

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 25**

**[Docket No. OCC-2021-0014]**

**RIN 1557-AF12**

**Community Reinvestment Act Regulations**

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

**ACTION:** Final rule.

**SUMMARY:** The Comptroller of the Currency is adopting a final Community Reinvestment Act (CRA) rule that is based largely on the 1995 CRA rules, as revised, that were 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). This final rule applies to national banks and savings associations. This action rescinds the CRA final rule published by the OCC on June 5, 2020, and facilitates the OCC's planned future issuance of updated interagency CRA rules with the Board and FDIC.

**DATES:** This final rule is effective on January 1, 2022. The compliance date for §§ 25.43 and 25.44 is April 1, 2022. The compliance date for the remainder of the rule is January 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Emily Boyes, Counsel, Karen McSweeney, Special Counsel, Heidi Thomas, Special Counsel, or Kevin Behne, Senior Attorney, Chief Counsel's Office, (202) 649-5490; or Vonda Eanes, Director for CRA and Fair Lending Policy, 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. Background

Congress enacted the Community Reinvestment Act (CRA)<sup>1</sup> in 1977 to encourage insured depository institutions (IDI)<sup>2</sup> to help meet the credit needs of their entire communities, including low- and moderate-income (LMI) neighborhoods, consistent with the safe and sound operation of the IDIs.<sup>3</sup> 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 services as well as deposit services; and (3) regulated financial institutions have continuing and affirmative obligation[s] to help meet the credit needs of the local communities in which they are chartered.”<sup>4</sup>

The Office of the Comptroller of the Currency (OCC or Agency),<sup>5</sup> Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) (collectively, Agencies),<sup>6</sup> along with the Federal Home Loan Bank Board, first issued rules to

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<sup>1</sup> Pub. L. 95–128, 91 Stat. 1147 (1977) (codified at 12 U.S.C. 2901 *et seq.* (as amended)).

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

<sup>3</sup> 12 U.S.C. 2903(a)(1). Congress enacted the CRA to promote access to credit by encouraging IDIs 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 a law that later became known as the Fair Housing Act to prohibit discrimination in renting or buying a home. *See* 42 U.S.C. 3601 *et seq.* (as amended). In 1974, Congress passed the Equal Credit Opportunity Act to prohibit creditors from discriminating against an applicant on the basis of race, color, religion, national origin, sex, marital status, or age. *See* 15 U.S.C. 1691 *et seq.* (as amended). These fair lending laws provide a legal basis for prohibiting discriminatory lending practices, such as redlining. *See* Interagency Fair Lending Examination Procedures, p. iv (Aug. 2009), available at <https://www.ffiec.gov/PDF/fairlend.pdf>.

<sup>4</sup> 12 U.S.C. 2901(a).

<sup>5</sup> The OCC is the primary regulator for national banks and Federal savings associations.

<sup>6</sup> In addition to the Agencies, Congress also charged the Office of Thrift Supervision (OTS) and its predecessor agency, the Federal Home Loan Bank Board, with implementing the

implement the CRA in 1978.<sup>7</sup> The Agencies, along with the Office of Thrift Supervision (OTS), significantly revised and clarified the CRA rules in 1995 (1995 Rules).<sup>8</sup> On September 5, 2018, the OCC published an Advance Notice of Proposed Rulemaking (ANPR) as part of its renewed efforts to update the CRA regulatory framework.<sup>9</sup> On January 9, 2020, the OCC and FDIC published a joint CRA Notice of Proposed Rulemaking,<sup>10</sup> and on June 5, 2020, the OCC adopted the rule in final form (June 2020 Rule).<sup>11</sup> The June 2020 Rule applied to national banks, Federal savings associations, and State savings associations (collectively, banks).<sup>12</sup>

The June 2020 Rule took effect October 1, 2020, although several of its more material components had compliance dates of either January 1, 2023, or January 1, 2024.<sup>13</sup> To implement certain provisions of the June 2020 Rule with a compliance date of January 1, 2023, the OCC published a Notice of Proposed Rulemaking on December 4, 2020, (December 2020 NPR), which proposed an approach to determine the benchmarks, thresholds, and minimums in the June

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CRA. The OTS had CRA rulemaking and examination authority for all savings associations. The OTS's rulemaking authority for 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, 1522 (2010) (Dodd-Frank Act). *See also* 12 U.S.C. 2905. With respect to CRA examination authority, the OCC examines Federal savings associations, and the FDIC examines State savings associations. *See* Sec. 312(b) of the Dodd-Frank Act.

<sup>7</sup> 43 FR 47144 (Oct. 12, 1978).

<sup>8</sup> 60 FR 22156 (May 4, 1995). As used herein, the term "1995 Rules" refers to the regulatory framework adopted by the Agencies and the OTS in 1995 and any revisions the Agencies and OTS made to that regulatory framework (*e.g.*, 70 FR 44256 (Aug. 2, 2005) and 75 FR 61035 (Oct. 4, 2010)), except for the changes made by the OCC in the June 2020 Rule. The 1995 Rules were codified in 12 CFR parts 25, 563e (recodified as 195), 228, and 345.

<sup>9</sup> The OCC worked with the Board and FDIC on this ANPR. 83 FR 45053.

<sup>10</sup> 85 FR 1204.

<sup>11</sup> 85 FR 34734.

<sup>12</sup> As used herein, 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).

<sup>13</sup> 12 CFR 25.01(c)(4).

2020 Rule’s performance standards.<sup>14</sup> In connection with the December 2020 NPR, the OCC also published a CRA information collection survey (Information Collection)<sup>15</sup> to obtain the data necessary to calibrate the June 2020 Rule’s performance standards.

On May 18, 2021, the OCC announced that it was reconsidering the June 2020 Rule.<sup>16</sup> At the same time, the OCC announced that it did not plan to finalize the December 2020 NPR and was discontinuing the Information Collection.<sup>17</sup> Collectively, these actions have enabled an orderly reconsideration of the June 2020 Rule and provided banks with the flexibility to deploy resources in response to the COVID-19 pandemic.

Although the OCC issued the June 2020 Rule independently, the Agencies’ joint CRA regulatory reform efforts have spanned the past decade.<sup>18</sup> In 2018, the Agencies 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. Separately, the Board explored ways to

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<sup>14</sup> 85 FR 78258.

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

<sup>16</sup> See OCC Bulletin 2021-24, Community Reinvestment Act: Implementation of the June 2020 Final Rule, available at <https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-24.html>.

<sup>17</sup> *Id.*

<sup>18</sup> For example, in 2014, pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the Agencies began a decennial review of all of their rules, with input from the public, to identify outdated, unnecessary, or unduly burdensome rules and to consider how to reduce regulatory burden on IDIs, while at the same time ensuring the safety and soundness of these institutions and the financial system. Pub. L. 104–208, 110 Stat. 3009 (1996) (codified at 12 U.S.C. 3311). 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. See Federal Financial Institutions Examination Council, Joint Report to Congress. Economic Growth and Regulatory Paperwork Reduction Act, pp. 41-48 (Mar. 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).

modernize the CRA regulatory framework to address changes in the banking industry, which culminated with the Board’s publication of an ANPR on October 19, 2020 (Board ANPR).<sup>19</sup>

Throughout all of the Agencies’ CRA modernization efforts, stakeholders have repeatedly stressed the importance of the Agencies issuing a single set of CRA rules applicable to all IDIs. On July 20, 2021, after considering (1) the disproportionate impacts of the pandemic on LMI communities, (2) the comments provided on the Board ANPR, and (3) the OCC’s experience with implementation of the June 2020 Rule, the OCC announced it would propose to rescind the June 2020 Rule.<sup>20</sup> On the same day, the Agencies announced that they are working together to strengthen and modernize the rules implementing the CRA.<sup>21</sup> This final rule is an important step in this interagency process because it reestablishes generally uniform rules that apply to all IDIs. Thus, it better positions the Agencies to identify joint solutions to the common issues affecting IDIs and the communities they serve.

## **II. Proposed Rule**

On September 8, 2021, the OCC issued its proposal to rescind the June 2020 Rule and replace it with rules for banks largely based on the 1995 Rules (Proposal or Proposed Rule).<sup>22</sup> The Proposal would have aligned the OCC’s CRA rules with the Board’s and FDIC’s CRA rules, thereby reinstating the regulatory uniformity for IDIs that existed prior to the June 2020 Rule and facilitating the ongoing interagency work to modernize the CRA rules. The OCC explained

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<sup>19</sup> 85 FR 66410.

<sup>20</sup> NR 2021-76, OCC Statement on Rescinding its 2020 Community Reinvestment Act Rule, available at <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-76.html>.

<sup>21</sup> NR 2021-77, Interagency Statement on Community Reinvestment Act Joint Agency Action, available at <https://www.occ.gov/news-issuances/news-releases/2021/nr-ia-2021-77.html>.

<sup>22</sup> NR 2021-94, OCC Issues Proposal to Rescind its 2020 Community Reinvestment Act Rule (Sept. 8, 2021), available at <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-94.html>. *See also* 86 FR 52026 (Sept. 17, 2021).

in the Proposal that any future interagency CRA rules would replace any final rule(s) the Agency issues pursuant to the Proposal.<sup>23</sup>

The purpose of the Proposed Rule was to (1) create consistent and transparent CRA rules for banks; (2) limit CRA-related burden on banks, banks' communities, and examiners; and (3) ensure that the OCC continues to encourage banks to help meet the credit needs of their entire communities, including LMI neighborhoods, consistent with safe and sound operations. A description of the Proposal and the comments the OCC received is set forth below.

#### A. Overview

The Proposed Rule would have provided different performance tests and standards for banks of different sizes, structures, and operations. Specifically, the Proposed Rule would have provided an assessment method for (1) small banks that would be streamlined and would emphasize lending performance; (2) intermediate small banks (ISB) that would consider lending and community development (CD) activities (*i.e.*, loans, investments, and services); (3) large, retail banks that would focus on lending, investment, and service performance; and (4) wholesale and limited purpose banks that would be based on CD activities. The Proposed Rule also would have given any bank, regardless of its size or business strategy, the option for the appropriate Federal banking agency to evaluate it under a strategic plan.<sup>24</sup>

Under the proposed performance tests and standards, the appropriate Federal banking agency would have considered a bank's performance context in assessing its CRA performance. Specifically, the Agency would have reviewed (1) demographic and economic data about the

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<sup>23</sup> 86 FR 52026, 52027.

<sup>24</sup> As noted previously, the OCC has CRA examination authority for Federal savings associations, and the FDIC has CRA examination authority for State savings associations. *See supra* note 6. References in this final rule to "appropriate Federal banking agency" are intended to reflect this distinction.

bank's assessment area(s) and information about its local economic conditions; (2) the bank's major business products and strategies; and (3) its financial condition, including its capacity and ability to lend or invest in its community. The Agency also would have reviewed any information a bank chose to provide about lending, investment, and service opportunities in its assessment area(s). Performance context also would have included any other information the appropriate Federal banking agency deemed relevant.

The Proposed Rule would have required a bank to identify one or more assessment area(s) where the appropriate Federal banking agency would evaluate its CRA performance. In most cases, the Proposed Rule would have required a bank to delineate as its assessment area(s) the town, city, county, or other political subdivision or a metropolitan statistical area (MSA) where (1) its main office, branch(es), and deposit-taking automated teller machines (ATMs) are located and (2) a substantial portion of its loans are made. A bank's assessment area(s) would not have needed to coincide with the boundaries of one or more political subdivisions or MSAs so long as the assessment area(s) was one that (1) the bank reasonably could have served; (2) satisfied applicable regulatory requirements; (3) did not reflect illegal discrimination; and (4) did not arbitrarily exclude LMI geographies (*i.e.*, census tracts).

Under the Proposed Rule, large banks<sup>25</sup> (and in some circumstances, other banks) would have needed to collect, maintain, and report certain data related to the proposed performance tests and standards. The OCC would have made this data available through individual and aggregate disclosure statements. In addition, banks would have made CRA-related information available in their public files and posted CRA notices in specified locations.

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<sup>25</sup> The term "large banks" is used in CRA guidance related to the 1995 Rules to describe banks that exceed the ISB asset-size threshold.

For a more detailed description of the 1995 Rules, on which the Proposed Rule was largely based, see the **Supplemental Information** sections of the *Federal Register* documents in which the 1995 Rules were issued.<sup>26</sup>

## B. Summary of Key Provisions

The following is a summary of key provisions of the Proposed Rule.

### 1. *Performance Tests and Standards.*<sup>27</sup>

- Small bank<sup>28</sup> performance standards would have included a retail lending test for assessing CRA performance. The small bank lending test could also have included consideration of CD loans. Qualified investments and CD services could have been considered at the bank’s option for an “outstanding” rating, but only if the bank met or exceeded the lending test criteria in the small bank performance standards.
- The ISB<sup>29</sup> performance standards would have included an assessment of CRA performance under the small bank retail lending test and a CD test. Under the ISB CD test, the appropriate Federal banking agency would have evaluated all CD activities together.

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<sup>26</sup> See *supra* note 8.

<sup>27</sup> The proposed performance tests and standards applicable to a bank would have been based on the bank’s asset size. The proposed asset-size thresholds for determining whether a bank would be a large bank, ISB, or small bank under the Proposed Rule would have been adjusted annually and aligned with the current asset-size thresholds in the Board’s and FDIC’s rules. See 12 CFR parts 228 and 345.

<sup>28</sup> Under the Proposed Rule, “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. “ISB” 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. See 12 CFR 25.12(u), of the Proposed Rule.

<sup>29</sup> *Id.*



- Large bank (*i.e.*, banks that exceed the ISB asset-size threshold)<sup>30</sup> lending and service tests would have considered both retail and CD activity, while the large bank investment test would have focused on qualified investments as defined in the Proposed Rule.
  - The appropriate Federal banking agency would have evaluated wholesale and limited purpose banks under a CD test that considered activities (1) within a bank’s broader statewide or regional area(s) that includes a bank’s assessment area(s) as activities that benefit the bank’s assessment area(s) and (2) outside of the bank’s broader statewide or regional area that includes a bank’s assessment area(s) if the bank had been responsive to needs in its assessment area(s).
  - Any bank could have elected to be evaluated under a strategic plan that set out measurable goals for lending, investment, and services, as applicable, to achieve a “satisfactory” or “outstanding” rating. The bank would have developed its strategic plan with community input, and the appropriate Federal banking agency would have needed to approve the bank’s plan.
2. *Discriminatory or Other Illegal Credit Practices (DOICP)*. Under the Proposal, the appropriate Federal banking agency’s evaluation of a bank’s CRA performance would have been adversely affected by evidence of DOICPs, including violations of the Equal Credit Opportunity Act;<sup>31</sup> Fair Housing Act;<sup>32</sup> Homeownership and Equity Protection Act;<sup>33</sup> the prohibition against unfair or deceptive acts or practices in section 5 of the

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<sup>30</sup> *Id.*

<sup>31</sup> 15 U.S.C. 1691 *et seq.*

<sup>32</sup> 42 U.S.C. 3601 *et seq.*

<sup>33</sup> Pub. L. 103-325, 108 Stat. 2190 (1994) (codified at 15 U.S.C. 1601-02; 15 U.S.C. 1639-41).

Federal Trade Commission Act;<sup>34</sup> section 8 of the Real Estate Settlement Procedures Act;<sup>35</sup> and the Truth in Lending Act.<sup>36</sup> The list of discriminatory or other illegal credit practices in the Proposal was not exhaustive, and the OCC also would have considered credit-related violations of the Military Lending Act (MLA) and Servicemembers Civil Relief Act (SCRA)<sup>37</sup> based on guidance that predates the June 2020 Rule.<sup>38</sup>

3. *Retail and CD Activities.* The appropriate Federal banking agency would have evaluated banks' CRA performance based on (1) retail lending (*i.e.*, home mortgage loans, small business loans, small farm loans, and consumer loans, as applicable) and CD loans; (2) qualified investments; and (3) CD services, as each of these terms would have been defined in the Proposed Rule and considered in the applicable performance tests and standards.

4. *Assessment Area(s).*

- A bank would have delineated assessment area(s) that generally—
  - Included the geographies where the bank has its main office, branch(es), and deposit-taking ATMs (as applicable), as well as any surrounding geographies where the bank has originated or purchased a substantial portion of its loans; and
  - Consisted of one or more MSAs, metropolitan divisions, or political subdivisions with a bank permitted to adjust the boundaries of its

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<sup>34</sup> 15 U.S.C. 45.

<sup>35</sup> 12 U.S.C. 2607.

<sup>36</sup> 15 U.S.C. 1601-1667f (as amended).

<sup>37</sup> See 10 U.S.C. 987 and 50 U.S.C. 3901 *et seq.*, respectively.

<sup>38</sup> See OCC PPM 5000-43, Impact of Evidence of Discriminatory or Other Illegal Credit Practices on Community Reinvestment Act Ratings (Aug. 15, 2018).

assessment area(s) to include only the portion of the political subdivision that the bank could reasonably be expected to serve.

- Assessment area(s) would have been 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(s) was in a multistate MSA.

5. *Data Collection, Recordkeeping, and Reporting.*

- Banks, other than small banks, would have collected, maintained, and reported certain data related to small business loans, small farm loans, CD loans, and assessment areas. Banks, other than small banks, that are subject to the Home Mortgage Disclosure Act of 1975 (HMDA) reporting requirements<sup>39</sup> also would have reported certain information related to home mortgage lending outside of the MSA(s) where a bank has a home or branch office (or outside any MSA). The Proposed Rule also would have included certain optional data collection and reporting provisions.
- The Proposed Rule would have reinstated requirements regarding the content and location of the public file and public notices that were revised or eliminated in the June 2020 Rule.

6. *Ratings.* The appropriate Federal banking agency would have determined a bank's CRA rating as provided in proposed appendix A.

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<sup>39</sup> 12 U.S.C. 2801 *et seq.*

7. *Integration of National Bank and Savings Association Rules.* The Proposed Rule would have reinstated separate rules for national banks (at 12 CFR part 25, subparts A through E and appendices A and B) and savings associations (at 12 CFR part 195, subparts A through C and appendices A and B). The June 2020 Rule integrated these rules in 12 CFR part 25.
8. *Transition Period.* The Proposed Rule would have required banks to comply with the final rule as of the effective date with no option to follow any provisions in the June 2020 Rule during the period between when the OCC would adopt the Proposed Rule in final form and the Agencies would adopt updated interagency CRA rules in final form.<sup>40</sup> The Proposal discussed whether the OCC should address certain transition considerations in the final rule.

### **III. Comments on the Proposed Rule**

The OCC received 62 comment letters on the Proposed Rule, the majority of which generally supported rescinding the June 2020 Rule and the ongoing interagency effort to issue updated CRA rules. These comments addressed a wide range of issues and came from a variety of stakeholders and interested parties, including the banking industry, community and other advocacy groups, State and local governments, and the general public. The discussion below identifies the significant issues raised by these commenters and explains how the OCC addresses these issues in the final rule. This final rule will provide certainty to stakeholders, eliminate burden associated with continuing to transition to the June 2020 Rule, and better position the OCC to engage in an interagency rulemaking process to update and modernize the CRA rules.

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<sup>40</sup> The period of time between the effective date of this final rule and the effective date of final updated interagency CRA rules is referred to herein as the “interim period.”

*Transition Provisions.* The OCC proposed to replace the June 2020 Rule with rules for banks based on the 1995 Rules. The Proposed Rule included a description of several transition considerations that the OCC was contemplating to provide for a smooth transition from the June 2020 Rule. Although commenters generally supported rescission of the June 2020 Rule, they expressed opposing views on replacing the June 2020 Rule with rules based on the 1995 Rules. Community groups and other commenters generally supported the Proposal for reasons including (1) the OCC should not have independently promulgated the June 2020 Rule; (2) there would be confusion and inconsistent CRA evaluations if there were different CRA regulatory regimes applicable to different types of IDIs; (3) the June 2020 Rule is not yet fully effective, which lessens the impact of its rescission; (4) uniformity of CRA rules for all IDIs during the interim period would facilitate the ongoing interagency rulemaking process; and (5) the June 2020 Rule both failed to ensure that banks meet their local communities' banking needs and disincentivized investment in LMI communities and communities of color. One commenter suggested that the final rule should return banks to the 1995 Rules but include certain innovations from the June 2020 Rule, including deposit-based assessment areas and the list of qualifying activities.

In contrast, industry and trade associations generally opposed transitioning back to the 1995 Rules. Some of these commenters stated that banks have already changed their CRA programs to comply with the June 2020 Rule and another transition would be burdensome. They requested that the OCC balance the benefits of interagency uniformity with the need to minimize the disruption—for both banks and their CRA reinvestment partners—that will result if the OCC adopts the Proposed Rule. Similarly, others asserted that implementing the Proposed Rule would be disruptive, wasteful, and confusing. They recommended that the OCC minimize the number

of regulatory transitions, the burden, and the confusion that would result from multiple rule changes.<sup>41</sup>

Several of these commenters requested that, during the interim period, the OCC (1) retain the provisions of the June 2020 Rule with a compliance date of October 1, 2020, and (2) revert to the 1995 Rules only for provisions of the June 2020 Rule with a compliance date of January 1, 2023, or January 1, 2024. Several commenters also requested that the OCC provide banks with flexibility to continue to utilize aspects of the June 2020 Rule or the 1995 Rules during the interim period, including by (1) providing consideration for all activities that qualify under either the June 2020 Rule or the 1995 Rules and (2) allowing banks that were in the process of transitioning to the June 2020 Rule to retain the CRA programs they have in place as long as their programs comply with either the 1995 Rules or the June 2020 Rule.

After considering the comments on transition issues, the OCC is adopting the final rule largely without modification from the Proposed Rule and with a delayed compliance date for two provisions: all banks will need to comply with the rule by January 1, 2022, with the exception of the public file and public notice provisions (§§ 25.43 and 25.44 of the final rule). As discussed below, banks will need to comply with §§ 25.43 and 25.44 by April 1, 2022. Notwithstanding commenters' concerns regarding the burden for banks to transition back to a rule based on the 1995 Rules, it is the view of the OCC that this burden will be limited because the June 2020 Rule has only been partially implemented. Further, the alternatives suggested by the commenters would create confusion. For example, allowing banks the flexibility to elect to operate under either the June 2020 Rule or the 1995 Rules would create confusion for stakeholders regarding

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<sup>41</sup> One commenter also expressed concern that reinstatement of the 1995 Rules could lead to regressive financial policies in low-income communities and suggested that the OCC consider lessons from the financial crisis and solicit feedback from the most affected communities.

which regulatory framework applied during banks' CRA evaluations. It also would undermine the goal of a consistent set of rules for all IDIs and could delay the issuance of the Agencies' updated interagency CRA rule. For example, creating a hybrid regulatory framework that leverages aspects of both the June 2020 Rule and the 1995 Rules could increase the supervisory burden and draw OCC resources away from the interagency CRA rulemaking efforts.

By finalizing this rule with an effective date of January 1, 2022, and a compliance date of April 1, 2022, for §§ 25.43 and 25.44, all IDIs will be subject to the same general regulatory framework at the earliest reasonable date, which will facilitate the Agencies' issuance of updated interagency CRA rules. To address concerns regarding the burden associated with this decision, the OCC will afford banks the implementation flexibility permitted by the transition provisions of the final rule and the Interagency Questions and Answers Regarding Community Reinvestment (Q&As) for the 1995 Rules<sup>42</sup> and other CRA guidance, including the application of performance context. For example, in evaluating a bank's performance from October 1, 2020, through the interim period, the OCC will consider the impact that regulatory changes had on the bank's ability to engage in qualifying activities as part of its performance context. In addition, the final rule's delayed compliance date of April 1, 2022, for the public file and public notice provisions will ease burden associated with this final rule.

*Qualifying Activities.* The Proposed Rule would have replaced the qualifying activities criteria in the June 2020 Rule with the 1995 Rules' home mortgage loan, small business loan, small farm loan, consumer loan, and CD definitions. The Proposed Rule also would have replaced the definitions related to the qualifying activities criteria in the June 2020 Rule with the

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<sup>42</sup> 81 FR 48506 (July 25, 2016).

applicable definitions under the 1995 Rules. The Proposed Rule would have eliminated June 2020 Rule definitions that did not exist in the 1995 Rules.

The Proposal also explained that banks would receive consideration in their CRA examinations for activities that met the qualifying activities criteria or definitions in effect at the time that the banks conducted the activities.<sup>43</sup> Under the final rule, as was also the case under the June 2020 Rule, a CRA activity may include a legally binding commitment to lend or invest. A legally binding commitment will be considered to have been conducted on the date that the commitment is legally binding on the bank. This practice is consistent with the OCC's longstanding treatment under the 1995 Rules of legally binding commitments.<sup>44</sup> Therefore, under the final rule, a legally binding commitment to lend or invest will be considered under the CRA regulatory framework that was in effect at the time the commitment became legally binding on the bank.

The OCC asked whether its proposal to consider activities based on whether they qualified at the time the bank (1) conducted the activities or (2) entered into a legally binding commitment to conduct the activities was a reasonable approach to address the proposed changes to the activities that would receive consideration in CRA examinations.

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<sup>43</sup> For example, if a bank originated a loan or entered into a legally binding commitment to lend on December 20, 2021, to build a charter school in which 40 percent of the students received free or reduced price school lunch, that loan would receive consideration in a bank's CRA examination even if the CRA examination took place after the effective date of the final rule (January 1, 2022) because this activity is a qualifying activity under the June 2020 Rule. *See* June 2020 Rule, 12 CFR 25.04(c)(5)(i). However, if the bank made the same loan or entered into the same legally binding commitment to lend on January 20, 2022, that loan or commitment would not qualify under the CD definitions in the final rule, and, therefore, would not receive consideration in a future CRA examination. *See* 12 CFR 25.12(g) and (h) of this final rule.

<sup>44</sup> *See* 12 CFR 25.21-27 of this final rule. *See also* Q&A §\_\_.23(e); Q&A §\_\_.26(b)—4.



Many commenters supported the elimination of the June 2020 Rule’s qualifying activities criteria in the final rule and returning to the definitions in the 1995 Rules.<sup>45</sup> Other commenters advocated retaining the June 2020 Rule’s qualifying activities criteria, asserting that their elimination would negatively affect banks’ communities. For example, one commenter asserted that the broader definition of qualifying activities in the June 2020 Rule provides an incentive for banks to engage in activities that benefit communities, including LMI and underserved persons, and that this result is consistent with the CRA’s intent.<sup>46</sup> Another commenter suggested that retaining the June 2020 Rule’s approach for qualifying activities would minimize disruptions in ongoing investment decisions. Other commenters supported retaining the current framework because of the burdens associated with changing regulatory regimes. One commenter suggested that the OCC give CRA consideration to any activity that qualifies under either the 1995 Rules or June 2020 Rule.

Many commenters expressed support for the proposal to provide consideration for activities based on whether they qualified at the time the activities were conducted or subject to a legally binding commitment, with some commenters describing this approach as both reasonable and appropriate. One community group stated that it would be unfair to revoke consideration for activities that qualified at the time that the activities were conducted.

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<sup>45</sup> One commenter suggested that, if legally permissible, the OCC should retroactively discount the expanded activities under the June 2020 Rule, particularly if done in the normal course of business, and all expanded activities should be re-evaluated to assess whether they benefitted the intended beneficiaries of the CRA.

<sup>46</sup> One of these commenters specifically objected to reinstating the 1995 Rules’ CD services definition, asserting that there are many CRA volunteer services that provide tremendous benefits to banks’ communities but do not focus on providing financial services to these communities.

After considering the comments, the OCC is adopting the retail lending, CD, and related definitions as proposed and adopts the proposed treatment of consideration for activities under the CRA. This outcome ensures that, going forward, (1) banks will receive consideration for activities that the Agencies have collectively recognized help to meet community credit needs; (2) consistent rules will apply to all IDIs; (3) banks will receive credit for dollars that are already legally committed; and (4) the OCC is likely to be able to more effectively work with the Board and the FDIC to determine the types of activities that should receive consideration under an updated interagency CRA rule. The final rule includes a provision in subpart D that explains when activities qualify for CRA consideration in CRA examinations based on the rule in effect at the time that the activities were conducted.

*Confirmation Process.* The June 2020 Rule included a confirmation process for qualifying activities that permits banks and other interested parties to request OCC confirmation that a loan, investment, or service is consistent with that rule's qualifying activities criteria prior to engaging in the activity. Under the Proposed Rule, the OCC would have removed the qualifying activities confirmation process from the rule and replaced it with OCC procedures that would be operationally similar to the June 2020 Rule's confirmation process, but the OCC would have adapted the substance to conform to the 1995 Rules. The OCC requested comment on this approach.

Both industry and community group commenters expressed support for retaining a confirmation process. One industry commenter noted that, regardless of whether the process is included in the final rule, retaining a confirmation process would be the least disruptive outcome for banks and interested parties. A community organization noted that any confirmation process should be equally accessible to community-based organizations and banks. Another community

group stated that any OCC delay in issuing guidance on the final rule's confirmation process should not affect banks' responsibilities to comply with the rule as of its effective date.

Given the broad support for a confirmation process in general and the clarity provided by the June 2020 Rule's confirmation process, the OCC is adopting the proposed approach and will provide guidance on the scope and mechanics of this CD activity confirmation process.<sup>47</sup>

*Illustrative List.* The June 2020 Rule provided an illustrative list of examples of CRA qualifying activities. The OCC indicated in the Proposal that it would maintain this list on its website to help banks determine whether activities conducted while the June 2020 Rule was in effect are eligible for CRA consideration. While the OCC received few comments on this topic, all of those who commented supported the proposed approach of continuing to maintain the list of examples.<sup>48</sup> The OCC believes that it may be useful to banks and other interested parties to continue to have access to the June 2020 Rule's illustrative list; therefore, the OCC will continue to make the list available on the Agency's website. After January 1, 2022, banks that newly engage in the activities on the illustrative list will only receive CRA consideration if the activities also meet the retail or CD definitions in the final rule.

*Bank Asset-Size Thresholds.* The June 2020 Rule increased the bank asset-size thresholds for determining small, intermediate, and general performance standards banks from the

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<sup>47</sup> As of January 1, 2022, confirmation letters issued under the June 2020 Rule for qualifying activities that a bank has not yet engaged in, or entered into a legally binding commitment for, would no longer serve as OCC confirmation that an activity qualifies for CRA consideration. Nonetheless, the activity may still receive CRA consideration if it meets the CD definitions and other requirements of the final rule.

<sup>48</sup> One commenter requested that the OCC preserve the four illustrative examples of qualifying activities that involve access to digital services as part of any amended guidance on CRA qualifying activities. These examples will remain on the illustrative list; however, new activities consistent with these examples that are conducted after January 1, 2022 will only receive consideration to the extent that they also are consistent with the retail or CD definitions in the final rule.

thresholds for determining small, ISB, and large banks under the 1995 Rules.<sup>49</sup> This increase changed some banks' asset-size categories (*e.g.*, certain banks that were ISBs under the 1995 Rules are small banks under the 2020 Rule, and certain banks that were large banks under the 1995 Rules became intermediate banks under the June 2020 Rule). Under the Proposed Rule, the OCC would have reinstated the bank asset-size thresholds of the 1995 Rules.<sup>50</sup> For banks that would have transitioned from small banks to ISBs as a result of this, under the Proposal, the OCC would have considered this change in assessing the bank's performance context. Although the proposed reinstatement of bank asset-size thresholds would have applied as of January 1, 2022, the Proposal described a transition period for the new data collection, recordkeeping, and reporting requirements for intermediate banks that would return to being designated as large banks or newly become designated as large banks, which is addressed in more detail below.

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<sup>49</sup> Prior to the enactment of the June 2020 Rule, (1) small banks were banks with less than \$326 million in assets; (2) ISBs were banks with assets between \$326 million but less than \$1.305 billion; and (3) large banks were banks with assets of \$1.305 billion and above. Under the June 2020 Rule, (1) small banks are banks with assets up to \$600 million; (2) intermediate banks are banks with assets of greater than \$600 million and up to \$2.5 billion; and (3) general performance banks (referred to as large banks under the 1995 Rules' framework) are banks with greater than \$2.5 billion in assets. As proposed, (1) small banks would have been banks of less than \$330 million in assets; (2) ISBs would have been banks with assets between \$330 million and less than \$1.322 billion; and (3) large banks would have been banks with assets of \$1.322 billion and above.

<sup>50</sup> The bank asset-size thresholds in this final rule reflect the adjusted thresholds issued by the Board and FDIC on December 17, 2020, effective January 1, 2021. *See, e.g.*, FDIC PR 140-2020, Agencies Release Annual CRA Asset-Size Threshold Adjustments for Small and Intermediate Small Institutions, available at <https://www.fdic.gov/news/press-releases/2020/pr20140.html>. The Agencies make annual adjustments to the bank asset-size thresholds based on the change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), not seasonally adjusted, for each 12-month period ending in November. The adjusted thresholds are typically available mid- to late-December and are effective January 1 of the following year. Once the Agencies determine the annual adjustment for calendar year 2022, the OCC will publicize the updated bank asset-size thresholds.

The OCC received several comments on the proposed changes to the bank asset-size thresholds. Generally, industry commenters did not support the proposed changes, noting that banks recently adjusted their CRA programs to satisfy the June 2020 Rule and that the Proposed Rule would require another set of adjustments and associated burden (*e.g.*, small banks that become ISBs would be subject to a CD test; intermediate banks that become large banks would be subject to separate lending, investment, and service tests and to new or reinstated data collection, recordkeeping, and reporting requirements).

Commenters also noted that reinstating the 1995 Rules' bank asset-size thresholds and then revising them again in a future interagency rulemaking would both be wasteful and burdensome, in part due to institutions' limited staff. One commenter also asserted that the asset-size thresholds under the 1995 Rules were too low, do not reflect the current banking industry, and should not be reinstated. Another commenter noted that the proposed asset-size thresholds are problematic because many banks now have inflated balance sheets due to government programs related to the COVID-19 pandemic.

Other commenters stated that an immediate effective date for the reinstated asset-size thresholds would require banks to quickly modify their current procedures and processes (*e.g.*, purchasing CRA software; educating specific lines of business about the new requirements; updating job aids; and implementing new requirements and testing processes). Several commenters suggested that banks that would have to comply with new standards or tests under a final rule (*e.g.*, the ISB performance standards or large bank lending, investment, and services tests) should be provided with additional time to comply. One commenter supported a transition period for banks that were below the 1995 Rules' large bank asset-size threshold prior to the June 2020 Rule's effective date but now exceed the proposed large bank asset-size threshold.

This commenter suggested a one-year transition, a two-year transition, or retaining the June 2020 Rule's bank asset-size thresholds for the duration of the interim period.

Community groups and other commenters generally supported the Proposal to revert to the 1995 Rules' asset-size thresholds. These commenters suggested that it should not be overly burdensome for banks to transition back to their former bank types because many banks likely retained their reporting infrastructure and software programs.

After considering these comments, the OCC is adopting the Proposed Rule's bank asset-size thresholds without modification. Therefore, any shift by banks to a new bank type (*i.e.*, small bank, ISB, or large bank) will be based on the final rule's definitions and effective January 1, 2022. Reinstating the 1995 Rules' asset-size thresholds is one way that the final rule establishes a consistent rule applicable to all IDIs, which, as discussed elsewhere in this preamble, will likely facilitate the interagency CRA rulemaking process. The final rule's consideration of performance context should provide sufficient flexibility to address commenters' concerns about the burden associated with being evaluated under new tests and standards. For example, the OCC will consider a bank's need to change its CRA procedures and processes (*e.g.*, reallocating staff and other resources; initiating or increasing its CD activities; or purchasing new software) when evaluating the bank under the final rule's applicable performance tests and standards. Furthermore, as discussed below, the OCC will provide banks that will be large banks for the first time under the final rule with additional time to comply with the rule's data requirements.

*Data Collection, Recordkeeping, and Reporting Requirements for Banks Transitioning from Intermediate Banks to Large Banks.* Under the June 2020 Rule, banks with assets between \$1.305 billion and \$2.5 billion changed bank type from large bank (their classification under the

1995 Rules) to intermediate bank. As a result, these banks were no longer subject to large bank data collection and recordkeeping requirements starting in 2021, and, under the June 2020 Rule, they would not have been subject to large bank data reporting requirements in 2022.

Under the Proposed Rule, the OCC would have (1) treated banks that exceeded the ISB asset-size threshold<sup>51</sup> as large banks and (2) applied the large bank data requirements to banks that were designated as intermediate banks under the June 2020 Rule beginning one year from the final rule's effective date (one-year proposed grace period).<sup>52</sup> This treatment is consistent with the OCC's general practice under the 1995 Rules.

As discussed above, industry commenters generally objected to the proposed changes to the bank asset-size thresholds largely because of the burden associated with the data requirements for the banks subject to new data requirements (*e.g.*, purchasing new software to comply with the applicable data requirements). Several commenters recommended that the OCC retain the June 2020 Rule's bank asset-size thresholds for the interim period. Others requested additional transition time to comply with the Proposed Rule's data requirements, or flexibility from the OCC when assessing an affected bank's data integrity. For example, one commenter suggested that the OCC apply a "good faith" standard in evaluating CRA performance during the interim period, including by (1) not issuing a "Needs to Improve" rating based on inaccuracies or deficiencies in an affected bank's data if the bank demonstrates its program was developed and administered in good faith and (2) giving the bank a reasonable period of time to correct inaccuracies or deficiencies prior to issuing the bank's final performance evaluation rating.

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<sup>51</sup> *See supra* note 28.

<sup>52</sup> Under the June 2020 Rule, banks that exceeded the intermediate bank threshold remained subject to the 1995 Rules' data collection, recordkeeping, and reporting requirements, and, therefore, the Proposed Rule would not have imposed new requirements on these banks.

Conversely, community groups generally supported the immediate reinstatement of the 1995 Rules' large bank data requirements for all large banks as of the effective date of the final rule. One commenter noted that this data is critical for assessing whether the bank is meeting community needs, and there should be no delay in providing it to the public. The OCC also received a comment suggesting different treatment for those banks that were large banks prior to the June 2020 Rule (redesignated large banks) and those banks that would, under the Proposal, be large banks for the first time (newly designated large banks).<sup>53</sup>

Because redesignated large banks have prior experience with the data requirements in the 1995 Rules, it does not appear to be necessary to provide them with a grace period for compliance with the large bank data collection, recordkeeping, and reporting requirements. The OCC notes that, although the final rule requires redesignated large banks to report calendar year 2022 data by March 1, 2023—a period of 14 months from the final rule's effective date—it contains no specific date during 2022 by which redesignated large banks must actually commence the applicable data collection and recordkeeping. Therefore, a redesignated large bank does not need to have its data collection and recordkeeping systems in place by January 1, 2022, to be in compliance with the final rule.<sup>54</sup>

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<sup>53</sup> As of September 30, 2021, approximately 36 OCC-regulated redesignated large banks and 31 OCC-regulated newly designated large banks would exceed the ISB threshold of the final rule and, therefore, be considered large banks under the final rule.

<sup>54</sup> The OCC is not requiring data reporting for calendar year 2021 for any redesignated or newly designated large banks. OCC guidance provided that intermediate banks under the June 2020 Rule that were formerly large banks under the 1995 Rules were exempt from data collection and recording requirements for calendar year 2021 and reporting requirements for calendar year 2022. *See* OCC Bulletin 2020-99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (Nov. 9, 2020), available at <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-99.html>. Therefore, although one commenter expressed an interest in having redesignated large banks report 2021 data, it would be unreasonable for banks expressly exempt from data collection and recordkeeping requirements in calendar year 2021 to be expected to report that data by March 1, 2022. This



In addition, the OCC intends to work with these redesignated large banks over the next year to ensure they are on track to report calendar year 2022 data by March 1, 2023, and to provide them with any necessary flexibility in terms of missing information or other limited error tolerances for calendar year 2022 data. However, the error tolerances afforded these banks will only last one year and the data collection, recordkeeping, and reporting systems and processes of redesignated large banks must be fully functional by January 1, 2023, including with respect to data integrity. This approach should provide a sufficient transition period to appropriately balance the need for CRA data from redesignated large banks under the final rule with the practical challenges these banks may encounter.

In contrast, the OCC has determined it is appropriate to apply the proposed grace period approach to newly designated large banks. These banks do not have the same prior experience with the data collection, recordkeeping, and reporting requirements under the 1995 Rules, and it is reasonable to provide them with additional time to establish the systems and processes necessary to comply with the final rule's data requirements. Therefore, the OCC is providing these banks with a one-year grace period during which they will not be subject to the final rule's data requirements. Specifically, the OCC will require these banks to comply with the large bank data collection and recordkeeping requirements beginning on January 1, 2023, and report calendar year 2023 data consistent with the large bank reporting requirements by March 1, 2024. Additionally, the OCC will evaluate these banks under the final rule's ISB lending and CD tests until they report the data necessary to evaluate them under the rule's large bank lending, investment, and service tests.

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approach is consistent with the 1995 Rules, which did not require banks that were small banks or ISBs in the prior calendar year to report data.

*Affiliate Activities.* The June 2020 Rule does not specifically address how the CRA activities of bank affiliates are treated but states that only activities conducted by a bank qualify for CRA consideration. In January 2021, the OCC issued an interpretive letter that limited the consideration of affiliate activities (IL 1177).<sup>55</sup> Under the Proposed Rule, the OCC would have considered a bank's affiliate's CRA activities consistent with the affiliate treatment provisions in the 1995 Rules, which permitted banks to elect to include affiliate activities in their CRA evaluations, subject to certain limitations.<sup>56</sup> As explained in the Proposal, the OCC also would have rescinded IL 1177.

Commenters that addressed affiliate activities generally supported the OCC's proposed treatment of these activities, and the OCC adopts the Proposed Rule as final on this issue. This decision should be generally nondisruptive relative to the alternatives because it (1) enables banks to retain their existing business models for engaging in CRA activities; (2) ensures that banks receive consideration for CRA-qualifying activities; and (3) promotes banks' continued efforts to serve their communities. Consequently, as of January 1, 2022, this final rule

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<sup>55</sup> The policy announced in that interpretive letter was set to take effect April 1, 2022, and provided that a bank would not have received 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 the affiliates. See IL 1177, 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 (Jan. 4, 2021), available at <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1177.pdf>.

<sup>56</sup> See §§ 25.22(c), 25.23(c), 25.24(c), 25.25(d), and 25.27(c)(3) of the Proposed Rule. See also Q&A § \_\_.22(c)(2)(i)—1; Q&A § \_\_.22(c)(2)(ii)—1; Q&A § \_\_.22(c)(2)(ii)—2; Q&A § \_\_.24(e)—1; and Q&A § \_\_.26—1.

supersedes IL 1177, and banks may receive consideration for affiliate activities as provided for in the final rule.<sup>57</sup>

*Strategic Plans.* As explained in the Proposal, the June 2020 Rule revised the requirements for strategic plans by, among other things, permitting banks to include target market assessment areas in their strategic plans. The OCC proposed to allow banks to maintain strategic plans that the Agency had approved under the June 2020 Rule, including plans that contained target market assessment areas.<sup>58</sup> Although not addressed in the Proposal, the OCC had provided in guidance regarding the June 2020 Rule that banks could establish goals for CRA-qualifying activities conducted outside of their assessment areas.<sup>59</sup>

Several commenters supported maintaining strategic plans approved under the June 2020 Rule with one commenter generally advocating for maintaining the status quo for portions of the June 2020 Rule. One commenter supported maintaining these plans but only if the strategic plan period is already in effect. A few commenters expressed concern about how these strategic plans would be affected if the final rule rescinds the June 2020 Rule's qualifying activities criteria,

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<sup>57</sup> Consistent with this statement, the OCC will officially rescind IL 1177 as of January 1, 2022.

<sup>58</sup> The OCC stated in the Proposal that permitting strategic plan banks to maintain their target market assessment areas was 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 notes that there are currently no banks with strategic plans, or strategic plans pending OCC approval by December 31, 2021, that include goals established for target market assessment areas. As a result, the remaining discussion of strategic plan transition issues focuses on issues other than target market assessment areas.

<sup>59</sup> Pursuant to OCC Bulletin 2020-99, a bank operating under an approved strategic plan could receive consideration for qualifying activities conducted outside of its assessment area(s) by establishing a separate goal for those activities. The OCC would judge the goal for outside qualifying activities independently of the goals established for delineated assessment area(s). These outside activities could elevate bank performance from satisfactory to outstanding but could not compensate for less than satisfactory overall performance inside a bank's assessment area(s). Poor performance in one area could not be offset by performance that exceeds plan goals in another area.

with some recommending that affected banks be permitted to continue to rely on those criteria while the plan is in effect.<sup>60</sup> In contrast, a community group commenter suggested that the OCC work with banks to modify strategic plans including target market assessment areas. The commenter noted that although this would put additional burden on the OCC and banks, it would not be unreasonable considering the circumstances and that it is not wholly sensible that banks would utilize strategic plans based on a rule that no longer applies.

Under the final rule, strategic plans approved under the June 2020 Rule may remain in effect but these plans must comply with the provisions of the final rule, as applicable.<sup>61</sup> This application of the final rule to strategic plans would put all banks—those with strategic plans and those without—on a level playing field. Because banks will be subject to the applicable aspects of the final rule, the guidance that permitted banks to develop outside of assessment areas goals is no longer applicable.<sup>62</sup> Specifically, for strategic plans, the final rule provides that the OCC will consider a bank’s record of helping to meet the credit needs of its assessment area(s). Therefore, provisions in strategic plans that include goals for activities outside a bank’s assessment area(s) will no longer be applicable, and the OCC will no longer evaluate these activities when assessing the bank’s performance. Because the final rule does not address assessing performance outside of a bank’s assessment area(s), the OCC will not rate a bank “Needs to Improve” or “Substantial Noncompliance” solely for failure to meet goals established under the June 2020 Rule for any area(s) outside of its assessment area(s).

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<sup>60</sup> The challenges associated with meeting strategic plan goals was one reason commenters requested that, during the interim period, the OCC retain either (1) the provisions of the June 2020 Rule with an October 1, 2020, compliance date or (2) the qualifying activities criteria and related definitions.

<sup>61</sup> Approved strategic plans will remain in effect for the duration of the term set out in the plan, unless otherwise amended.

<sup>62</sup> See *supra* note 59.

In addition, the OCC is committed to minimizing burden on banks transitioning to the final rule by giving them the appropriate flexibility permitted under the final rule, Q&As and other CRA guidance, and longstanding OCC policy in evaluating their performance relative to the goals outlined in strategic plans approved under the June 2020 Rule. Therefore, the OCC will continue to consider a bank's activities in the broader statewide or regional area(s) that include a bank's assessment area(s), consistent with the guidance in the Q&As.<sup>63</sup>

Nonetheless, if a bank is concerned that it will not be able to meet the measurable goals specified in its strategic plan due to the regulatory changes in the final rule, the bank may request to amend its strategic plan based on the process outlined in § 25.27(h) of the final rule. While the OCC will not require any bank to amend its strategic plan, the OCC will work expeditiously with banks that request amendments. This approach will enable the OCC to balance its interest in reestablishing consistency with respect to the CRA rules with banks' individual circumstances.

*CRA Activities Outside of a Bank's Assessment Area(s).* The June 2020 Rule provides for nationwide consideration of qualifying activities for banks evaluated under the general performance standards. As explained in guidance addressing implementation of the June 2020 Rule, if certain conditions are met during the period transitioning from the 1995 Rules to the June 2020 Rule, an OCC-regulated bank could receive consideration for qualifying activities conducted outside of its assessment area(s), even if those activities do not directly or indirectly serve its assessment area(s).<sup>64</sup>

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<sup>63</sup> Q&A § \_\_\_\_.12(h)—6.

<sup>64</sup> See OCC Bulletin 2020-99.

Under the Proposed Rule, the OCC would have considered a bank's activities outside of its assessment area(s) in limited circumstances and generally not on a nationwide basis, consistent with the 1995 Rules and the Q&As. The OCC requested comment, however, on whether it should continue to consider bank activities that do not directly or indirectly serve either a bank's assessment area(s) or the broader statewide or regional area(s) that include the bank's assessment area(s). For commenters who supported consideration for those activities, the OCC also requested comment on what conditions, if any, should apply.

Several community group commenters supported limiting consideration for activities that do not directly or indirectly serve either a bank's assessment area(s) or the broader statewide or regional area(s) that include a bank's assessment area(s). The commenters noted that the Agencies should have the same rules and apply the same standards to activities conducted outside of the assessment areas of the IDIs they supervise. One community group commenter also stated that consideration of these activities should end on the effective date of the final rule. In contrast, some industry commenters asserted that the OCC should continue to consider activities conducted outside of banks' assessment areas.

The final rule does not provide for consideration of activities that do not directly or indirectly serve either a bank's assessment area(s) or the broader statewide or regional area(s) that include a bank's assessment area(s). This approach is more consistent with the approach taken by the 1995 Rules and likely will enable the OCC to work more effectively with the Board and the FDIC in the interagency rulemaking process on a consistent approach for the geographic consideration of CD activities.<sup>65</sup>

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<sup>65</sup> Under the final rule, banks may receive consideration for investments in nationwide funds consistent with the guidance in Q&A § \_\_\_\_.23(a)—2.

*Public File.* The June 2020 Rule included requirements for the content and location of a bank's public file that differed from those in the 1995 Rules. The Proposed Rule would have restored the public file content and location requirements in the 1995 Rules. As such, the Proposed Rule would have required banks to (1) include additional information in their public files; (2) make all the information in their public file available at their main offices and, if an interstate bank, at one branch office in each State; and (3) make more limited information available at each branch. Because the Proposed Rule would have imposed these additional public file content and location requirements, the OCC requested comment on whether banks would need additional time to comply and, if so, whether three months after the final rule's effective date would be sufficient time.

Some industry commenters suggested that, under the final rule, banks should be given the flexibility to comply with the public file requirements of either the 1995 Rules or June 2020 Rule. They argued that this flexibility would reduce the burden for banks that very recently transitioned to the June 2020 Rule's public file requirements. One industry commenter suggested that banks should have four months to comply if the rules are finalized as proposed. In contrast, other commenters suggested that three months was sufficient for banks to make these changes, with some noting that the proposed approach was to revert to a well understood and established process.

The final rule adopts the three-month transition provision for compliance with the final rule's public file requirements as proposed. Therefore, banks will be required to comply with the final rule's public file requirements by April 1, 2022. This transition period should strike an appropriate balance between providing community groups and other interested parties with access to the information that banks will have to provide in their public files under the final rule

and ensuring that banks have adequate time to update their public files in accordance with the requirements of the final rule.

*Public Notice.* The June 2020 Rule's public notice requirements differed from the 1995 Rules' requirements. Under the Proposed Rule, the 1995 Rules' public notice content and location requirements would have been restored, requiring each bank to provide the public notice content set out in appendix B of the Proposed Rule and place the notice in (1) the public lobby of its main office and (2) each branch, if any. Although the Proposed Rule would not have provided a transition period for complying with this provision, the OCC requested comment on this issue.

Some industry commenters suggested that the OCC should permit banks to comply with the public notice requirements under either the 1995 Rules or June 2020 Rule because it would be burdensome for banks that already transitioned to the June 2020 Rule's public notice requirement. One commenter requested four months for banks to make necessary changes, to the extent the OCC does not permit banks to use either the June 2020 Rule's or 1995 Rules' requirements as requested. In contrast, one commenter opposed any transition period.

The OCC agrees that it would be unduly burdensome to require banks to comply with the public notice requirements as of the January 1, 2022, effective date. Therefore, banks will be required to comply with the public notice requirements three months after the effective date of the final rule, April 1, 2022. The three-month delayed compliance date for the final rule's public notice provisions will mitigate burden associated with the revised content and location requirements while ensuring that interested parties are appropriately provided with the requisite notice.



*DOICP*. Prior to issuing the June 2020 Rule, OCC policy provided that the Agency would consider a bank's violation of the MLA or SCRA in its CRA examination of that bank.<sup>66</sup> The June 2020 Rule codified this policy by including MLA and SCRA violations in the non-exhaustive, enumerated list of DOICPs included in the rule that the OCC considers in evaluating a bank's CRA performance.

Under the Proposed Rule, the codification of this policy would be rescinded. The OCC did not intend, however, for this change to have a substantive effect. Because the list of violations included in the Proposed Rule is non-exhaustive, the OCC would have continued to consider violations of the MLA and SCRA consistent with its longstanding policy.<sup>67</sup>

The OCC received only one comment on this issue that opposed the change. This commenter stated that MLA and SCRA are designed to create a national standard of conduct and CRA evaluations should assess banks' compliance with these laws. As noted above, the OCC would have continued to consider MLA and SCRA violations under the Proposed Rule. Because one of the OCC's primary goals in issuing the Proposed Rule was to re-establish consistent rules for all IDIs, and because it is not necessary to include MLA and SCRA violations in the rule for the appropriate Federal banking agency to consider them in CRA examinations, the OCC adopts the Proposed Rule as final on this issue.

*Publication of CRA Performance Evaluations.* One community group commenter suggested that the OCC should instruct banks to make CRA exams more prominent on their websites and that all applications for new charters or for a change in control include publicly released CRA plans available from the banks and the regulatory agencies. The OCC has elected

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<sup>66</sup> See *supra* note 38.

<sup>67</sup> *Id.*

not to make this change at this time given the interest in reestablishing consistent requirements for all IDIs.

*Integration of National Bank and Savings Association Rules.* Under the June 2020 Rule, there is currently a single CRA rule that applies to both national banks and savings associations, located at 12 CFR part 25. The Proposed Rule would have reverted back to separate CRA rules for national banks and savings associations, 12 CFR part 25 and 12 CFR part 195, respectively, as was the case under the 1995 Rules. These separate rules, originally issued on an interagency basis, are materially the same, with only a few differences, described below.

The OCC sought input from commenters on whether it should retain the integrated rule or reinstate separate rules. Commenters did not provide significant input on this issue. One industry commenter opposed integration if it would prevent or deter the Agency from implementing a final rule that would allow OCC-regulated banks to continue to operate under the June 2020 Rule, and a member of the public expressed general support for separate rules. The OCC notes that integrating the national bank and savings association CRA rules will not affect the timing of the final rule's implementation.

As a general matter, the OCC has integrated many of its national bank and savings association rules for a variety of reasons, including to reduce regulatory duplication and clarify when the same substantive rule applies to both types of entities.<sup>68</sup> For these same reasons, the final rule maintains the integration of the national bank and savings association CRA rules in a single CRA rule. Furthermore, keeping an integrated rule will cause less confusion for stakeholders. The OCC also notes that integrating the CRA rules in this final rule will simplify the process of amending the OCC's CRA rule during the interagency rulemaking process and

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<sup>68</sup> See, e.g., 79 FR 28393 (May 16, 2014); 80 FR 43240 (July 21, 2015).

negate the need for OCC-specific integration provisions in the updated interagency rulemaking. Therefore, the OCC is not adopting the proposed separate rules for national banks and savings associations but is instead adopting an integrated CRA rule. Specifically, the final rule sets out, in 12 CFR part 25, subparts A through E<sup>69</sup> and appendices A and B, the CRA rule applicable to both national banks and savings associations. This integration should not have a material impact on any bank or any other person or entity.

Parts 25 and 195 under the 1995 Rules contained two substantive differences that were retained in the Proposed Rule. First, the Proposed Rule contained a small difference with respect to the effect of a national bank's CRA performance on an application for a deposit facility compared to a savings association's application. Under the CRA statute, the Agencies must take into account an institution's CRA performance record when evaluating an "application for a deposit facility."<sup>70</sup> The statute defines an "application for a deposit facility" to include the "establishment of a domestic branch or other facility with the ability to accept deposits."<sup>71</sup> Consistent with the 1995 Rules, proposed § 25.29(a)(1) stated that the OCC would take into account an applicant bank's CRA performance record in considering an application to establish a "domestic branch," while proposed § 195.29(a)(1) would have permitted the appropriate Federal banking agency to consider this record in a savings association's application to establish a "domestic branch or other facility that would be authorized to take deposits." Second, proposed § 25.29(b) would have required an application for a national bank charter filed by an applicant other than an IDI to include a description of the how the applicant will meet its CRA objectives

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<sup>69</sup> Subpart E, Prohibition Against Use of Interstate Branches Primarily for Deposit Production, only applies to national banks.

<sup>70</sup> 12 U.S.C. 2903(a)(2).

<sup>71</sup> 12 U.S.C. 2902(3).

and the OCC to take into account this description in considering the application. The Proposed Rule did not include a similar requirement for an IDI applicant for a national bank charter. The Proposed Rule for savings associations, § 195.29(b), differed from the Proposed Rule for national banks by including this requirement for every applicant for a savings association charter, not just non-IDI applicants. The OCC is including in the final rule separate provisions to reflect these differences for national banks and savings associations.

The final rule also includes a number of non-substantive or technical changes to proposed part 25 and its appendices to reflect the integration of the national bank and savings association rules. For example, § 25.11(c)(1)(ii) of the final rule explains that the OCC has the authority to prescribe these rules for national banks, Federal savings associations, and State savings associations and to enforce these rules for national banks and Federal savings associations. It further explains that the FDIC has the authority to enforce these rules for State savings associations. Section 25.11(c)(1)(iii) of the final rule explains that the phrase “appropriate Federal banking agency” will mean the OCC when the institution is a national bank or Federal savings association and the FDIC when the institution is a State savings association. This allows a single rule to apply to different institutions.

The final rule also revises the proposed definition of “bank” in § 25.12(e) to include a definition of “banks or savings associations” and a definition of “banks and savings associations.” Revising the proposed definition of the term “bank,” as opposed to adding a separate definition for “savings associations,” preserves in the final rule the numbering convention that is used in the Q&As. However, because “bank” and “savings association” are not separately defined, the final rule also revises §§ 25.29 and 25.44 to use the terms “insured

national bank” and “savings association” in the parts of those section that apply to only one type of institution. Lastly, the final rule does not include proposed 12 CFR part 195.

*Interagency Rulemaking.* The OCC received a number of comments on the June 2020 Rule and recommendations and ideas for the Agencies’ efforts to develop updated interagency CRA rules. Such comments are outside the scope of the current rulemaking. The OCC will share these comments with the Board and FDIC, as they are more relevant to the interagency rulemaking process.

*Technical Changes.* The OCC proposed a technical correction to an error in the 1995 Rules’ cross-reference to the definition of “foreign bank” at 12 CFR 25.62(a)(2) by replacing “12 CFR 28.11(j)” with “12 CFR 28.11(i).” The Agency received no comments on this change and adopts the correction as proposed.

The final rule also includes three other technical corrections. First, the final rule corrects the 1995 Rules’ cross-reference to the definition of “Federal branch” in 12 CFR 25.62(c) by replacing “12 CFR 28.11(i)” with “12 CFR 28.11(h).” Second, the final rule corrects the 1995 Rules’ cross-reference to the definition of the “home State of the foreign bank” in 12 CFR 25.62(d)(4)(i) by replacing “12 CFR 28.11(o)” with “12 CFR 28.11(n).” Third, in appendix B, the final rule replaces (1) the reference to “Comptroller of the Currency” with “Office of the Comptroller of the Currency (OCC)” and (2) references to the “Comptroller” and “Deputy Comptroller” with “OCC.”

#### **IV. The Final Rule**

For the reasons discussed above, the OCC finalizes the rule as proposed, except as discussed above.<sup>72</sup>

#### **V. Regulatory Analyses**

##### **A. Paperwork Reduction Act**

Certain provisions of the final rule contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995.<sup>73</sup> 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 submitted the information collection requirements to OMB in connection with the Proposed Rule and received pre-approval under OMB Control No. 1557-0160.

Under the final rule:

- 12 CFR 25.25(b) – Requests for designation as a wholesale or limited-purpose bank shall be made in writing with the OCC at least three months prior to the proposed effective date of the designation.
- 12 CFR 25.27 – Strategic plans shall be submitted at least three months prior to proposed effective dates. Plans shall include measurable goals and address all the performance categories. Plans shall include a description of informal efforts to solicit public suggestions, any written public comments received, and if revised pursuant to public

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<sup>72</sup> As referenced throughout this preamble, the final rule incorporates the guidance in the Q&As and any other applicable guidance related to the 1995 Rules.

<sup>73</sup> 44 U.S.C. 3501 *et seq.*

comment, a copy of the initial plan. Amendments to plans shall be submitted in the case of a change in material circumstances.

- 12 CFR 25.42(a) – Large banks shall 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).
- 12 CFR 25.42(b)(2) – Large banks shall 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) – A large bank, if subject to reporting under HMDA, shall 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) – Each bank shall collect and maintain in machine readable form certain data for consumer loans originated or purchased by the bank for consideration under the lending test. Under 12 CFR 25.42(c)(2)-(4), other information shall be included concerning a bank’s lending performance, including additional loan distribution data.
- 12 CFR 25.42(d) – 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 the data that the bank would have collected, maintained, and reported pursuant to 12 CFR 25.42(a)-(c), 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 HMDA by the affiliate.

- 12 CFR 25.42(e) – A bank that elects 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, shall report for those loans the data that the bank would have reported under 12 CFR 25.42(b)(2), had the loans been originated or purchased by the bank.
- 12 CFR 25.42(f) – Small banks that qualify for evaluation under the small bank performance standards but elect evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other banks under 12 CFR 25.42(a) and 25.42(b).
- 12 CFR 25.42(g) – A bank, except 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.
- 12 CFR 25.43(a) – A bank shall maintain a public file that contains 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) – A large bank shall include in its 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, it shall 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



and outside the bank's assessment area(s); and its CRA Disclosure Statement. A bank required to report home mortgage loan data pursuant to 12 CFR part 1003 shall 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 shall 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 shall 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), 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 shall include in its public file a copy of that plan. 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.

- 12 CFR 25.43(c)-(e) – A bank shall make available to the public for inspection upon request and at no cost to the public the information required in these provisions at the main office or branch as specified. 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. A bank shall 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 continue to be 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.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)<sup>74</sup> requires an agency, in connection with a final rule, to prepare a Final 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 assets of \$41.5 million or less) or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The RFA does not required this analysis, however, if the agency certifies that the final rule will not have a

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<sup>74</sup> 5 U.S.C. 601 *et seq.*

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 final rule will impact approximately 669 small entities. The OCC estimates the annual cost for small entities to comply with the final rule will 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 final rule will have a significant economic impact on zero small entities, which is not a substantial number. Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

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

Pursuant to the Unfunded Mandates Reform Act of 1995,<sup>75</sup> the OCC considers whether a final rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted for inflation). The OCC estimates that expenditures associated with the mandates in the final rule will be roughly \$6.2 million and, therefore, concludes the rule will not result in an expenditure of \$100 million or more annually (adjusted for inflation) by State, local, and tribal governments, or by the private sector.

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<sup>75</sup> 2 U.S.C. 1532.

#### D. Administrative Procedure Act

Pursuant to section 553(b)(3)(B) of the Administrative Procedure Act (APA),<sup>76</sup> general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>77</sup> As described in the final rule’s **SUPPLEMENTARY INFORMATION** section, the final rule includes a few technical amendments that the OCC did not include in its Proposed Rule. Because these amendments are not substantive and merely correct cross-references and a reference to the OCC, the OCC believes that public notice of these changes is unnecessary and, therefore, that it has good cause to adopt these changes without notice and comment.

Under the APA, an agency is required to provide a 30-day delayed effective date when publishing a substantive rule, with certain exceptions including for good cause.<sup>78</sup> The OCC believes it has good cause to issue this final rule without a 30-day delayed effective date for several reasons.

First, the OCC’s CRA evaluations for banks consider CRA activities in full calendar year increments (*i.e.*, January 1 – December 31). A 30-day delayed effective date would cause the final rule to take effect after the start of the 2022 calendar year. This would cause a bank to be subject to two different regulatory regimes during any three-year examination period that includes 2022, including different approaches to the activities that receive consideration in CRA evaluations and different data collection, recordkeeping, and reporting requirements. As was the

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<sup>76</sup> 5 U.S.C. 551 *et seq.*

<sup>77</sup> 5 U.S.C. 553(b)(3)(B).

<sup>78</sup> 5 U.S.C. 553(d).

OCC's experience with the June 2020 Rule, this would result in more complicated written CRA performance evaluations, create confusion for banks and other stakeholders reviewing CRA performance evaluations, and make it more difficult to compare CRA performance across the banking industry.<sup>79</sup> Second, data collected on a calendar-year basis is more useful to stakeholders than data collected for a partial year. Finally, banks currently are required to comply with many of the provisions in the 1995 Rules, which this final rule reinstates, because the June 2020 Rule is only partially in effect. Therefore, banks will not have to make changes to adjust to these provisions of the final rule.

For these reasons, the OCC finds that there is good cause to publish this rule without a 30-day delayed effective date.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Under the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), in determining the effective date and administrative compliance requirements for new rules that impose additional reporting, disclosure, or other requirements on IDIs, the OCC must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such rules will place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such rules.<sup>80</sup> In addition, the RCDRIA requires new rules and amendments to rules that impose additional reporting, disclosure, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the rules are published in

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<sup>79</sup> The June 2020 Rule had an effective date of October 1, 2020, which resulted in two regulatory regimes applying during calendar year 2020.

<sup>80</sup> 12 U.S.C. 4802(a).

final form.<sup>81</sup> The OCC has determined that this final rule will impose additional reporting, disclosure, or other new requirements on IDIs and considered the rule’s burdens and benefits in determining its effective date and the administrative compliance requirements. The final rule’s effective date provisions are consistent with the requirements of the RCDRIA.

#### F. Congressional Review Act

The Congressional Review Act provides that if the OMB makes a determination that a final rule constitutes a “major rule,” the rule may not take effect until at least 60 days following its publication.<sup>82</sup> The Congressional Review Act defines “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets.<sup>83</sup> The OCC has submitted the final rule to the OMB for this major rule determination. As required by the Congressional Review Act, the OCC will also submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.<sup>84</sup>

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<sup>81</sup> 12 U.S.C. 4802(b).

<sup>82</sup> 5 U.S.C. 801.

<sup>83</sup> 5 U.S.C. 804(2).

<sup>84</sup> 5 U.S.C. 801.

## **List of Subjects**

### 12 CFR part 25

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

## **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 amends 12 CFR part 25 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 and savings associations.
- 25.26 Small bank and savings association performance standards.
- 25.27 Strategic plan.
- 25.28 Assigned ratings.
- 25.29 Effect of CRA performance on applications.

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

Sec.

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

**Subpart D—Transition Provisions**

Sec.

- 25.51 Consideration of Bank Activities.
- 25.52 Strategic Plan Retention.

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



Sec.

25.61 Purpose and scope.

25.62 Definitions.

25.63 Loan-to-deposit ratio screen.

25.64 Credit needs determination.

25.65 Sanctions.

### **Appendix A to Part 25—Ratings**

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

**Authority:** 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1814, 1816, 1828(c), 1835a, 2901 through 2908, 3101 through 3111, and 5412(b)(2)(B).

### **Subpart A—General**

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

(a) *Authority and OMB control number*— (1) Authority. The authority for subparts A, B, C, D, and E is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1814, 1816, 1828(c), 1835a, 2901 through 2908, 3101 through 3111, and 5412(b)(2)(B).

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

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

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

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

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

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

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

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

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

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

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

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

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

## **§25.12 Definitions.**

For purposes of subparts A, B, C, and D, and Appendices A and B, of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. The term “control” has the meaning given to that term in 12

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

(b) *Area median income* means:

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

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

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

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

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

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

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

(g) *Community development* means:

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

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

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

(4) Activities that revitalize or stabilize—

(i) Low-or moderate-income geographies;

(ii) Designated disaster areas; or

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

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

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

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

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

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

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

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

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

(1) Has as its primary purpose community development;

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

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

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

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

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

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

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

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

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

(m) *Income level* includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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



(u) *Small bank or savings association*— (1) Definition. *Small bank or savings association* means a bank or savings association that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.322 billion. *Intermediate small bank or savings association* means a small bank or 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 appropriate Federal banking agency, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

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

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

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

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

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

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

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

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

(3) *Small bank and savings association performance standards.* The appropriate Federal banking agency applies the small bank or savings association performance standards as provided in §25.26 in evaluating the performance of a small bank or savings association or a bank or savings association that was a small bank or savings association during the prior calendar year, unless the bank or savings association elects to be assessed as provided in paragraphs (a)(1), (2), or (4) of this section. The bank or savings association may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks or savings associations under §25.42.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **§25.22 Lending test.**

(a) *Scope of test.* (1) The lending test evaluates a bank’s or savings association’s record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank’s or savings association’s home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank’s or savings association’s business, the appropriate Federal banking agency will evaluate the bank’s or savings association’s consumer lending in one or more of the following categories:

motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a bank's or savings association's option, the appropriate Federal banking agency will evaluate one or more categories of consumer lending, if the bank or savings association has collected and maintained, as required in §25.42(c)(1), the data for each category that the bank or savings association elects to have the appropriate Federal banking agency evaluate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

### **§25.23 Investment test.**

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

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

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

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

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

- (1) The dollar amount of qualified investments;
- (2) The innovativeness or complexity of qualified investments;
- (3) The responsiveness of qualified investments to credit and community development needs; and
- (4) The degree to which the qualified investments are not routinely provided by private investors.

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

**§25.24 Service test.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in §25.22(c) and (d).

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

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

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

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

(a) *Performance criteria*— (1) *Small banks and savings associations that are not intermediate small banks or savings associations*. The appropriate Federal banking agency evaluates the record of a small bank or savings association that is not, or that was not during the prior calendar year, an intermediate small bank or savings association, of helping to meet the

credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

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

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

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

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

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

(4) The geographic distribution of the bank's or savings association's loans; and

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

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

- (1) The number and amount of community development loans;
- (2) The number and amount of qualified investments;
- (3) The extent to which the bank or savings association provides community development services; and
- (4) The bank's or savings association's responsiveness through such activities to community development lending, investment, and services needs.

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

#### **§25.27 Strategic plan.**

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

- (1) The bank or savings association has submitted the plan to the appropriate Federal banking agency as provided for in this section;
- (2) The appropriate Federal banking agency has approved the plan;
- (3) The plan is in effect; and



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

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

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

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

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

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

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

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

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

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

(f) *Plan content— (1) Measurable goals.* (i) A bank or savings association shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A bank or savings association shall address in its plan all three performance categories and, unless the bank or savings association has been designated as a wholesale or limited purpose bank or savings association, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its

assessment area(s), considering public comment and the bank's or savings association's capacity and constraints, product offerings, and business strategy.

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

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

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

(g) *Plan approval—* (1) *Timing.* The appropriate Federal banking agency will act upon a plan within 60 calendar days after the appropriate Federal banking agency receives the complete plan and other material required under paragraph (e) of this section. If the appropriate

Federal banking agency fails to act within this time period, the plan shall be deemed approved unless the appropriate Federal banking agency extends the review period for good cause.

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

(3) *Criteria for evaluating plan.* The appropriate Federal banking agency evaluates a plan's measurable goals using the following criteria, as appropriate:

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

(ii) The amount and innovativeness, complexity, and responsiveness of the bank's or savings association's qualified investments; and

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

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

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

**§25.28 Assigned ratings.**

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

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

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

(2) A bank or savings association that receives an “outstanding” rating on both the service test and the investment test and a rating of at least “high satisfactory” on the lending test receives an assigned rating of “outstanding”; and

(3) No bank or savings association may receive an assigned rating of “satisfactory” or higher unless it receives a rating of at least “low satisfactory” on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The appropriate Federal banking agency's evaluation of a bank’s or savings association’s CRA

performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or savings association or in any assessment area by any affiliate whose loans have been considered as part of the bank's or savings association's lending performance. In connection with any type of lending activity described in §25.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

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

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

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

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

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

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

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

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

(1) The establishment of:

(i) A domestic branch for insured national banks; or

(ii) A domestic branch or other facility that would be authorized to take deposits for savings associations;

(2) The relocation of the main office or a branch;

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

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

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

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

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

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

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

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

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

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

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



(b) *Geographic area(s) for wholesale or limited purpose banks or savings associations.*

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

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

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

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

(d) *Adjustments to geographic area(s).* A bank or savings association may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it

reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

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

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

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

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

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

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

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

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

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

(2) The loan amount at origination;

(3) The loan location; and

(4) An indicator whether the loan was to a business or farm with gross annual revenues of \$1 million or less.

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

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

(i) With an amount at origination of \$100,000 or less;

(ii) With amount at origination of more than \$100,000 but less than or equal to \$250,000;

(iii) With an amount at origination of more than \$250,000; and

(iv) To businesses and farms with gross annual revenues of \$1 million or less (using the revenues that the bank or savings association considered in making its credit decision);

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

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

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

category. The bank or savings association shall maintain data separately for each category, including for each loan:

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

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

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

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

(d) *Data on affiliate lending.* A bank or savings association that elects to have the appropriate Federal banking agency consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the bank or savings association would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the bank or savings association. For home mortgage loans, the bank or savings association shall also be prepared to identify the home mortgage loans reported under part 1003 of this title by the affiliate.

(e) *Data on lending by a consortium or a third party.* A bank or savings association that elects to have the appropriate Federal banking agency consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an

approved strategic plan, shall report for those loans the data that the bank or savings association would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the bank or savings association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) *Central data depositories.* The appropriate Federal banking agency makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual



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

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

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

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the bank's or savings association's performance in helping to meet community credit needs, and any response to the comments by the bank or savings association, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or savings association or publication of which would violate specific provisions of law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) At each branch:

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

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

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

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

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

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

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

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

## **Subpart D—Transition Provisions**

### **§25.51 Consideration of Bank Activities.**

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

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

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

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

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

### **§25.61 Purpose and scope.**

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

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

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

#### **§25.62 Definitions.**

For purposes of this subpart, the following definitions apply:

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

(1) A national bank; and

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

(b) *Covered interstate branch* means:

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

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

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

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

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

(d) *Home State* means:

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

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

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

(i) July 1, 1966; or

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

(4) With respect to a foreign bank:

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

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

(A) July 1, 1966; or



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **§25.65 Sanctions.**

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

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

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

(b) *Notice prior to closure of a covered interstate branch.* Before exercising the OCC's authority to order the bank to close a covered interstate branch, the OCC will issue to the bank a

notice of the OCC's intent to order the closure and will schedule a hearing within 60 days of issuing the notice.

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

## **Appendix A to Part 25—Ratings**

(a) *Ratings in general*. (1) In assigning a rating, the appropriate Federal banking agency evaluates a bank's or savings association's performance under the applicable performance criteria in this part, in accordance with §§25.21 and 25.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(2) A bank's or savings association's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's or savings association's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

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

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

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

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

(C) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

availability of such opportunities for community development in the bank's or savings association's assessment area(s).

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

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

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

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

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

(e) *Strategic plan assessment and rating—* (1) *Satisfactory goals.* The appropriate Federal banking agency approves as “satisfactory” measurable goals that adequately help to meet the credit needs of the bank’s or savings association’s assessment area(s).

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

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

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

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

(iii) If the bank or savings association fails to meet substantially its plan goals for a satisfactory rating, the appropriate Federal banking agency will rate the bank or savings association as either “needs to improve” or “substantial noncompliance,” depending on the

extent to which it falls short of its plan goals, unless the bank or savings association elected in its plan to be rated otherwise, as provided in §25.27(f)(4).

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

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

### Community Reinvestment Act Notice

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

Your involvement is encouraged.

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

At least 30 days before the beginning of each quarter, the [OCC or FDIC, as appropriate] publishes a nationwide list of the banks and savings associations that are scheduled for CRA examination in that quarter. This list is available from the [OCC or FDIC, as appropriate], at

[address]. You may send written comments about our performance in helping to meet community credit needs to [name and address of official at bank or savings association] and to the [OCC or FDIC, as appropriate], at [address]. Your letter, together with any response by us, will be considered by the [OCC or FDIC, as appropriate] in evaluating our CRA performance and may be made public.

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

*(b) Notice for branch offices.*

#### Community Reinvestment Act Notice

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

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by

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

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

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

You may ask to look at any comments received by the [OCC or FDIC, as appropriate]. You may also request from the [OCC or FDIC, as appropriate] an announcement of our applications

covered by the CRA filed with the [OCC or FDIC, as appropriate]. We are an affiliate of [name of holding company], a [bank holding company or savings and loan holding company, as appropriate]. You may request from the [title of responsible official], Federal Reserve Bank of [\_\_\_\_], [address], an announcement of applications covered by the CRA filed by [bank holding companies or savings and loan holding companies, as appropriate].

**Michael J. Hsu**

*Acting Comptroller of the Currency*

**[BILLING CODE: 4810-33-P]**