(2)-(4), other information could be included concerning a bank's lending performance, including additional loan distribution data.
- 12 CFR 25.42(d) and 195.42(d) – Banks that elect to have the OCC consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, would collect, maintain, and report the data that the bank would have collected, maintained, and reported pursuant to 12 CFR 25.42(a)-(c) or 195.42(a)-(c), respectively, had the loans been originated or purchased by the bank. For home mortgage loans, the bank would also be prepared to identify the home mortgage loans reported under HMDA by the affiliate.
- 12 CFR 25.42(e) and 195.42(e) – Banks that elect to have the OCC consider community development loans by a consortium or a third party, for purposes of the lending or community development tests or an approved strategic plan, would report for those loans the data that the bank would have reported under 12 CFR 25.42(b)(2) or 195.42(b)(2), respectively, had the loans been originated or purchased by the bank.
- 12 CFR 25.42(f) and 195.42(f) – Small banks that qualify for evaluation under the small bank performance standards but elect evaluation under the lending,

investment, and service tests would collect, maintain, and report the data required for other banks under 12 CFR 25.42(a), 25.42(b), 195.42(a), and 195.42(b).

- 12 CFR 25.42(g) and 195.42(g) – Banks, except those that were a small bank during the prior calendar year, would collect and report to the OCC by March 1 each year a list for each assessment area showing the geographies within the area.
- 12 CFR 25.43(a) and 195.43(a) – All banks would maintain a public file that contains with certain specified details: all written comments and responses; a copy of the public section of the bank’s most recent CRA performance evaluation; a list of the bank’s branches; a list of the branches opened or closed; a list of services offered; and a map of each assessment area delineated by the bank.
- 12 CFR 25.43(b) and 195.43(b) – Large banks would include in their public files certain information pertaining to the institution and its affiliates, if applicable, for each of the prior two calendar years. 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, they would include 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); and their CRA Disclosure Statement. A bank required to report home mortgage loan data pursuant to 12 CFR part 1003 would include a written notice that the institution’s HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau’s (Bureau’s) Web site. A bank that elected to have the OCC consider the mortgage lending of an affiliate would include 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. A small bank or a bank that was a small bank during the prior calendar year would include: its 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 the information required for other banks by 12 CFR 24.43(b)(1) or 195.43(b)(1), if it has elected to be evaluated under the lending, investment, and service tests. A bank that has been approved to be assessed under a strategic plan would include in its public file a copy of that plan. A bank that received a less than satisfactory rating during its most recent examination would 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 would update the description quarterly.

- 12 CFR 25.43(c)-(e) and 12 CFR 195.43(c)-(e) – A bank would make available to the public for inspection upon request and at no cost the information required in these provisions at the main office or branch as specified. Upon request, bank would provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. A bank would ensure that this information is current as of April 1 of each year.

*OCC Title of Information Collection:* Community Reinvestment Act.

*Frequency:* On Occasion.

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

*Total estimated annual burden:* 113,351 hours.

*Comments are invited on:*

- a. Whether the collections of information are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;
- b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;
- c. Ways to enhance the quality, utility, and clarity of the information to be collected;
- d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and
- e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

### **C. Unfunded Mandates Reform Act of 1995**

The OCC considers whether a proposed rule includes a Federal mandate, under the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*), 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 (\$158 million as adjusted annually for inflation). The UMRA does not apply to rules that incorporate requirements specifically set forth in law.

The OCC estimates that expenditures associated with mandates in the proposed rules would be approximately \$6 million. Therefore, the OCC concludes the proposed rules would not result in an expenditure of \$158 million or more annually by State, local, and tribal governments or by the private sector.

## **D. Riegle Community Development and Regulatory Improvement Act**

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 rules that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC will consider, consistent with principles of safety and soundness and the public interest (1) any administrative burdens that the proposed rules would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of the proposed rules. The OCC requests comment on (1) any administrative burdens that the proposed rules would place on depository institutions, including small depository institutions, and their customers and (2) the benefits of the proposed rules that the OCC should consider in determining the effective date and administrative compliance requirements for any final rules.

### **List of Subjects**

12 CFR part 25

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

12 CFR part 195

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

### **Authority and Issuance**

For the reasons discussed in the preamble, and under the authority of 12 U.S.C. 93a, the Office of the Comptroller of the Currency proposes to amend 12 CFR part 25 and proposes to add part 195 as follows:

1. 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.

25.26 Small bank 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.
- 25.45 Publication of planned examination schedule.

**Subpart D [Reserved]**

**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, 1814, 1816,

1828(c), 1835a, 2901 through 2908, and 3101 through 3111.

**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, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

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

(c) *Scope*—(1) General. This part applies to all banks except as provided in paragraphs (c)(2) and (c)(3) of this section.

(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. 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.

**§25.12 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 §25.41.

(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 national bank (including a Federal branch as defined in part 28 of this chapter) with Federally insured deposits, except as provided in §25.11(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.

(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, Federal Deposit Insurance Corporation, and 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:

(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 §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* 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 §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*—(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 \$1.322 billion. *Intermediate small bank* means a small bank with assets of at least \$330 million as of December 31 of

both of the prior two calendar years and less than \$1.322 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 OCC, 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 §25.25(b).

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

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

(a) *Performance tests and standards.* The OCC assesses the CRA performance of a bank in an examination as follows:

(1) *Lending, investment, and service tests.* The OCC applies the lending, investment, and service tests, as provided in §§25.22 through 25.24, 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 OCC applies the community development test for a wholesale or limited purpose bank, as provided in §25.25, except as provided in paragraph (a)(4) of this section.

(3) *Small bank performance standards.* The OCC applies the small bank performance standards as provided in §25.26 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 §25.42.

(4) *Strategic plan.* The OCC evaluates the performance of a bank under a strategic plan if the bank submits, and the OCC approves, a strategic plan as provided in §25.27.

(b) *Performance context.* The OCC 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 §25.43, and any written comments about the bank's CRA performance submitted to the bank or the OCC; and

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

(c) *Assigned ratings.* The OCC assigns to a bank 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 OCC 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 OCC 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 OCC 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 OCC 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).

#### **§25.22 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 OCC 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 OCC will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in §25.42(c)(1), the data for each category that the bank elects to have the OCC evaluate.

(2) The OCC considers originations and purchases of loans. The OCC 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 OCC 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 OCC will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The OCC 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 OCC will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to §25.42.

(2) The OCC 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 OCC 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 OCC 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 OCC 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 §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 OCC rates a bank'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 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 OCC 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 OCC 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 OCC rates a bank'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 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 OCC 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 OCC 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 OCC 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 OCC rates a bank's service performance as provided in appendix A of this part.

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

(a) *Scope of test.* The OCC 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 OCC, at least three months prior to the proposed effective date of the designation. If the OCC approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the OCC notifies the bank that the OCC has revoked the designation on its own initiative.

(c) *Performance criteria.* The OCC 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 OCC 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 §25.22(c) and (d).

(e) *Benefit to assessment area(s)*—(1) *Benefit inside assessment area(s).* The OCC 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 OCC 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 OCC rates a bank's community development performance as provided in appendix A of this part.

#### **§25.26 Small bank performance standards.**

(a) *Performance criteria*—(1) *Small banks that are not intermediate small banks.* The OCC 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 OCC 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 OCC rates the performance of a bank evaluated under this section as provided in appendix A of this part.

**§25.27 Strategic plan.**

(a) *Alternative election.* The OCC 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 OCC as provided for in this section;
- (2) The OCC 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 OCC's approval of a plan does not affect the bank'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 OCC 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 OCC 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 OCC 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 OCC on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the OCC 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 OCC approves, both “satisfactory” and “outstanding” performance goals, the OCC 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 OCC 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 OCC will act upon a plan within 60 calendar days after the OCC receives the complete plan and other material required under paragraph (e) of this section. If the OCC fails to act within this time period, the plan shall be deemed approved unless the OCC extends the review period for good cause.

(2) *Public participation*. In evaluating the plan's goals, the OCC 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 OCC 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 OCC 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 OCC 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 OCC 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 OCC 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 OCC'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 §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 assigned rating, the OCC 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.

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

(a) *CRA performance.* Among other factors, the OCC takes into account the record of performance under the CRA of each applicant bank in considering an application for:

- (1) The establishment of a domestic branch;
- (2) The relocation of the main office or a branch;

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

(4) The conversion of an insured depository institution to a national bank charter.

(b) *Charter application.* 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.

(c) *Interested parties.* The OCC takes into account any views expressed by interested parties that are submitted in accordance with the OCC's procedures set forth in part 5 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.

(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 shall delineate one or more assessment areas within which the OCC evaluates the bank's record of helping to meet the credit needs of its community. The OCC does not evaluate the bank's delineation of its assessment area(s) as a separate

performance criterion, but the OCC 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 OCC uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the OCC 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, except a small bank, shall collect, and maintain in machine readable form (as prescribed by the OCC)

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 OCC in machine readable form (as prescribed by the OCC) 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 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 OCC) 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 OCC 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 OCC 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 OCC by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The OCC 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 OCC, in conjunction with the Board of Governors of the Federal Reserve System 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 195, 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 OCC 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 OCC 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 OCC 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 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 OCC. The bank shall place this copy in the public file within 30 business days after its receipt from the OCC;
- (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 OCC.

(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 OCC 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 OCC 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.

#### **§25.44 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.

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

The OCC 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.

**Subpart D [Reserved]**

**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 Federal Deposit Insurance Corporation) 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(i).

(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(o); 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 OCC evaluates a bank'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 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 OCC assigns each bank's lending performance one of the five following ratings.

(i) *Outstanding*. The OCC 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 OCC 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 OCC 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 OCC 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 OCC 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 OCC assigns each bank's investment performance one of the five following ratings.

(i) *Outstanding*. The OCC 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 OCC 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 OCC 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 OCC 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 OCC 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 OCC assigns each bank's service performance one of the five following ratings.

(i) *Outstanding*. The OCC 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 OCC 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 OCC 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 OCC 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 OCC 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 OCC assigns each wholesale or limited purpose bank's community development performance one of the four following ratings.

(1) *Outstanding*. The OCC 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 OCC 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 OCC 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 OCC 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 OCC 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 OCC 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 OCC 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 OCC 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 OCC 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 OCC will approve those goals as “outstanding.”

(3) *Rating.* The OCC 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 OCC 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 OCC 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 OCC 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 §25.27(f)(4).

## **Appendix B to Part 25—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 Comptroller of the Currency evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Comptroller 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 Comptroller; 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 Comptroller publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Deputy Comptroller (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 Deputy Comptroller (address). Your letter, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered

by the CRA filed with the Comptroller. 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 Comptroller of the Currency evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Comptroller 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 Comptroller, 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 Comptroller 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 Comptroller publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Deputy Comptroller (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 Deputy Comptroller (address). Your letter, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. 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.

2. Add 12 CFR part 195 to read as follows:

## **PART 195 – COMMUNITY REINVESTMENT ACT**

### **Subpart A—General**

Sec.

195.11 Authority, purposes, and scope.

195.12 Definitions.

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

Sec.

- 195.21 Performance tests, standards, and ratings, in general.
- 195.22 Lending test.
- 195.23 Investment test.
- 195.24 Service test.
- 195.25 Community development test for wholesale or limited purpose banks.
- 195.26 Small bank performance standards.
- 195.27 Strategic plan.
- 195.28 Assigned ratings.
- 195.29 Effect of CRA performance on applications.

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

Sec.

- 195.41 Assessment area delineation.
- 195.42 Data collection, reporting, and disclosure.
- 195.43 Content and availability of public file.
- 195.44 Public notice by banks.
- 195.45 Publication of planned examination schedule.

**Appendix A to Part 195—Ratings**

**Appendix B to Part 195—CRA Notice**

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 1814, 1816, 1828(c), 2901 through 2908, and 5412(b)(2)(B).

**Subpart A—General**

**§195.11 Authority, purposes, and scope.**

(a) *Authority*. This part is issued under the Community Reinvestment Act of 1977 (CRA), as amended (12 U.S.C. 2901 et seq.); section 5, as amended, and sections 3, and 4, as added, of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462a, 1463, and 1464); and sections 4, 6, and 18(c), as amended of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1828(c)).

(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 appropriate Federal banking agency assesses a 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 savings association; and

(2) Providing that the appropriate Federal banking agency takes that record into account in considering certain applications.

(c) *Scope*—(1) *General*. This part applies to all savings associations except as provided in paragraph (c)(2) of this section.

(2) *Certain special purpose savings associations*. This part does not apply to 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 associations include banker's banks, as defined in

12 U.S.C. 24 (Seventh), and associations that engage only in one or more of the following activities: Providing cash management controlled disbursement services or serving as correspondent associations, trust companies, or clearing agents.

**§195.12 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 §195.41.

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

(e) [Reserved]

(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 appropriate Federal banking agency 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 savings association:

(i) Has not been reported or collected by the savings association or an affiliate for consideration in the 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 savings association's assessment area(s) or a broader statewide or regional area that includes the 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 savings association's retail banking services under §195.24(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.

(1) *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 savings association* means a 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 savings association is in effect, in accordance with §195.25(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 savings association*—(1) Definition. *Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.322 billion. *Intermediate small savings association* means a small savings association with assets of at least \$330 million as of December 31 of both of the prior two calendar years and less than \$1.322 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 OCC 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 Thrift Financial Report (TFR) or Consolidated Reports of Condition and Income (Call Report), as appropriate.

(w) *Small farm loan* means a loan included in “loans to small farms” as defined in the instructions for preparation of the TFR or Call Report, as appropriate.

(x) *Wholesale savings association* means a 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 savings association is in effect, in accordance with §195.25(b).

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

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

(a) *Performance tests and standards.* The appropriate Federal banking agency assesses the CRA performance of a 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 §§195.22 through 195.24, in evaluating the performance of a savings association, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose savings associations.*

The appropriate Federal banking agency applies the community development test for a

wholesale or limited purpose savings association, as provided in §195.25, except as provided in paragraph (a)(4) of this section.

(3) *Small savings association performance standards.* The appropriate Federal banking agency applies the small savings association performance standards as provided in §195.26 in evaluating the performance of a small savings association or a savings association that was a small savings association during the prior calendar year, unless the savings association elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The 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 savings associations under §195.42.

(4) *Strategic plan.* The appropriate Federal banking agency evaluates the performance of a savings association under a strategic plan if the savings association submits, and the appropriate Federal banking agency approves, a strategic plan as provided in §195.27.

(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 savings association's assessment area(s);

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

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

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

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

(6) The savings association's public file, as described in §195.43, and any written comments about the savings association's CRA performance submitted to the 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 savings association one of the following four ratings pursuant to §195.28 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 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 savings association.

(d) *Safe and sound operations.* This part and the CRA do not require a 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 savings associations can meet the standards of this part with safe and sound

loans, investments, and services on which the savings associations expect to make a profit. 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 savings association under this part, the appropriate Federal banking agency considers, as a factor, low-cost education loans originated by the 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 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 savings association under this part, the appropriate Federal banking agency considers as a factor capital investment, loan participation, and other ventures undertaken by the 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 savings association's assessment area(s) or the broader statewide or regional area that includes the savings association's assessment area(s).

**§195.22 Lending test.**

(a) *Scope of test.* (1) The lending test evaluates a savings association's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a savings association's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a savings association's business, the appropriate Federal banking agency will evaluate the 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 savings association's option, the appropriate Federal banking agency will evaluate one or more categories of consumer lending, if the savings association has collected and maintained, as required in §195.42(c)(1), the data for each category that the 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 savings association may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A savings association may ask the appropriate Federal banking agency to consider loans originated or purchased by consortia in which the savings association participates or by third parties in which the 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 savings association's lending performance pursuant to the following criteria:

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

(2) *Geographic distribution.* The geographic distribution of the 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 savings association's lending in the savings association's assessment area(s);

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

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

(3) *Borrower characteristics.* The distribution, particularly in the savings association's assessment area(s), of the 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 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 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 savings association's option, the appropriate Federal banking agency will consider loans by an affiliate of the savings association, if the savings association provides data on the affiliate's loans pursuant to §195.42.
- (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 savings association elects to have the appropriate Federal banking agency consider loans within a particular lending category made by one or more of the savings association's affiliates in a particular assessment area, the 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 savings association's affiliates.

(3) The appropriate Federal banking agency does not consider affiliate lending in assessing a 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 savings association participates or by a third party in which the savings association has invested:

(1) Will be considered, at the savings association's option, if the savings association reports the data pertaining to these loans under §195.42(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 savings association's lending performance as provided in appendix A of this part.

### **§195.23 Investment test.**

(a) *Scope of test.* The investment test evaluates a 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 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 savings association's option, the appropriate Federal banking agency will consider, in its assessment of a savings association's investment performance, a qualified investment made by an affiliate of the 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 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 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 savings association's investment performance as provided in appendix A of this part.

**§195.24 Service test.**

(a) *Scope of test.* The service test evaluates a 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 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 savings association's assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(c) *Affiliate service.* At a savings association's option, the appropriate Federal banking agency will consider, in its assessment of a savings association's service performance, a community development service provided by an affiliate of the 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 savings association's systems for delivering retail banking services, pursuant to the following criteria:

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

(2) In the context of its current distribution of the savings association's branches, the 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 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 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 savings association's service performance as provided in appendix A of this part.

**§195.25 Community development test for wholesale or limited purpose savings associations.**

(a) *Scope of test.* The appropriate Federal banking agency assesses a wholesale or limited purpose 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 savings association.* In order to receive a designation as a wholesale or limited purpose savings association, a 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 savings association requests revocation of the designation or until one year after the appropriate Federal banking agency notifies the savings association that the appropriate Federal banking agency 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 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 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 savings association's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a 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 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 §195.22(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 savings association's assessment area(s) or a broader statewide or regional area that includes the 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 savings association's assessment area(s), if the savings association has adequately addressed the needs of its assessment area(s).

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

#### **§195.26 Small savings association performance standards.**

(a) *Performance criteria*—(1) *Small savings associations that are not intermediate small savings associations*. The appropriate Federal banking agency evaluates the record of a small savings association that is not, or that was not during the prior calendar year, an intermediate small 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 savings associations*. The appropriate Federal banking agency evaluates the record of a small savings association that is, or that was during the prior calendar year, an intermediate small 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 savings association's lending performance is evaluated pursuant to the following criteria:

- (1) The 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 savings association's assessment area(s);
- (3) The 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 savings association's loans; and
- (5) The 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 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 savings association provides community development services; and
- (4) The savings association's responsiveness through such activities to community development lending, investment, and services needs.

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

**§195.27 Strategic plan.**

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

(1) The 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 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 savings association's obligation, if any, to report data as required by §195.42.

(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 savings association's performance.

(2) *Multiple assessment areas.* A 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 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 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 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 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 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 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 savings association shall address in its plan all three performance categories and, unless the savings association has been designated as a wholesale or limited purpose 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 savings association's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A 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 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 savings association submits, and the appropriate Federal banking agency approves, both “satisfactory” and “outstanding” performance goals, the appropriate Federal banking agency will consider the savings association eligible for an “outstanding” performance rating.

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

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

(h) *Plan amendment*. During the term of a plan, a 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 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.

**§195.28 Assigned ratings.**

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the appropriate Federal banking agency assigns to a savings association a rating of “outstanding,” “satisfactory,” “needs to improve,” or “substantial noncompliance” based on the savings association's performance under the lending, investment and service tests, the community development test, the small 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 savings association assessed under the lending, investment, and service tests in accordance with the following principles:

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

(2) A 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 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 savings association's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the savings association or in any assessment area by any affiliate whose loans have been considered as part of the savings association's lending performance. In connection with any type of lending activity described in §195.22(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 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 savings association (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the 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.

**§195.29 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 savings association, and for applications under section 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 a domestic branch or other facility that would be authorized to take deposits;
- (2) The relocation of the main office or a branch;
- (3) The merger or consolidation with or the acquisition of the assets or assumption of the liabilities of an insured depository institution requiring appropriate Federal banking agency approval under the Bank Merger Act (12 U.S.C. 1828(c));
- (4) A Federal thrift charter; and
- (5) Acquisitions subject to section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)).

(b) *Charter application.* An applicant for a Federal thrift 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 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**

#### **§195.41 Assessment area delineation.**

(a) *In general.* A savings association shall delineate one or more assessment areas within which the appropriate Federal banking agency evaluates the savings association's record of helping to meet the credit needs of its community. The appropriate Federal banking agency does not evaluate the 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 savings associations.* The assessment area(s) for a wholesale or limited purpose 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 savings association has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other savings associations.* The assessment area(s) for a savings association other than a wholesale or limited purpose 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 savings association has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the 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 savings association chooses, such as those consumer loans on which the savings association elects to have its performance assessed).

(d) *Adjustments to geographic area(s)*. A 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 savings association'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 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 savings association serves

a geographic area that extends substantially beyond a state boundary, the savings association shall delineate separate assessment areas for the areas in each state. If a savings association serves a geographic area that extends substantially beyond an MSA boundary, the savings association shall delineate separate assessment areas for the areas inside and outside the MSA.

(f) *Savings associations serving military personnel.* Notwithstanding the requirements of this section, a 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 savings association in its evaluation of the 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.

#### **§195.42 Data collection, reporting, and disclosure.**

(a) *Loan information required to be collected and maintained.* A savings association, except a small 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 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 savings association, except a small savings association or a savings association that was a small 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 agency) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the 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 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 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 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 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 savings association for consideration under the lending test. A 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 savings association maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The 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 savings association considered in making its credit decision.

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

(d) *Data on affiliate lending*. A 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 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 savings association. For home mortgage loans,

the 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 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 savings association would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the savings association.

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

(g) *Assessment area data.* A savings association, except a small savings association or a savings association that was a small 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 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 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 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 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 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 savings association and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the savings association; and

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

(i) *Aggregate disclosure statements.* The appropriate Federal banking agency, in conjunction with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation or the OCC, as appropriate, 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, 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 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.

**§195.43 Content and availability of public file.**

(a) *Information available to the public.* A 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 savings association's performance in helping to meet community credit needs, and any response to the comments by the 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 savings association or publication of which would violate specific provisions of law;

(2) A copy of the public section of the savings association's most recent CRA Performance Evaluation prepared by the appropriate Federal banking agency. The 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 savings association's branches, their street addresses, and geographies;

(4) A list of branches opened or closed by the 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 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 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 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 savings association chooses.

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

(i) If the 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 savings association's assessment area(s) and outside the savings association's assessment area(s); and

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

(2) *Savings associations required to report Home Mortgage Disclosure Act (HMDA) data.* A 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) Web site at [www.consumerfinance.gov/hmda](http://www.consumerfinance.gov/hmda). In addition, a 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 Web site. The 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 savings associations.* A small savings association or a savings association that was a small savings association during the prior calendar year shall include in its public file:

(i) The 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 savings associations by paragraph (b)(1) of this section, if the savings association has elected to be evaluated under the lending, investment, and service tests.

(4) *Savings associations with strategic plans.* A 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 savings association need not include information submitted to the appropriate Federal banking agency on a confidential basis in conjunction with the plan.

(5) *Savings associations with less than satisfactory ratings.* A 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 savings association shall update the description quarterly.

(c) *Location of public information.* A 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 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 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 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 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 savings association shall ensure that the information required by this section is current as of April 1 of each year.

#### **§195.44 Public notice by savings associations.**

A 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 savings association having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a savings association that is an affiliate of a holding company shall include the last two sentences of the notices.

#### **§195.45 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 savings associations scheduled for CRA examinations in that quarter.

#### **Appendix A to Part 195—Ratings**

(a) *Ratings in general*. (1) In assigning a rating, the appropriate Federal banking agency evaluates a savings association's performance under the applicable performance criteria in this part, in accordance with §§195.21 and 195.28. 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 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 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) *Savings associations evaluated under the lending, investment, and service tests*—(1)

*Lending performance rating.* The appropriate Federal banking agency assigns each savings association's lending performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a 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 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 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 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 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 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 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 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 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 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 savings association's investment performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a 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 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 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 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 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 savings association's service performance one of the five following ratings.

(i) *Outstanding*. The appropriate Federal banking agency rates a savings association's service performance “outstanding” if, in general, the 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 savings association's service performance "high satisfactory" if, in general, the 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 savings association's service performance "low satisfactory" if, in general, the 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 savings association's service performance “needs to improve” if, in general, the 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 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 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 savings association's service performance as being in “substantial noncompliance” if, in general, the 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 savings associations.* The appropriate Federal banking agency assigns each wholesale or limited purpose 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 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 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 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 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) *Savings associations evaluated under the small savings association performance standard—(1) Lending test ratings. (i) Eligibility for a satisfactory lending test rating.*

The appropriate Federal banking agency rates a small savings association's lending performance “satisfactory” if, in general, the savings association demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the 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 savings association's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the 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 savings association's assessment area(s).

(ii) *Eligibility for an “outstanding” lending test rating.* A small savings association that meets each of the standards for a “satisfactory” rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of “outstanding.”

(iii) *Needs to improve or substantial noncompliance ratings.* A small 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 savings associations—(i) Eligibility for a satisfactory community development test rating.* The appropriate Federal banking agency rates an intermediate small savings association's community development performance “satisfactory” if the 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 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 savings association's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The appropriate Federal banking agency rates an intermediate small savings association's community development performance “outstanding” if the 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 savings association's capacity and the need and availability of such opportunities for community development in the savings association's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small 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 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 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 savings association that is not an intermediate small 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 savings association's performance is “outstanding,” the appropriate Federal banking agency considers the extent to which the 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 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 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 savings association operating under an approved plan to determine if the savings association has met its plan goals:

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

(ii) If the 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 savings association's performance under the plan as “outstanding.”

(iii) If the savings association fails to meet substantially its plan goals for a satisfactory rating, the appropriate Federal banking agency will rate the 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 savings association elected in its plan to be rated otherwise, as provided in §195.27(f)(4).

**Appendix B to Part 195—CRA Notice**

*(a) Notice for main offices and, if an interstate 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)] evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or 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 [OCC or 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 [OCC or FDIC] publishes a nationwide list of the savings associations that are scheduled for CRA examination in that quarter. This list is available from the [OCC Deputy Comptroller (address) or FDIC appropriate regional director (address)]. You may send written comments about our performance in helping to meet community credit needs to (name and address of official at savings association) and the [OCC Deputy Comptroller (address) or FDIC appropriate regional director (address)]. Your letter, together with any response by us, will be considered by the [OCC or FDIC] in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the [OCC Deputy Comptroller or FDIC appropriate regional director]. You may also request from the [OCC Deputy Comptroller or FDIC appropriate regional director] an announcement of our applications covered by the CRA filed with the [OCC or FDIC]. We are an affiliate of (name of holding company), a savings and loan 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 savings and loan holding companies.

*(b) Notice for branch offices.*

## 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)] evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or 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 [OCC or 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 [OCC or 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 savings association 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] publishes a nationwide list of the savings associations that are scheduled for CRA examination in that quarter. This list is available from the [OCC Deputy Comptroller (address) or FDIC appropriate regional office (address)]. You may send written comments about our performance in helping to meet community credit needs to (name and address of official at savings association) and the [OCC or FDIC]. Your letter, together with any response by us, will be considered by the [OCC or FDIC] in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the [OCC Deputy Comptroller or FDIC appropriate regional director]. You may also request an announcement of our applications covered by the CRA filed with the [OCC Deputy Comptroller or FDIC appropriate regional director]. We are an affiliate of (name of holding company), a savings and loan 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 savings and loan holding companies.

**Michael J. Hsu**  
*Acting Comptroller of the Currency.*