DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

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RIN 1557–AE34

Community Reinvestment Act Regulations

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

ACTION: Final rule; temporary final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting a final rule to strengthen and modernize the Community Reinvestment Act (CRA) by clarifying and expanding the activities that qualify for CRA credit; updating where activities count for CRA credit; creating a more consistent and objective method for evaluating CRA performance; and providing for more timely and transparent CRA-related data collection, recordkeeping, and reporting.

DATES: This rule is effective on October 1, 2020. Banks must comply with the final amendments by October 1, 2020, January 1, 2023, or January 1, 2024, as applicable, except that appendix C to part 25 expires January 1, 2024. See **SUPPLEMENTARY INFORMATION** for compliance details.

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SUPPLEMENTARY INFORMATION:

I. Introduction

The Office of the Comptroller of the Currency (OCC or agency) [1] is adopting a final rule [2] to strengthen and modernize implementation of the Community Reinvestment Act (CRA).[3] The OCC believes that the CRA regulatory framework must be strengthened and modernized. The goals of this reform are to make the framework more objective, transparent, consistent in application, and reflective of changes in banking. Accomplishing these goals would make the CRA framework a better tool to encourage national banks and savings associations (banks) [4] to engage in more activities to serve the needs of their communities, particularly in low- and moderate-income (LMI) communities and other communities that have been underserved under previous versions of the CRA regulatory framework. Together, the OCC-regulated banks covered by this final rule conduct a majority of all CRA activity in the United States.

The OCC has engaged stakeholders and sought public input on CRA reform over the past three years. Stakeholders generally agree with the need for reform and with the goals of increasing the amount of CRA activity, expanding the geographic scope of where CRA activities are measured, and improving the ability of regulators and the public to measure CRA activity levels. Disagreements about reform focus almost entirely on the details of how to achieve these goals under a modernized CRA regulatory framework, not whether to modernize the framework. Stakeholders' perspectives on the specific details of reform, including those expressed in the more than 1,500 comments on the OCC's Advance Notice of Proposed Rulemaking (ANPR) [5] and the more than 7,500 comments on the Notice of Proposed Rulemaking (NPR or proposal),[6] have been constructive and informative. The OCC's final rule adopts many important changes suggested by or made in response to stakeholders and, as a result, better achieves the goals of reform.

II. Overview of Final Rule

The final rule makes changes in four areas of the CRA framework. Specifically, the final rule: (1) Clarifies and expands the bank lending, investment, and services (collectively, qualifying activities or CRA activities) that qualify for positive CRA consideration; (2) updates how banks delineate the assessment areas in which they are evaluated; (3) provides additional methods for evaluating CRA performance in a consistent and objective manner; and (4) requires reporting that is timely and transparent.

The new framework incentivizes banks to achieve specific performance goals; this is in contrast to the previous rule, under which banks received ratings based primarily on a curve compared to their peers' performance. Timely and transparent CRA data, including CRA performance evaluations (CRA PEs), will provide meaningful information to all stakeholders, rather than to relatively few experts.

This final rule augments and makes changes to aspects of the current framework that have unintentionally inhibited banks' CRA activity by creating uncertainty about which activities qualify and how much those activities contribute to a bank's CRA rating. As a result, many banks engage only in CRA activities for which they previously received CRA consideration and commit capital and credit only in amounts they are confident will receive positive consideration—at the cost of innovation and responsiveness. In addition to disincentivizing all but the most clear-cut CRA activities by banks, the current framework's lack of consistent and objective evaluations and timely and transparent reporting inhibits the public's ability to understand how and to what extent banks are meeting community credit needs.

Moreover, the predominantly subjective nature of the current framework means that an individual bank's CRA rating is not a reliable indicator of the actual volume of that bank's CRA activity. In the OCC's analysis of historical CRA ratings

[1] The OCC is the primary regulator for national banks and federal savings associations.

[2] The Federal Deposit Insurance Corporation (FDIC) has elected not to join this final rule. To reflect this, the final rule includes conforming and technical changes from the Notice of Proposed Rulemaking published on Jan. 9, 2020 (85 FR 1204).

[3] Public Law 95–128, 91 Stat. 1147 (1977), *codified at* 12 U.S.C. 2901 *et seq.* The CRA was enacted to promote access to credit by encouraging banks to serve their entire communities. During this time period, in the 1960s and 1970s, Congress also enacted fair lending laws to address fairness and access to housing and credit. In 1968, Congress passed the Fair Housing Act, 42 U.S.C. 3601 *et seq.,* to prohibit discrimination in renting or buying a home. In 1974, Congress passed the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* (amended in 1976), to prohibit creditors from discriminating against an applicant on the basis of race, color, religion, national origin, sex, marital status, or age. These fair lending laws provide a legal basis for prohibiting discriminatory lending practices, such as redlining. *Interagency Fair Lending Examination Procedures,* p. iv (Aug. 2009), available at *https://www.ffiec.gov/PDF/fairlend.pdf.*

[4] The rulemaking authority of the Office of Thrift Supervision (OTS) and the Director of the OTS, respectively, relating to savings associations was transferred to the OCC in Title III of the Dodd–Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 1522 (2010). As a result, the OCC has CRA rulewriting authority for both federal and state savings associations, in addition to national banks. In addition, as used throughout this rulemaking, 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)).

[5] 83 FR 45053 (Sept. 5, 2018).

[6] 85 FR 1204 (Jan. 9, 2020).

distributions, the agency found that it is extremely rare for banks to receive ratings in the two lowest ratings—needs to improve and substantial noncompliance. Less than three percent of banks received such ratings, while nearly 74 percent of the banks were rated satisfactory and almost 24 percent were rated outstanding.[7] Using the Home Mortgage Disclosure Act (HMDA) and CRA small business loan and small farm loan data, the agency found only a weak positive relationship between a bank's CRA rating and its CRA activities. While incorporating community development (CD) lending and investments helped explain some of the variation in CRA ratings, a significant amount of the variation remained unexplained.[8]

By moving from a system that is primarily subjective to one that is primarily objective and that increases clarity for all banks, CRA ratings will be more reliable, reproducible, and comparable overtime. Under the agency's final rule, the same facts and circumstances will be evaluated in a similar manner regardless of the particular region or particular examiner. CRA activities will be treated in a consistent manner from bank to bank.

Qualifying Activities. Since 1977, banks, regulators, community groups, and others have evaluated CRA activities in the absence of comprehensive criteria for what qualified for CRA consideration or a list of activities that have previously received credit. As a result, the activities given CRA consideration have varied from examiner to examiner, bank to bank, region to region, and time period over time period. The modernized framework in the final rule eliminates these variations in treatment.

The modernized framework sets forth criteria for qualifying activities that capture the activities that currently receive CRA consideration and are widely recognized by stakeholders as supporting community reinvestment and development. In addition, the qualifying activities criteria capture activities that are consistent with the statutory purpose of the CRA but that generally may not receive credit, such as: (1) Certain activities in identified areas of need beyond LMI areas (*i.e.,* underserved areas, distressed areas, disaster areas, Indian country and other tribal and native lands); [9] and (2) a limited set of activities that benefit a whole community, while maintaining an appropriate focus on LMI neighborhoods. Where appropriate, the criteria exclude activities that may have qualified for CRA consideration in the past, like loans to middle- and upper-income borrowers in LMI census tracts, in order to emphasize activities that support LMI populations and areas and other communities of need.

Assessment areas. The purpose of the CRA is to encourage banks to engage in CRA qualifying activities in those areas where they collect deposits. Over forty years ago (when the CRA was enacted) and through 1995 (when the last major revisions to the CRA regulatory framework were made), bank branches were the primary means by which banks gathered deposits and, in turn, delivered financial products and services to their customers. During this period, the number and placement of branches closely reflected the distribution of the areas where banks received deposits. In this historical context, the focus in the current regulations solely on branch locations for determining where bank CRA activities are considered made sense; it ensured that banks reinvest capital and credit in the communities from which they draw deposits due to their branch presence and addressed certain issues that would arise if banks took deposits from one community and lent that capital in another, perhaps more profitable or affluent, community.

Over the past 25 years, however, an increasingly large number of banks have, in whole or in part, adopted new business models in which they collect significant deposits from areas far outside of their physical branch footprint. The current regulatory framework's reliance on branch footprint as the sole basis for delineating a bank's CRA assessment areas thus no longer aligns adequately with where a given bank does business. As this misalignment grows, the gap has grown between the purpose of the CRA—to assess a bank's CRA activity where it gathers deposits—and the current framework. To close the gap, under the final rule, banks that collect deposits above a threshold percentage of their total retail domestic deposits from outside of their physical branch footprint must delineate additional assessment areas in those areas where they draw more than a certain percentage of deposits. The final rule sets the threshold percentage for requiring a bank to delineate these deposit-based assessments areas at a level that will not affect the vast majority of traditional banks but that will generally capture other banks whose business models are significantly different than the models used when the CRA regulations were last reformed, such as internet banks and banks with large amounts of deposits sourced outside of the area where its main office is located.

The final rule recognizes, however, the continuing significance of branches. The final rule retains the requirement that banks delineate assessment areas around their physical deposit-taking locations, in recognition of the importance of branches to the CRA. Branches continue to play a large and important role in meeting certain communities' needs and serving certain populations. By preserving facility-based assessment areas in the final rule, the agency continues to encourage banks to maintain their branches.

In creating a framework that equalizes treatment between traditional branch-based banks and banks that gather deposits through the internet and other non-branch-based channels, the agency has relied on its supervisory experience and judgment, as well as an understanding of the banking industry. The agency chose to leverage its experience and judgment in part because the currently available deposit data is incomplete and does not provide the depositors' locations.

Measurements. Because the CRA regulatory framework historically has not provided a consistent and objective means to measure a bank's CRA activity, examiners have been left to apply their best subjective judgment to assess a bank's performance and to assign ratings. To do this, examiners considered two primary aspects of a bank's CRA activity: (1) The distribution of the number of its retail lending activities (*i.e.,* home mortgage loans, small loans to businesses, small loans to farms, and consumer loans); and (2) and the impact of the dollar value of CD activities. When measuring the distribution of retail lending, examiners evaluated the geographic and borrower distribution of this activity. When

[7] Distribution of ratings is based on the OCC's analysis of the Federal Financial Institutions Examination Council (FFIEC) CRA data and covers over 1,500 CRA PEs published between 2006 and 2018, pertaining to banks with assets over the small bank asset size that are regulated by the OCC, FDIC, or Board of Governors of the Federal Reserve System (Board).

[8] Findings on the relationship between ratings and CRA qualifying lending activities are based on several analyses using different data sources: FFIEC CRA data for over 1,500 CRA PEs published between 2006 and 2018, pertaining to banks with assets over the small bank asset size that are regulated by the OCC, Board, or FDIC; a sample of over 200 CRA PEs completed between 2011 and 2018, pertaining to over 150 OCC-regulated banks with assets over the small bank asset size; and data compiled by the Board from nearly 1,900 CRA PEs completed between 2005 and 2017, pertaining to over 1,200 banks.

[9] As discussed below, in response to comments, the agency changed the definition of Indian country and added a new definition for other tribal and native lands in the final rule.

measuring the dollar impact of CRA activities, examiners generally measured the dollar amount of retail lending and CD activities, as well as the hours of CD services engaged in by a bank. Examiners also considered qualitative factors that are more difficult to quantify, such as responsiveness, innovativeness, and complexity. The final rule builds on these existing methods of assessing CRA performance by spelling out the distribution and impact analysis in new performance standards upon which examiners can base their judgments in determining ratings. At a later date, the agency will set the objective thresholds and benchmarks for the level of performance necessary to achieve each rating category; these thresholds and benchmarks will be applied as of the compliance date applicable to each bank.

To provide a more objective and consistent means of evaluating these activities, the final rule establishes an evaluation method that assesses a bank's retail lending and CD activities by considering: (1) The distribution of retail lending activities relative to LMI populations and LMI census tracts in a bank's assessment areas; and (2) the impact of all CRA activity, measured in dollars. Quantifying these activities will help provide a more complete picture of the impact of a bank's CRA activity. The final rule also provides quantitative credit for branches in, or that serve, LMI census tracts or other identified areas of need. Furthermore, the final rule provides for consideration of the qualitative aspects of CRA activities by including an assessment of a bank's performance context. To promote more consistent consideration of these qualitative aspects, the final rule contains performance context factors that are based on the factors in the current regulation and on input from examiners. As discussed below, the agency will issue guidance to help further standardize how examiners apply performance context in CRA evaluations.

Reporting. Under the current CRA regulatory framework, banks' CRA PEs can be extremely lengthy and in excess of 1,000 pages. CRA PEs can also be years in the making, in which case they provide an outdated and stale assessment of bank performance. They can be difficult to use, and it can be hard to draw comparisons from bank-to-bank or from one bank's evaluation to the next. As a result of the changes in the final rule, examiners will be able to produce more consistent, useful, and timely CRA PEs that will enable banks, regulators, and others to have a better understanding of the CRA activities of individual banks and of cross-sections of the industry. Over time, better data will allow the agency to adjust periodically the thresholds in the new framework (*e.g.,* for delineating deposit assessment areas and for the level of performance necessary to achieve each rating category). Objective measures, reported in a transparent manner, will allow interested parties to assess performance and progress for themselves. This information will improve and accelerate decision making by the agency and ensure that ratings are more accurate reflections of the level of CRA activity being conducted.

III. Background

The agency's current efforts to strengthen and modernize the CRA regulatory framework began in 2018 but attempts at reform have spanned the past decade. The agency, along with the Board and the FDIC, worked together on an ANPR, which the OCC issued in August 2018 and, as noted above, received more than 1,500 comments.[10] During that same period, the OCC, FDIC, and Board engaged with stakeholders, including civil rights organizations, community groups, members of Congress, academics, and banks, to obtain their perspectives and feedback on all aspects of the CRA and potential improvements that could be made to the CRA regulatory framework. While the feedback confirmed that the CRA has historically been an important tool for promoting lending, investment, and services for community revitalization in neighborhoods across the country, many stakeholders stated that the current CRA regulatory framework lacks objectivity, transparency, and fairness; is applied inconsistently; and is hard to understand. Stakeholders observed that evaluation under the current regulatory framework of banks' CRA activities—including what type of activities count, where they count, and how they count—is inconsistent, opaque, and complex.[11]

In December 2019, the OCC and FDIC (agencies) jointly released the proposal [12] noted above, which was designed to strengthen and modernize the regulations that implement the CRA. The proposed changes were designed to make the CRA regulations more objective and transparent to enable consistent application of the rule, thereby providing regulatory certainty for covered institutions.[13] Achieving these objectives would, over time, encourage insured depository institutions [14] to better meet the credit, investment, and other financial services needs of their entire communities, including LMI areas, by conducting more CRA activity and serving more of their communities, including identified areas of need. The proposal applied to insured depository institutions regulated by both the OCC and FDIC, which include national banks, federal and state savings associations, and state banks that are not members of the Federal Reserve System.

To achieve the purpose of encouraging banks to conduct more CRA activities in the communities they serve, including LMI areas, the proposal introduced changes to modernize the CRA rule to reflect changes in banking over the past 25 years. The improvements embodied in the proposed changes fell into four general categories. First, the proposal sought to clarify what bank activities qualify for positive CRA consideration. Second, the proposal sought to update how banks delineate the assessment areas in which they are evaluated. Third, the proposal sought to evaluate bank CRA performance more objectively. And fourth, the proposal sought to provide more transparent and timely reporting.

The proposal clarified which activities would have been qualifying by including detailed qualifying activities criteria and requiring the periodic publication of a non-exhaustive, illustrative list of examples of qualifying activities. The proposal also established a process for banks to seek agency confirmation that an activity is a qualifying activity.[15]

The proposal expanded where CRA activity counts by requiring banks to delineate deposit-based assessment areas where they have significant concentrations of retail domestic deposits. The proposal provided an objective method to measure CRA

[10] *Supra* note 5.

[11] 85 FR 1204, 1206 (Jan. 9, 2020).

[12] *See, e.g., OCC News Release 2019–147 (Dec. 12, 2019), available at https://occ.gov/news-issuances/news-releases/2019/nr-ia-2019-147.html; FDIC FIL–81–2019 (Dec. 13, 2019), available at https://www.fdic.gov/news/news/financial/2019/fil19081.html.* The NPR was published in the **Federal Register** on Jan. 9, 2020. *See supra 6.*

[13] Some commenters on the ANPR stated that: (1) CRA PEs and ratings are subjective and inconsistent and (2) the current framework is applied inconsistently and hard to understand.

[14] 12 U.S.C. 1813(c)(2).

[15] As discussed below, the final rule retains for certain banks the small bank performance standards in the current regulations and the community development test for wholesale and limited purpose banks, which is renamed the wholesale and limited purpose performance standards. *See* 12 CFR 25.25; 25.26; 195.25; 195.26. The agency intends for these standards to be applied consistent with the current regulations except as expressly provided for in this final rulemaking.

activity by establishing new general performance standards to evaluate CRA activities. The proposal also required banks to collect, maintain, and report certain data related to their qualifying activities, certain non-qualifying activities, retail domestic deposits, performance context, and assessment areas. As with other regulatory initiatives, the OCC would have provided guidance and assistance to help ensure compliance.[16]

These proposed changes were designed to promote greater regulatory certainty and consistency, which the agency believes will encourage banks to engage in more activities. Increased objectivity coupled with more comprehensive data collection and reporting would allow observers to know the extent of CRA activity banks are conducting, what sorts of CRA activities are being conducted, and where that activity is occurring. This additional transparency would promote greater accountability through more objective ratings and improved ability to compare a bank's performance against the industry and its peers over time.

IV. Comments Received on the NPR

The OCC received more than 7,500 comments on the proposal, representing a wide range of viewpoints.[17] These comments came from a variety of stakeholders and interested parties, including the banking industry, community and other advocacy groups, Congress, state and local governments, academia, and the general public.

Commenters endorsed the clarifications regarding qualifying activities, the establishment of a qualifying activities list, and the creation of a confirmation process. Some supported providing CRA credit for all activities that formerly qualified as economic development, and others supported credit for all legally-binding commitments to lend. Some industry commenters and community groups supported credit for all loans to non-LMI individuals in LMI areas. Other industry commenters also supported multipliers for donations, volunteer service, and qualifying activities in CRA deserts.

In contrast, many commenters expressed concern that the expanded qualifying activities criteria could divert activity from LMI individuals and communities, as well as from businesses and farms most in need of credit. Other commenters recommended that any list of examples of qualifying activities be published for public comment before inclusion in a final rule, or they simply recommended against a list. Others asserted that a list would be confusing, could discourage activities that are not listed, and would raise legal issues because of alleged procedural deficiencies with the proposed qualifying activities list confirmation process.

Some industry commenters also criticized aspects of the proposal, including that the proposal undervalued retail loans originated and sold within 90 days.

With respect to the proposal's treatment of where qualifying activities count, many commenters supported the proposed approach. Some industry commenters and community groups expressed concern, however, about the data on which the deposit-based assessment area concept was based, and some also questioned whether this concept would address CRA hot spots and credit deserts. Commenters from industry that discussed the deposit-based assessment area framework opposed the establishment of deposit-based assessment areas because of potential costs to collect additional data, concerns about the safety and soundness of lending in areas where banks have no physical presence, and the belief that these new assessment areas would exacerbate CRA hot spots and deserts. Some of these commenters generally supported retaining the facility-based assessment areas and either making changes to the proposed thresholds for deposit-based assessment areas or to the treatment of out-of-assessment area qualifying activities. Some commenters supported the ability of banks to tailor their assessment areas to geographic areas smaller than a county to reflect only the areas where banks can be reasonably expected to serve, as is possible under the current regulations.

Some community groups criticized the proposed deposit-based assessment area thresholds on the grounds that they were not adequately supported and said the proposal would either do little to alleviate or would exacerbate CRA deserts, particularly in small and rural communities. Those groups recommended: (1) Changing the proposed requirement that a bank delineate deposit-based assessment areas only if it receives 50 percent or more of its deposits from areas outside its assessment areas to a lower percentage; and (2) delineating deposit-based assessment areas based on a bank's deposit market share in given geographic markets, instead of the percentage of the particular bank's deposits, as proposed. They also expressed concern that the proposal's approach to providing banks credit for activities outside of their assessment areas was underdeveloped and would encourage banks to engage in activities that are larger in dollar value and easier to do.

The agency also received comments on the performance standards set out in the proposal. Some of these commenters supported tailored benchmarks for the CRA evaluation measure.[18] They stated that the pass/fail nature of the retail lending distribution tests,[19] CD minimums, and significant portion threshold did not provide the appropriate flexibility for the diversity of banking business models and local community conditions. Instead, they supported gradations in performance levels for these standards. Some commenters questioned whether retail domestic deposits, as defined in the proposal, is the appropriate denominator for the CRA evaluation measure.

Several industry commenters asserted that the data analysis and rationale behind the proposed performance standards were not adequately set forth in the NPR or were unclear. Some commenters requested that the agency make publicly available the relevant data and analysis upon which it relied. These commenters advocated for further data gathering and testing of the performance standards prior to the issuance of the final rule.

Community groups and other commenters expressed concern that the proposed performance standards could lead to a focus on large transactions at the expense of smaller activities, which they believe would be more responsive to community needs. They also opposed allowing a bank to receive a satisfactory overall rating automatically if it received a satisfactory rating in a

[16] As the agency has done in other circumstances, such as the current expected credit loss accounting standard that was issued in June 2016, the agency plans to develop webinars and other guidance and resources to help ensure compliance with the final rule. *See* Current Expected Credit Losses (CECL) Methodology, available at *https://www.occ.gov/topics/supervision-and-examination/bank-operations/accounting/current-expected-credit-losses/index-current-expected-credit-losses.html.*

[17] The NPR's comment period was initially set to end on Mar. 9, 2020. In response to requests from stakeholders and to ensure that members of the public had ample time to review and comment on the proposal, the comment period was extended until Apr. 8, 2020. *See* 85 FR 10996 (Feb. 26, 2020).

[18] Other commenters supported the proposed use of multipliers for certain activities. Additionally, commenters suggested that benchmarks be established for each major type of qualifying activity.

[19] Under the proposal, the retail lending distribution tests are used to evaluate a bank's retail lending activities, which include home mortgage loans, small loans to businesses, small loans to farms, and consumer loans.

significant portion of its assessment areas and in those assessment areas where it receives a significant amount of deposits. These commenters supported a more complex and subjective approach that would retain the existing tests and maintain qualitative considerations while adding quantitative guidelines, as well as additional gradations to the retail lending distribution tests.

Some industry commenters and others advocated for the small bank exemption threshold to be higher than the proposed $500 million, recommending that, at a minimum, the exemption cover banks that are intermediate small banks [20] under the current regulations. In contrast, community groups and other commenters opposed the small bank exemption or any increase in the thresholds because the small bank performance standards do not evaluate CD activity. In addition, some industry commenters voiced concerns with the NPR's treatment of banks that are designated as wholesale and limited purpose banks under the current regulations.

The OCC also received numerous comments on proposed data collection, recordkeeping, and reporting requirements. Commenters expressed concern that the costs associated with the data requirements would outweigh the benefits associated with the changes. These commenters highlighted the ongoing nature of the costs and the potential need for several additional personnel with specialized skills. These commenters also explained that most banks cannot rely on or modify their current systems to produce or maintain the data; if the requested data are available, the data are frequently stored in different systems. In some cases, the required data simply do not exist, especially for consumer loans. Commenters also emphasized the costs of geocoding deposit accounts, particularly for small banks, which may require manual research and input for a non-negligible amount of data. These commenters also explained the painstaking steps and documentation associated with validating and verifying the accuracy of the new data collection.

Other commenters suggested additional, more granular data reporting, and many community groups and individuals suggested making information collected under the final regulations publicly available. Some commenters recommended that the agency take steps to minimize data collection, recordkeeping, and reporting burdens by relying on existing datasets and data collection processes and by offering webinars and seminars to assist banks.

After carefully reviewing and considering all of the comments received, the OCC is adopting this final rule. Although commenters disagreed with the approach outlined in the proposal, the agency ultimately agreed with the minority of commenters who expressed support for the proposed framework. The lodestar for this new CRA framework is increased transparency, objectivity, and consistency in application, which will help the OCC achieve the objective of the CRA—to encourage banks to meet the credit needs of their entire communities, including LMI individuals and areas. The agency is also cognizant that not every aspect of every CRA activity can be quantified and, for those items, it has sought to qualitatively capture the subjective elements. This new framework will strengthen and modernize the CRA regulations and encourage banks to more effectively help meet the credit needs of their entire communities, including LMI individuals and communities, by conducting more CRA activities and serving more of their communities. In the OCC's view, these outcomes better align with, and thus are a better way to implement the CRA statute than, the current framework. Moreover, in response to comments, the final rule takes a more incremental approach to reform that appropriately accounts for the differences among the categories of institutions that are subject to the CRA.

V. Section-by-Section Discussion

A. Qualifying Activities

Overview. Since 1977, community stakeholders, banks, and regulators have evaluated banks' CRA performance without an approved illustrative list of qualifying CRA activities. Without an illustrative list or detailed qualifying activities criteria, the activities that have received credit have varied from bank to bank, region to region, and time period over time period.[21] Thus, to avoid the uncertainty created by the lack of clarity regarding which activities will receive CRA credit, banks currently tend to gravitate to a few types of activities that have received consideration in the past because they are more confident those activities will receive credit in the future.[22]

The proposal included detailed qualifying activities criteria that clarified what type of activities would count for CRA credit and expanded the activities that would count to include additional activities that were consistent with the stated purpose of the CRA. The proposal also provided a process for confirming whether an activity is qualifying before commencement of the activity and included a publicly available non-exhaustive, illustrative list of examples of qualifying activities that meet or do not meet the criteria in the rule (CRA illustrative list).

These proposed changes addressed current impediments to engaging in CRA activities and would have provided banks with greater certainty and predictability regarding whether certain activities would qualify for CRA credit. The OCC received many comments on the proposed qualifying activities; the OCC's responses are set forth below.

Qualifying activities criteria and scope. In the proposal, the agency clarified the activities that would qualify for CRA credit by defining a qualifying activity as an activity that helps meet the credit needs of a bank's entire community, including LMI individuals and communities and setting forth clearly defined qualifying activities criteria, which identified the types of activities that would meet the credit needs of banks' communities. The proposed criteria included activities that currently qualify for CRA consideration. In this regard, the agency incorporated some of the guidance on activities that currently receive credit under the *Interagency Questions and Answers Regarding Community Reinvestment (Interagency Q&As),*[23] such as affordable housing for middle-income individuals and families in high-cost areas, into the qualifying activities criteria. The proposed criteria also expanded the activities that would count as qualifying activities to include other activities that meet the credit needs of economically disadvantaged

[20] 12 CFR 25.12(u); 195.12(u).

[21] Under this approach, banks often are uncertain about whether an activity will qualify for CRA consideration until their supervisory agency makes a determination in a CRA evaluation, which often happens years after the bank engaged in the activity in question.

[22] For example, while stakeholders expressed support for banks engaging in activities outside of their assessment areas, banks are inhibited from doing so today due to the limitations on where qualifying activities can count outside of assessment areas and the uncertainty of not knowing if they have done enough in their assessment areas for their outside activities to count in circumstances where banks may count qualifying activities outside of their assessment areas. Commenters to the CRA ANPR stated that the ambiguity over what types of activities qualify for CRA consideration under the current framework discourages certain types of CRA activity in LMI census tracts and other identified areas of need. *See* 85 FR 1204, 1207 (Jan. 9, 2020).

[23] *See* 81 FR 48505 (July 25, 2016).

individuals and entities, LMI census tracts, and other identified areas of need in banks' communities. This expansion recognized that there are additional activities that meet the credit needs of these populations and areas that are consistent with the statutory purpose of the CRA but that do not currently qualify for CRA credit. The proposed changes generally expanded, not reduced, the type of activities that would have qualified for CRA credit but remained consistent with the statutory purpose of encouraging banks to serve their entire communities, including LMI neighborhoods.

The OCC received a variety of comments on the proposed qualifying activities criteria and related definitions. Some commenters supported the expansion and clarification of the activities that would qualify for CRA credit. Others argued that the proposal contravened the text and purpose of the CRA by not focusing appropriately on LMI communities and individuals, and they expressed concern that, if adopted, the proposal would negatively impact, and reduce investment in or benefits to, these areas and populations. Commenters expressed their opinion that the proposal would incentivize banks to focus on higher dollar projects rather than smaller, more targeted loans, investments, and grants. Some community group and industry commenters suggested that banks should continue to receive credit for more general areas of economic development, workforce development, and job creation activities. At least a few community group and industry commenters noted that the exclusion of economic development activities would directly harm financing intermediaries. A few commenters expressed concern that the proposal would negatively impact funds such as the University Growth Fund. The agency carefully considered these comments and concluded that some changes should be made to the proposed qualifying activities criteria to emphasize LMI activities in appropriate circumstances and to correct the inadvertent exclusion of certain activities that qualify under the current framework. The OCC's responses to commenters' concerns and revisions to the qualifying activities criteria and related definitions are discussed below.

CD investments. The proposal replaced the term qualified investment [24] in the current regulation with the term CD investment.[25] A few industry commenters sought clarification as to whether the proposal intended to expand the range of investments eligible for CRA credit to encompass investments that would not be considered public welfare investments under the OCC's regulations, 12 CFR part 24 (part 24).[26] Commenters also asked whether part 24 would be amended by replacing the current cross-reference to qualified investment with a reference to CD investment. The agency is clarifying that the purpose of the proposed change from qualified investment to CD investment was to use consistent terminology for loans, investments, and services with a CD purpose. In this regard, the agency is also clarifying that activities that currently receive CRA consideration as qualified investments would receive CRA consideration as CD investments. The OCC, as part of its ongoing regulatory activities, strives to ensure that nomenclature is up-to-date and consistent across its regulations. The OCC anticipates that it will consider and make any needed adjustments to part 24. The OCC is adopting the CD investment definition with minor clarifying changes to make clear that monetary donations and in-kind donations are two separate types of investments and is separately defining monetary donation and in-kind donation.

The agency is also clarifying that, as proposed, the criteria for qualifying activities encompasses activities that currently receive CRA consideration, as well as additional activities that meet the credit needs of economically disadvantaged individuals and entities and LMI census tracts and other identified areas of need in banks' communities, while maintaining an appropriate focus on LMI neighborhoods. Under the final rule, CD investments will include activities that meet the new qualifying activities criteria.

A commenter noted that the proposal was silent on the treatment of equity equivalent investments and requested that these investments be included in the qualifying activities criteria. The commenter noted that these types of investments are described in the *Interagency Q&As,* which explain how they are considered under the lending test, investment test, or both.[27] Equity equivalent investments that meet the definition of CD investment and one of the qualifying activities criteria will receive credit under the final rule. Moreover, all CD investments are eligible for a multiplier. Thus, even though the final rule does not provide the same formula for determining the consideration provided for equity equivalent investments as described in the *Interagency Q&As,* the final rule nonetheless recognizes the value that these activities contribute to communities.

Consumer loans. The NPR would have defined consumer loans with reference to the Call Report,[28] and these loans would have been included in all CRA evaluations as retail loans. Specifically, the proposal defined consumer loan as a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 6, Loans to individuals for household, family, and other personal expenditures.[29]

The agency received several comments on the definition of consumer loans and their inclusion in CRA evaluations. Many of these commenters expressed concern with the inclusion of consumer lending activities because of the burden associated with collecting

[24] The current CRA regulations define a qualified investment as a lawful investment, deposit, membership share, or grant that has as its primary purpose community development. 12 CFR 25.12(t); 195.12(t).

[25] The NPR defined a CD investment as a lawful investment, membership share, deposit, legally-binding commitment to invest that is reported on the Call Report, Schedule RC–L, or monetary or in-kind donation that meets the community development qualifying activities criteria.

[26] Under current 12 CFR 24.3, a public welfare investment is one that (1) primarily benefits LMI individuals, LMI areas, or other areas targeted by a governmental entity for redevelopment or (2) would receive consideration under the CRA regulations as a qualified investment.

[27] *See Interagency Q&As* §§ __.22(d)—1 and __.23(b)—1, 81 FR at 48540.

[28] Call Report means the Consolidated Reports of Condition and Income as filed under 12 U.S.C. 161.

[29] As defined in the proposal, consumer loans would have included: (1) Credit card, which is an extension of credit to an individual for household, family, and other personal expenditures arising from credit cards; (2) other revolving credit plan, which is an extension of credit to an individual for household, family, and other personal expenditures arising from prearranged overdraft plans and other revolving credit plans not accessed by credit cards; (3) automobile loan, which is a consumer loan extended for the purpose of purchasing new and used passenger cars and other vehicles, such as minivans, vans, sport-utility vehicles, pickup trucks, and similar light trucks for personal use; and (4) other consumer loan, which is any other loan to an individual for household, family, and other personal expenditures (other than those that meet the definition of a loan secured by real estate and other than those for purchasing or carrying securities), including low-cost education loans, which is any private education loan, as defined in § 140(a)(8) of the Truth in Lending Act (15 U.S.C. 1650(a)(8)) (including a loan under a state or local education loan program), originated by the bank for a student at an institution of higher education, as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in § 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

data for consumer lending, particularly for activities that are currently on a bank's balance sheet. Other commenters expressed concern that the high dollar volume of certain consumer lending, such as credit card lending, may mean that banks engaged in those activities have little incentive to engage in other types of CRA activities.

A few community groups and individuals expressed concern about including consumer lending in CRA evaluations because of the potential negative impact on borrowers if those products were not offered with affordable rates and terms. These commenters offered a variety of suggestions for addressing their concerns, including limiting CRA credit for consumer loans to those that are safe and sound and offered at reasonable rates and with terms that are not detrimental to LMI individuals. Commenters suggested several ways the agency could limit the type of consumer loans that receive CRA credit under both the CRA evaluation measure and the retail lending distribution tests. A few industry commenters suggested that consideration of consumer lending should be optional unless it involves a substantial majority of the bank's lending, as under the current framework.[30]

In contrast, several commenters supported providing credit for consumer loans. For example, community groups noted that smaller-dollar lending at low rates is scarce and highly needed. Two industry commenters recommended that all consumer lending in LMI census tracts receive CRA credit.

The agency generally agrees that consumer lending should be a component of CRA evaluations because consumer loan products can be an important means for LMI individuals to gain access to credit. Further, many banks are exiting the home mortgage lending market and instead engaging in other types of lending activity, including consumer lending. The agency, however, is cognizant of the challenges to capturing the information needed to evaluate credit card lending and believes that, given the nature of the lending and the impact it has on LMI individuals and communities, it may not be appropriate for the CRA to be used to incentivize banks' credit card lending. The agency also recognizes that certain lending activities that meet the proposed definition of consumer loan may not provide adequate benefit to LMI individuals, such as certain overdraft products. The agency emphasizes that its expectation is that all CRA activities, including consumer lending, will be conducted in a safe and sound manner and consistent with the OCC's relevant guidance.[31]

Considering these factors, the final rule includes consumer loans provided to LMI individuals and in Indian country or other tribal or native lands in the qualifying activities criteria but removes credit cards and overdraft products from the definition of consumer loan to reduce the burden associated with information gathering and to ensure that banks have an incentive to engage in a variety of CRA activities that benefit LMI individuals. The agency did not further restrict the categories of consumer loans to ensure that CRA credit will be given for providing consumers with access to a variety of consumer lending products and is otherwise adopting the consumer loan definition as proposed. The agency expects that, as part of its ongoing administration of the regulation, it will provide guidance needed on various aspects of the rule, including on the documentation needed to demonstrate that a consumer loan qualifies for CRA credit. Further, as discussed below, the agency will consider the qualitative aspects of qualifying activities through performance context, as well as evidence of discriminatory or other illegal credit practices.

Home mortgage loans. The agency's objective in reforming CRA is to increase transparency and objectivity in all aspects of the CRA to incentivize banks to provide more CRA activities to those populations and communities that banks serve, including to LMI individuals or families and areas. To achieve these objectives, the proposal defined home mortgage loans with reference to the Call Report[32] but generally limited CRA credit to home mortgage loans made to LMI individuals and families to give proper emphasis to LMI lending activities. Specifically, the proposed qualifying activities criteria included home mortgage loans to LMI individuals and families and those provided in Indian country.[33]

Some commenters expressed concern that the proposal would eliminate home mortgage lending to middle- and upper-income individuals and families in LMI census tracts as a qualifying retail activity.[34] Commenters also stated that the issue of gentrification associated with giving CRA consideration for home mortgage loans to middle- and upper-income individuals and families is mostly confined to large coastal metropolitan areas, and the proposal would prolong economic distress in LMI communities in these areas.

At least a few community groups and individual commenters stated that excluding CRA credit for certain home lending in LMI census tracts would create negative externalities because of the limited information about borrowers and neighborhoods, and depressed housing markets in LMI tracts would make small business lending more difficult. Although the OCC is adopting the qualifying criteria related to home mortgage loans as proposed, as discussed below, the agency agrees that it is important that banks lend in LMI census tracts and have added a geographic distribution test for home mortgage loans.

Small loans to businesses and small loans to farms retail lending. In the NPR, the agencies proposed increasing the small loan to a business and the small loan to a farm loan size thresholds to loans of $2 million or less. The agencies also proposed increasing the business and farm revenue size thresholds that receive positive consideration under CRA to businesses and farms with gross annual revenues of $2 million or less.[35] These proposed increases were based generally on inflation since the thresholds were instituted 25 years ago, rounded up to the next million. The agencies also proposed the same loan size thresholds related to small loans to farms and small

[30] A commenter also stated that the agency should define substantial majority in the current framework.

[31] *See e.g.,* OCC Bulletin 2018–14, *Installment Lending: Core Lending Principles for Short-Term, Small-Dollar Installment Lending* (May 23, 2018).

[32] The final rule continues to define home mortgage loans by reference to the Call Report. In response to a commenter's concern, the agency is clarifying that construction loans for 1–4 family residential properties to builders and consumers are home mortgage loans for CRA purposes if they are reported on Item 1.a.(1) of Schedule RC–C of the Call Report.

[33] To focus on LMI home mortgage lending, the proposal did not apply the retail lending geographic distribution test to home mortgage loans.

[34] These commenters argued that the change would: (1) Thwart the CRA objective of economic integration; (2) ignore research on the educational and other benefits to LMI individuals and families of living and working in integrated communities; (3) hasten displacement by making it more difficult for LMI borrowers to receive loans in gentrifying areas; (4) cause banks to focus on loans to LMI households in non-LMI tracts; and (5) be inconsistent with the CRA statute's mandate for banks to serve their *entire* community.

[35] The proposal defined businesses and farms that meet the revenue thresholds as small businesses and small farms. For the reasons described below, these terms were replaced in the final rule with the terms CRA-eligible business and CRA-eligible farm.

loans to businesses to provide consistency in treatment.

The agency received conflicting comments from community groups, industry, and government stakeholders on the increases to the loan size and revenue size thresholds. Certain commenters supported the increases, with some arguing that the thresholds should be increased even further and indexed to inflation going forward. In contrast, other commenters opposed the increases, with several industry, community, and individual commenters stating that it was unclear why the agencies had selected $2 million for the thresholds. The commenters generally expressed the concern that increases to these thresholds could incentivize banks to make larger loans to larger businesses. Certain commenters argued that the existing loan size and revenue thresholds were too large. A community group also asserted that the proposed increases to the loan size and revenue thresholds may diminish the prospects for black-owned businesses to access capital in comparison to white-owned businesses.

In response to the proposed loan size thresholds, some commenters supported the proposal and stated that increasing loan sizes would divert less financing from the smallest businesses and farms than increasing the revenue thresholds and noted that higher loan amounts may be needed in more expensive areas. Commenters suggested that the current small loan to a business threshold of $1 million could be updated to $1.6 million to account for inflation according to the U.S. Government Accountability Office. However, commenters stated that increases beyond that amount are not supported by data because neither the overall average nor the average for the highest quartile of loans to businesses with revenues over $1 million approached the $1 million loan limit. To address the concerns about disincentivizing smaller loans, one commenter suggested that banks should receive double credit for the smallest small business loans.

After considering these comments, the final rule includes a smaller increase to the loan size thresholds of $1.6 million instead of the proposed $2 million, which more closely reflects the increase resulting from inflation. Based on the agency's analysis, this threshold accounts for inflation since the $1 million small loan to a business size threshold was introduced in 1995, rounded up to the next $100,000 increment instead of the next million as was proposed. This loan size threshold also standardizes the threshold applicable to small loans to businesses and small loans to farms.

In response to the proposed increase to the revenue thresholds for the size of a small business or small farm, some commenters expressed concern that the increased thresholds would divert lending away from the smallest businesses with the greatest credit needs, which they stated are the primary engines of economic growth and job creation.[36] Another commenter, who asserted the existing thresholds were too expansive, suggested a two-prong test: $1 million or less in gross annual revenues and loans must be targeted to small businesses owned by underserved borrowers or small businesses that operate primarily in underserved communities. Similarly, a community group stated that loans to large corporate agricultural operations should be excluded and asserted that more information is necessary to understand the impact of the increased revenue size thresholds. As opposed to a revenue limit, a community group recommended that the OCC consider the profile of the business borrowing the funds to incentivize banks to serve business owners from groups that have been, and continue to be, excluded from access to credit from banks.

Other commenters supported increasing the revenue size thresholds. The U.S. Small Business Administration (SBA) stated that qualifying retail loans under the CRA should not be limited to businesses with $2 million or less in annual revenue and in amounts of $2 million or less. Specifically, the SBA stated that the agency could not define small business in a way that differed from the SBA's standards without obtaining its approval. An industry commenter supported using the SBA standards for the definition of small business and small farm. Another industry commenter suggested that, in addition to a $2 million revenue threshold, there should be a 20-employee limit.

After considering these comments, the agency is adopting a smaller increase to the revenue thresholds of $1.6 million instead of the proposed $2 million, which reflects the increase resulting from inflation rounded to the next hundred thousand. These increased revenue size thresholds are intended to encourage economic development and job creation and recognize that the thresholds have not been increased to account for inflation since they were instituted in 1995.

In response to the comments, the agency is also revising the terms used to define the type of businesses and farms banks can receive CRA credit for financing. As such, the final rule replaces the terms small business and small farm with the terms CRA-eligible business and CRA-eligible farm.

The NPR also proposed annual adjustments to the loan size and revenue size thresholds. Some commenters expressed concern that annual adjustments would be too frequent and may increase the risk of error. Some industry commenters suggested that the adjustments should be made every 5 or 10 years. In contrast, several industry commenters expressed support for adjustments to the loan size and revenue size thresholds, including one that supported annual adjustments. Regarding the form of adjustments, commenters suggested simple incremental adjustments, not percentage adjustments, to reduce the burden with regard to data collection and data integrity requirements. The final rule requires that the $1.6 million thresholds be adjusted for inflation once every five years to balance concerns regarding the burden associated with changes to the thresholds with the OCC's interest in ensuring that the thresholds keep pace with inflation.

The OCC also received comments on other aspects of the small loan to a business definition. Community groups recommended that credit cards and subprime products not qualify for CRA credit under the retail lending distribution test applicable to small loans to businesses. The final rule defines small loans to businesses by reference to the Call Report to reduce complexity and to be consistent with the current regulation. However, the agency will consider qualitative aspects of qualifying activities, such as the ones referenced by commenters, as part of performance context.

At least a few industry commenters also urged the agencies to include loans to businesses secured by real estate in the definition of a small loan to a business. Under the current framework these loans are treated as home mortgage loans. In the OCC's view, this remains an appropriate treatment of these loans because it is consistent with how these loans are categorized on the Call Report,[37] and the agency is not revising the treatment of these loans as

[36] For example, commenters argued that the change is unsupported by research and noted that 76 percent of firms have receipts under $100,000, and another 19 percent have receipts between $100,000 and $999,999.

[37] Consistent with the proposal, home mortgage loans, small loans to businesses, small loans to farms, and consumer loans (*i.e.*, retail loans) are defined with reference to the Call Report.

part of the final rulemaking. Some of these commenters also requested that the agencies clarify whether and when banks could classify small loans to businesses and small loans to farms as CD loans, because how these loans are classified would affect banks' ability to meet the CD minimum and the retail lending distribution tests, discussed below. The agency is clarifying that loans that meet the criteria for both: (1) CD loans; and (2) small loans to businesses or small loans to farms could receive credit in the bank's CRA evaluation measure or assessment-area CRA evaluation measures as either: (1) CD loans; or (2) retail small loans to businesses or farms—but not both (*i.e.,* the dollar value of these loans can only be counted once). If a bank elects, the quantified value of these loans could count towards satisfying the CD minimum. Even if a bank elects to consider a small loan to a business or small loan to a farm as a CD loan for purposes of the CRA evaluation measures and CD minimums, the bank must include all loans that meet the retail loan criteria in the retail lending distribution tests. Further, under the final rule, commenters' concerns with the more qualitative aspects of CRA-eligible business and CRA-eligible farm-related activities, such as what type of businesses benefit and whether banks are making smaller loans, will be addressed through the application of performance context and, in certain circumstances, through the use of multipliers, discussed below.

Other than the changes described above, the agency is adopting the CRA-eligible business, CRA-eligible farm, small loan to a farm, and small loan to a business definition as proposed. The agency has implemented conforming edits throughout the rule to reflect the changes discussed above in this section.

Commitments to lend. The NPR defined a CD loan as a loan, line of credit, or contingent commitment to lend that meets the CD qualifying activities criteria.[38] The proposal defined contingent commitments to lend as legally binding commitments to extend credit in instances where another bank initially funded, or committed to fund, a project but cannot, for financial or legal reasons, advance unanticipated additional funds necessary to complete the project.

The agency received comments asserting that, under the proposal, banks would not receive sufficient CRA credit for certain legally binding commitments to lend, such as revolving credit lines and standby letters of credit due to how these types of commitments to lend would be quantified. These commenters stated that banks should receive credit for the value of standby letters of credit and other legally binding commitments to lend because: (1) Banks are legally bound to the commitments; (2) the value of the line of credit reflects the consumer's access to credit; (3) banks must hold capital against noncancelable lines; and (4) some projects mandate having such letters of credit.

The agency agrees that certain legally binding commitments to lend, such as standby letters of credit, are important to facilitating beneficial CRA projects across the United States. In particular, legally binding commitments to lend that provide credit enhancements are necessary to get many affordable housing projects off the ground. However, general lines of credit that are not drawn, in the OCC's view, do not provide the same value as legally binding commitments to lend, such as standby letters of credit. To address the commenters' concern, the final rule provides that legally binding commitments to lend, such as standby letters of credit that can provide needed credit enhancements for qualifying activities to commence or continue, are quantified based on the dollar value of the commitment. Other general commitments to lend are quantified, as proposed, based on the on-balance-sheet funded portion of the credit line because that value most accurately reflects the bank's CRA commitment. The agency has revised the quantification section to reflect this policy decision. The final rule also redefines the type of commitments to lend that qualify as CD activities to focus on the legally binding commitments to lend described above.

Affordable housing. The proposal would have provided credit for activities that finance or support affordable housing that partially or primarily benefit middle-income individuals or families in high-cost areas as demonstrated by: (1) A governmental set-aside requirement; or (2) being undertaken in conjunction with a government affordable housing program for middle-income individuals or families in high-cost areas. Some commenters supported these components of the affordable housing criterion, but others opposed them, arguing that LMI individuals and families face the greatest housing burdens, and the criteria could divert resources from them. Commenters suggested expanding the middle-income criteria to include owner-occupied as well as rental housing.

Upon consideration of all the comments on this topic, the agency agrees with commenters that suggested that providing CRA credit for affordable housing should be focused on LMI individuals and families. Therefore, the final rule does not include the proposed middle-income rental housing in high-cost areas components of the affordable housing criterion or the definition of high-cost area.

The proposal also clarified that affordable housing encompasses naturally occurring affordable housing (*e.g.,* unsubsidized rental housing with rents that are affordable to LMI individuals and families). To qualify under this aspect of the affordable housing criterion, the housing must be likely to partially or primarily benefit individuals or families as demonstrated by median rents that do not and are not projected at the time of the transaction to exceed 30 percent of 80 percent of the area median income. Several commenters expressed concern that the criterion did not require that the housing be occupied by LMI individuals or families and suggested that the criterion be revised to include that requirement.

While the agency understands commenters' desire to ensure that LMI individuals or families occupy the affordable units that banks receive credit for under the CRA, in the OCC's view, the proposed criterion is appropriate given the importance of maintaining the nation's affordable housing stock.[39] Adding a requirement that banks ensure that LMI individuals or families are actually occupying the unsubsidized affordable rental units would be too burdensome for banks, if not infeasible, particularly for units with long-term tenants. Such a requirement would create a competitive disadvantage that would further push banks out of LMI housing finance. Specifically, if banks require borrowers to ascertain the income level of current and prospective tenants before financing the maintenance, rehabilitation, or construction of unsubsidized affordable housing at the outset or on an on-going basis, borrowers may choose to forgo bank financing and seek non-bank financing to avoid the increased burdens. Further, banks may decide that the additional burdens do not justify providing loans to borrowers for unsubsidized affordable housing. Thus,

[38] A line of credit also meets the definition of retail loan.

[39] *See Preserving Affordable Rental Housing: A Snapshot of Growing Needs, Current Threats, and Innovative Solutions,* Office of Policy Development & Research, U.S. Department of Housing and Urban Development (Summer 2013), available at *https://www.huduser.gov/portal/periodicals/em/summer13/highlight1.html.*

the requirements suggested by commenters, while well intentioned, could have the long-term consequence of diminishing affordable housing options for LMI individuals and families. This would be contrary to the objective of the agency's reform efforts regarding the CRA. Therefore, the agency is adopting this component of the affordable housing criterion as proposed with a clarifying revision.[40]

Community groups recommended that only acquisitions or re-financings by non-profits and local governments that commit to improve or maintain the housing stock at a level consistent with the local housing code should be CRA eligible. As noted below, the agency will consider qualitative aspects of a bank's qualifying activities through performance context, including whether activities that finance affordable housing are consistent with local housing codes. Two commenters expressed their belief that examiners have applied the phrase express, bona fide intent, purpose, or mandate inconsistently under the current framework, resulting in costly and burdensome ownership structures for affordable housing. As discussed below, the final rule includes an illustrative list of qualifying activities and a process for confirming that a particular activity meets the qualifying activities criteria, which will help to improve consistent treatment of qualifying activities under the final rule.

Community support services. The proposal defined community support services as activities, such as child care, education, health services, and housing services, that partially or primarily serve or assist LMI individuals or families. A few community groups and industry commenters noted the importance of workforce development activities for LMI individuals and stated that such activities should receive CRA credit. It was the OCC's purpose that the proposed qualifying activities criteria would include workforce development and job training programs for LMI individuals. Although the examples provided in the community support services definition were, and are, not exhaustive, the final rule revises the definition of community support services to expressly include workforce development and job training programs to make clear that banks will receive credit for financing or supporting those types of programs for LMI individuals. Otherwise, the agency adopts the community support services definition as proposed.

Economic development. Under the current regulatory framework, CD activities include those that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Development Center (SBDC)[41] or Small Business Investment Company (SBIC) programs or have gross annual revenues of $1 million or less. The *Interagency Q&As* explain what type of activities are considered to promote economic development.[42] Certain aspects of this guidance are not well understood, particularly job creation, retention, and improvement, providing little incentive for banks to engage in activities that could help their communities. The proposal did not retain the term economic development and instead sought to identify activities that would qualify under the current framework as economic development activities through more detailed and objective qualifying activities criteria. For example, one of the criteria in the proposal that was designed to capture economic development activities was the criterion regarding technical assistance and supportive services, such as shared space, technology, or administrative assistance for businesses or farms that meet the size eligibility standards of SBDC and SBIC programs.

Commenters expressed concern that certain activities that qualify under the current framework would no longer have qualified under the proposal. Commenters suggested that to ensure these activities receive CRA credit the agency should eliminate the reference to technical assistance and supportive services in the qualifying activities criteria or revise the reference so these activities are examples of, not required, uses of loan funds. Commenters also requested clarification on what activities satisfy the technical assistance and supportive services criteria. Community group commenters stated that loans and investments that support projects, programs, or organizations with a mission of community or economic development or those defined as community/economic development by federal, state, local, or tribal governments should be presumed to qualify for CRA credit. One industry commenter suggested that, by granting CRA credit for investing in SBICs and other programs administered by government agencies—but not in privately funded programs—the agencies are allowing the SBA and other agencies to be the exclusive gatekeepers of CRA credit.

Eliminating CRA credit for activities that currently qualify as economic development was not the OCC's purpose. To address commenters' concerns, the final rule revises the qualifying activities criteria by adding an economic development criterion. This new criterion is a consolidation of three proposed criteria with two additional components that capture activities permitted under the current framework but inadvertently excluded in the proposal, including activities that promote job creation or retention for LMI individuals.[43] Under the final rule, CD activities include those that finance or support economic development, which means activities that provide financing for or support: (1) Federal, state, local, or tribal government programs, projects, or initiatives that partially or primarily serve small businesses or small farms as those terms are defined in the programs, projects, or initiatives; (2) job creation or job retention partially or primarily for LMI individuals; (3) retaining existing, or attracting new, businesses, farms, or residents to LMI census tracts, underserved areas, distressed areas, designated disaster areas consistent with a disaster recovery plan, or Indian country and other tribal and native lands; (4) a Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, a SBIC, as described in 13 CFR part 107, a New Markets Venture Capital company, as described in 13 CFR part 108, a qualified Community Development Entity, as defined in 26 CFR 45D(c), or a U.S. Department of Agriculture (USDA) Rural Business Investment Company, as defined in 7

[40] In addition to the changes described above, the OCC made two clarifying changes to the affordable housing criterion: (1) The OCC replaced the term ''benefit'' with the more specific phrase ''inhabited by'' in the affordable housing criterion to clarify that affordable housing must be likely to or be inhabited by LMI individuals or families and made other technical conforming revisions; and (2) the OCC clarified that affordable housing activities include owner-occupied housing purchased, refinanced, or improved by or *on behalf of* LMI individuals or families, except for home mortgage loans provided directly to individuals or families.

[41] The preambles to the proposed and final rules abbreviate SBA Certified Development Companies as SBDCs. One commenter suggested that the references to these entities in the rule and in the *Interagency Q&As* should use the abbreviation CDC for Certified Development Companies instead. The agency notes that, in the CRA context, CDC typically refers to community development corporation and the use of SBDC is intended to avoid confusion.

[42] *See Interagency Q&As* § ____.12(g)(3)—1, 81 FR at 48526.

[43] A few commenters offered suggestions on how to track job creation. Suggestions included using Participant Individual Record Layout data collected by the U.S. Departments of Labor and Education and using job creation statistics from the Bureau of Labor Statistics. The OCC plans to consider these comments as it develops guidance for implementing the qualifying activities criteria.

CFR 4290.50; or (5) technical assistance and supportive services, such as shared space, technology, or administrative assistance for businesses or farms that meet the size-eligibility standards of the SBIC, as described in 13 CFR part 107.

Additionally, as discussed above, the criteria in the proposal related to technical assistance and supportive services incorporated the size eligibility standards for the SBDC and SBIC programs. This standard was one of two size standards provided in the *Interagency Q&As* related to economic development.[44] The proposal did not include the other size standard in the *Interagency Q&As*—businesses or farms with gross annual revenues of $1 million or less. Some commenters recommended that the OCC revise the criterion to include the size standard of gross annual revenues of $1 million or less in place of the one in the proposal. The OCC reviewed the SBA regulations and determined that the SBIC program size standards encompass both businesses and farms with gross annual revenues of $1 million or less and those that meet the size-eligibility standards of the SBDC program. Therefore, the agency is not implementing the commenters' suggestions. Businesses and farms that meet commenters' suggested size eligibility standards also meet the size eligibility standards of the SBIC program.[45] The agency is also revising the proposed size standard in the technical assistance and supportive services economic development criterion component by removing the reference to the SBDC program to eliminate that additional redundancy.

A few industry commenters expressed concern about overlapping and inconsistent definitions and qualifications for activities involving businesses and farms in the retail lending and CD criteria in the proposal. The OCC acknowledges that loans to businesses or farms of varying sizes receive credit under different qualifying activities criteria. These varying business and farm size thresholds were included in the proposal to ensure that certain activities that already qualified for CRA credit continue to qualify under the revised regulations. The agency will work to ensure that qualifying activities criteria and related definitions are consistent to the maximum extent possible in its administration of the regulation going forward.

Essential community facilities. The NPR included a criterion for essential community facilities that partially or primarily benefit LMI individuals or families, LMI census tracts, or other identified areas of need. At least a few community groups and one industry commenter suggested that essential community facilities must benefit or serve LMI communities. A few community group commenters argued that certain facilities that do not actually serve LMI communities would meet this definition. Commenters asserted that it was unclear whether CRA credit would be provided for facilities that only tangentially benefit LMI individuals or families, LMI census tracts, and other identified communities of need. These commenters also noted their belief that banks are likely to finance these activities without a CRA incentive. One industry commenter argued that healthcare facilities should receive CRA credit for the entire investment regardless of who benefits.

The comments provided on the proposed essential community facilities criterion and definition appear to reflect a misunderstanding of the proposal. As proposed, essential community facilities projects would only have received CRA credit if they partially or primarily benefit or serve LMI individuals or families, LMI census tracts, or other identified areas of need.[46] The proposal provided that banks would receive full credit for activities that primarily benefit or serve these communities and pro-rata credit for activities that partially benefit or serve these communities. As discussed below, the agency will accept reasonable methods for calculating the benefit to LMI populations and other identified communities of need. Otherwise, the OCC is adopting the essential community facilities definition and criterion as proposed.

Essential infrastructure. The agency proposed including a CD criterion for essential infrastructure. The proposal did not limit CRA credit for essential infrastructure projects to those that partially or primarily benefitted or served LMI individuals or families, LMI areas, or other identified areas of need, provided these populations and communities received some benefit from the projects. Several community groups expressed concern that the essential infrastructure criterion was too broad and would divert resources away from other projects that benefit LMI communities that are most in need of resources and may even harm these communities.[47] At least a few community groups and one industry commenter suggested that essential infrastructure projects should only receive CRA credit if the bank documents that the infrastructure benefits LMI communities. A few community group commenters recommended that CRA credit should only be provided if the project primarily serves LMI individuals and communities, unless the activity is in a rural area. A few community groups also suggested restricting credit for essential infrastructure projects to circumstances where access to funding is limited. Another community group suggested that there should be protections for LMI communities that face displacement due to redevelopment projects.

The agency agrees that CRA activity should focus on LMI individuals and census tracts and other identified areas of need. In response to these comments, the OCC revised this criterion to require that essential infrastructure activities must partially or primarily serve: (1) LMI individuals or families; or (2) LMI census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country or other tribal and native lands. This revision acknowledges the importance of these types of projects to communities in helping to attract new or retain existing businesses and residents. As discussed below, the agency will accept reasonable methods for calculating the portion of an activity that benefits or serves LMI individuals, small businesses, small farms, LMI census tracts, or the identified communities of need. As noted elsewhere, the agency will consider qualitative aspects of a bank's CRA activities as part of

[44] *See Interagency Q&As* § ___.12(g)(3)—1, 81 FR at 48526.

[45] The $1 million or less gross annual revenue size standard suggested by commenters would also mean that certain activities that finance businesses with revenues in excess of $1 million but that meet the SBIC size eligibility standards would no longer meet the qualifying activities criteria.

[46] For the sake of clarity, the agency removed the word benefit from the criterion to focus on these facilities serving their communities.

[47] The agencies also received comments from community groups and industry commenters on the method of financing essential infrastructure, in particular, municipal bonds and tax increment financing bonds (TIFs). A number of commenters suggested that municipal bonds, or municipal bonds that only partially benefit LMI individuals, should not be included as qualifying activities, while other commenters supported fully valuing municipal bonds. A few community group commenters suggested that the financing of TIFs should not receive CRA credit or only receive credit to the extent TIF expenditures directly serve LMI households and census tracts, while one industry commenter suggested that TIFs used by municipalities should qualify for CRA credit. Because municipal bonds and TIFs are common methods for financing essential infrastructure, the OCC is not making any changes in the final rule in response to these comments but does note that, as in the proposal, municipal bonds are excluded from the final rule's multiplier provisions.

performance context, including how responsive the essential infrastructure projects are to the communities they serve.

The OCC also received comments on the definition of essential infrastructure. Suggestions for revisions to the definition included: (1) Adding renewable energy production and distribution; (2) adding abatement of certain environmental hazards; (3) adding activities that promote climate resilience; and (4) clarifying whether any public infrastructure project receives credit. The agency does not believe changing the definition of essential infrastructure is necessary because, depending on the facts and circumstances, the suggested types of projects may already receive credit under the proposed qualifying activities criteria. As explained in the preamble to the proposal, depending on the facts and circumstances, activities that finance or support affordable housing, essential community facilities, or essential infrastructure may include: (1) Renewable energy, energy-efficiency, or water conservation equipment or projects associated with affordable housing, essential community facilities, or essential infrastructure; or (2) the abatement or remediation of, or other actions to correct, environmental hazards, such as lead-based paint, lead pipes (such as those used in antiquated water supply systems), asbestos, mold, or radon that is present in the housing, facilities, or site where the housing or facilities are located. In addition, as with essential community facilities, the agency is clarifying that all infrastructure projects that meet the definition and the criterion are essential infrastructure for purposes of the CRA. As such, the agency is adopting the essential infrastructure definition as proposed.

Family farms. As proposed, family farm was defined using the definition from the Farm Service Agency of the USDA.[48] Some commenters supported the inclusion of family-farm related activities in the proposal. Many commenters stated, however, that the proposal used a revenue threshold of $10 million for family farms which, they argued, is unsupported by research or analysis. These comments appear to be based on a misunderstanding. In providing an example of an activity on the CRA illustrative list, the agency used a family farm with gross annual revenues of $10 million. This was only an example; the Farm Service Agency of the USDA's definition of family farm is not based on a revenue threshold.

An individual commenter also recommended an alternative definition for family farm based on the definition of farm in the Agriculture Improvement Act of 2018.[49] Two industry commenters also requested clarification on the types of farming entities that are considered family farms.[50] The final rule continues to rely on the expertise of the USDA in defining family farms and retains the cross-reference to the Farm Service Agency of the USDA's definition of family farm. Under the final rule, banks and interested parties may request confirmation that activities involving specific farms meet the family farm definition and qualifying activities criterion.

The proposal provided credit for CD activities that provide financing for or support a family farm's: (1) Purchase or lease of farm land, equipment, and other farm-related inputs; (2) receipt of technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary; or (3) sale and trade of family farm products.[51] The agency intended for the family farm qualifying activities criterion to provide CRA credit for activities that finance or support family farm production and the sale and trade of a family farm's own products. The proposal could also have provided CRA credit for activities that finance or support activities other than production, such as a family farm with capacity for buying and warehousing crops produced by others and subsequently selling and trading them on the open market. While these are beneficial activities and should be encouraged, they go beyond the needs of the family farm to finance its own production and, in the OCC's judgment, do not fit within the scope of the CRA. To clarify that these activities will not qualify, the final rule limits the qualifying criteria to activities that finance or support a family farm's own production, including the sale and trade, of its own products. Otherwise, the agency is adopting the family farm definition and criterion as proposed.

Federal, state, local, or tribal government programs, projects, and initiatives. The proposed qualifying activities criteria included a CD criterion for activities that finance or otherwise support federal, state, local, or tribal programs, projects, or initiatives that benefit or serve LMI individuals or families, small businesses or small farms, or LMI census tracts or other identified areas of need. Commenters suggested that the agencies should clarify and more clearly define what is included in government programs, projects, or initiatives, including by clarifying whether the criteria are inclusive of local, state, and federal revitalization undertaken via the establishment of specified geographies (*e.g.,* Enterprise Zones, Historic Underutilized Business Zones). They also suggested the criteria be more precise due to the potential for contentious projects. Industry commenters suggested that the criterion should be adjusted to allow for programs to benefit areas of identified need so that state and local governments can determine which activities should qualify.

The agency carefully considered the commenters' concerns. The agency continues to believe that, in many circumstances, communities are in the best position to identify their needs and design projects, programs, and initiatives that help to address those needs. This criterion is meant to provide the flexibility to encompass a variety of programs, projects, and initiatives that serve LMI individuals and families, LMI census tracts, and other identified areas of need. Nonetheless, the agency appreciates the need for clarity. Banks and interested parties that have questions about activities should reference the CRA illustrative list or utilize the qualifying activity confirmation process in the final rule. As such, other than consolidating the component of this criteria that involves financing or supporting small businesses or small farms with the other related activities under the new economic development criterion, the OCC is adopting these criteria as proposed, with a minor clarifying edit.[52]

Financial literacy. The NPR would have provided credit for all financial literacy and education or homebuyer counseling activities, regardless of the income level of the beneficiary of the

[48] *See* 7 CFR 761.2(b).

[49] Public Law 115–334, 132 Stat. 4490 (2018).

[50] A commenter also noted concerns with the biased nature of farm lending and alleged racial discrimination against African-American-owned farms. Lending disparities correlated with race or ethnicity are of concern to the agency, and the agency addresses lending discrimination-related concerns through the federal fair lending laws.

[51] One industry commenter recommended that the OCC include operating loans, such as crop and livestock loans, in the qualifying activities criteria. The proposal would have provided credit for these loans because they provide financing for farm-related inputs. These activities also will qualify under the final rule.

[52] As with other criterion, the final rule uses more specific terminology and removes the term benefit to clarify that these programs, projects, and initiatives must serve LMI individuals or families, LMI census tracts, or other identified areas of need.

activity.[53] Some commenters argued that these activities should only receive credit if they are targeted to LMI individuals or families for the framework to be consistent with the statutory purpose of the CRA. The agency disagrees with these comments, which are premised on the incorrect assumption that the CRA statute and regulations are intended to exclusively benefit LMI individuals and communities. The language in the CRA statute expressly contemplates that banks should be encouraged to meet the credit needs of their entire communities, including their LMI neighborhoods. Thus, while LMI-focused activities are important, the existing regulations give CRA consideration for farm and business lending, which these commenters have not challenged. Moreover, since 2005, the CRA regulations have provided consideration for activities that revitalize or stabilize distressed or underserved nonmetropolitan middle-income areas.[54]

Where appropriate, the OCC has placed particular emphasis on incentivizing increased activities targeted to LMI individuals, families, and census tracts. This includes limiting CRA consideration in the CRA evaluation measure to mortgages made to LMI individuals and families. The agency has, however, also sought to give credit for activities that do not exclusively benefit LMI individuals, families, and census tracts in circumstances where the OCC has determined that it is appropriate to ensure banks are serving their entire communities and where such activities are much needed (*i.e.,* other identified areas of need). The agency believes that providing financial literacy and education or homebuyer counseling to a broad audience, including but not limited to LMI communities, is consistent with both the language and the spirit of the CRA. The need for, and benefit of, financial literacy extends well beyond LMI individuals, families, and census tracts. Given these considerations, the agency is adopting the financial literacy criterion as proposed.

Indian country. The proposal would have defined Indian country by reference to 18 U.S.C. 1151 and provided credit for certain activities in Indian country. A few industry and community groups said that the statutory definition of Indian country was too narrow and would exclude lands that are typically thought of as Indian country. These commenters provided options for expanding the definition, such as including various Census Bureau statistical areas or by adding areas that would be covered by the Inspiring Nationally Vibrant Economies Sustaining Tribes Act of 2020 bill, which has been proposed and referred to the Senate Committee on Finance.[55] At least one community group requested that Hawaiian Home Lands, which are held in trust by the state of Hawaii, and State Designated Tribal Statistical Areas be considered but remain distinct from federal designations of Indian country. One commenter suggested that activities in census tracts adjacent to a reservation or within a number of miles from a reservation border qualify for CRA credit.

The agency agrees that the proposed definition should be expanded to cover additional areas typically thought of as Indian country or other tribal and native lands. As noted above, the final rule continues to define Indian country by reference to the definition in 18 U.S.C. 1151 but adds Census Bureau-designated Tribal Census Tracts, Oklahoma Tribal Statistical Areas, Tribal Designated Statistical Areas, American Indian Joint-Use Areas, and Alaska Native Village Statistical Areas. The final rule also includes other tribal and native lands as a new defined term, which includes Hawaiian Home Lands and State Designated Tribal Statistical Areas. Activities that qualify in Indian country will also qualify in other tribal and native lands. In the final rule, the OCC made conforming revisions to the qualifying activities criteria and the measure of a bank's branch distribution in the CRA evaluation measure.

Commenters also sought clarity on whether Indian country would include lands not in a reservation and no longer in a state of original allotment or include lands that were once within the boundaries of native nations even if they were not technically reservations or allotments. Areas that are not covered by the final rule's changes to the proposal are only part of Indian country if they meet the statutory definition of 18 U.S.C. 1151, which includes reservations, dependent Indian communities, and allotments. The agency notes that case law has interpreted the statute to cover informal reservations,[56] and the term dependent Indian communities specifically to cover "a limited category of Indian lands that are neither reservations nor allotments, and that satisfy two requirements—first, they must have been set aside by the [f]ederal [g]overnment for the use of the Indians as Indian land; second, they must be under federal superintendence." [57]

One community group recommended that the agency provide credit for activities funded by the government or receiving tribal authorization or support. All retail loans in Indian country and other tribal and native lands qualify for CRA credit under the final rule. The CD criteria also include certain tribal government programs, projects, or initiatives and other activities related to Indian country and other tribal and native lands. As noted below, activities need not be in Indian country or other tribal and native lands to be a qualifying activity if they benefit or serve those areas. For activities whose qualifying status is ambiguous, the OCC encourages interested parties to seek confirmation as provided in the final rule. Another commenter suggested that government agency and tribal leaders be consulted regarding any expansion or inclusion of the CRA in their communities. The agency engaged in significant outreach prior to issuing the NPR and received feedback from many stakeholders that informed the proposal and the final rule, including those that would be affected by the inclusion of activities in Indian country and other tribal and native lands.

Opportunity zones. The proposal would have given credit for qualified opportunity funds that benefit LMI qualified opportunity zones. A few industry commenters expressed support for providing credit to investments in opportunity zones. Some community groups relayed concerns about such provision of credit because these investments could finance projects that do not benefit LMI individuals or communities. These commenters provided examples of such projects, including luxury condominiums. A few

[53] Two community groups stated that, for several reasons, non-profits are better suited to deliver financial education services. They suggested that CRA credit be awarded for banks' support of and investment in non-profits' financial literacy and education programs rather than encouraging banks to provide the services directly. Under the proposal and the final rule, banks may receive CRA credit for financial literacy activities conducted by the bank or financed by a bank and provided by a non-profit. Two commenters recommended that the OCC provide CRA credit for digital literacy training to LMI individuals focused on using internet banking services as a type of financial literacy program. If the digital literacy training meets a CD criterion, the agency will award CRA credit. Banks that intend to offer these programs may discuss them with their examiners or use the qualifying list confirmation process to ensure that the services they provide will qualify.

[54] *See* 70 FR 44256 (Aug. 2, 2005).

[55] S. 3181, 116th Cong. (2019–2020).

[56] *Oklahoma Tax Comm'n* v. *Sac & Fox Nation,* 508 U.S. 114, 123 (1993).

[57] *Alaska* v. *Native Vill. of Venetie Tribal Gov't,* 522 U.S. 520, 527 (1998).

commenters also expressed the view that investments in qualified opportunity funds already receive enough support and should not receive a multiplier. Commenters criticized the basis for designating opportunity zones because they are based on 2010 data and may not actually benefit areas currently identified as LMI. Commenters that supported providing credit for investments in qualified opportunity funds proposed a safe harbor or presumption in which certain activities would be presumed to benefit LMI communities.

The OCC's purpose in adding a criterion for qualified opportunity funds that benefit qualified opportunity zones in LMI census tracts was to incentivize banks to help meet the needs of LMI individuals and communities located in opportunity zones, which are areas the federal government has identified as needing economic development and job creation. The OCC is clarifying that to qualify under the opportunity zone criterion, activities that finance or support qualified opportunity funds must benefit LMI qualified opportunity zones.[58] Whether an activity benefits an LMI qualified opportunity zone will depend on the facts and circumstances of the activity, including whether it is responsive to the needs of LMI individuals, families, and communities in the opportunity zone. The OCC made no changes to this criterion and has adopted it as proposed. Although the agency is not revising the criterion to provide specific safe harbors or presumptions for certain investments in qualified opportunity funds, as with all activities, a bank may request confirmation that a particular qualified opportunity fund meets the qualifying activities criteria using the process contained in the final rule.

Sports stadiums. The proposal included as an example on the CRA illustrative list an investment in a qualified opportunity fund established to finance improvements to an athletic stadium in an opportunity zone that is also an LMI census tract. The OCC received numerous comments expressing concern with this example. There is a misperception that the proposal would have created a new incentive by giving banks CRA credit for financing athletic facilities. To the contrary, banks have received CRA credit for decades for loans and other financing involving athletic facilities that increase opportunities for economically disadvantaged individuals and areas. A review of publicly accessible CRA PEs provides many examples of this credit, dating back to at least 1993. Many of the examples involve repairs to local high school and municipal facilities that serve local communities. Some involve creative projects involving multiuse facilities and school facilities, and some involve professional sports stadiums.

In response to comments received on the proposal, the agency has replaced the stadium example with an example that better reflects the type of athletic facilities that have been approved historically. In addition, the agency is clarifying that under the final rule the agency will continue to review and give CRA credit for loans and other financing involving athletic facilities that increase opportunities for economically disadvantaged individuals and areas. Under the final rule, the agency will consider the facts and circumstances of specific projects involving athletic facilities, either in the context of a CRA evaluation or pursuant to a request for confirmation that an activity is a qualifying activity.

Ventures undertaken in cooperation with minority depository institutions, women's depository institutions, Community Development Financial Institutions (CDFI), or low-income credit unions. The proposal included ''ventures undertaken, including capital investments and loan participations, by a bank in cooperation with a minority depository institution, women's depository institution, [CDFI], or low-income credit union'' as qualifying activities if the ventures help meet the credit needs of the communities in which these institutions are chartered, including by promoting the sustainability and profitability of those institutions themselves. Commenters largely supported the clarification regarding activities with minority depository institution, women's depository institution, or low-income credit union and CDFIs and suggested additional examples of activities that should be included in the final rule.

The agency agrees that additional activities undertaken with these institutions should qualify for CRA credit. The agency notes that the examples following the term ventures in the proposal—capital investments and loan participations—are illustrative and not exhaustive. The agency intends the term ventures to broadly encompass, for example, deposits, loans, and other financial and nonfinancial support. The agency has adopted these provisions as proposed, with minor changes to clarify that activities and ventures, other than those expressly included in the proposal, may qualify for CRA credit.

Underserved areas, distressed areas, and CRA deserts. The proposal would have revised the definitions of distressed nonmetropolitan middle-income area and underserved nonmetropolitan middle-income area to include additional census tracts where there are unmet financial needs and to simplify the terms used to describe these areas. Specifically, proposal removed the requirement that a distressed area be a nonmetropolitan area in recognition that there may be middle-income census tracts in metropolitan statistical areas (MSA) that experience high rates of poverty, unemployment, or population loss and, therefore, need financial resources. Similarly, the proposal would also have revised the definition of underserved area to remove the requirement that these census tracts be nonmetropolitan areas to address urban banking deserts that lack access to financial services.

Commenters suggested that the agency proposed these definitions without sufficient research. The agency disagrees with this contention. The agency decided how to modify the existing definitions to capture areas with unmet financial needs based on publicly available census tract demographic information, such as population density, poverty rates, unemployment, population loss, and availability of bank branches.

Commenters also argued that because the agency did not provide information about the census tracts that would be affected, the public was unable to provide meaningful comment.[59] To the contrary, the proposal included clear definitions based on publicly available information for distressed areas and underserved areas, enabling commenters to provide meaningful comment. Furthermore, at least one commenter was in fact able to use publicly available information to review which census tracts would likely be affected by the proposal, as commenters did for the proposed definition of high-cost areas.[60] It is clear from the comments received that commenters were able to look at the definitions included in the proposal and to use public data related to those definitions

[58] One community group suggested that it is unclear whether qualified opportunity funds can make investments through a lower-tier entity, noting that many investors have established two-tier structures in which investments are made through the subsidiary. To the extent that commenters have questions about the requirements or structure of qualified opportunity funds, those questions should be directed to the Internal Revenue Service.

[59] *See, e.g.,* Comment Letter: *National Community Reinvestment Coalition (NCRC),* from J. Van Tol and J. Taylor, at 28 (Apr. 8, 2020).

[60] *Id.*

to analyze and comment on the proposal.

Many commenters, citing research showing continuing racial disparities in lending, expressed the view that communities of color should be included in the definition of underserved areas. Congress enacted the CRA with the purpose of encouraging sound lending to a bank's entire community, and CRA requires the OCC to assess banks' records of meeting the credit needs of their entire community, including LMI neighborhoods. Although the CRA statutory language does not explicitly address communities of color, of course a bank's entire community includes communities of color. Adjustments to the current framework, including those made to the definitions of distressed area and underserved area, will help ensure that banks do more, not less, in LMI census tracts and other identified areas of need, including areas that may have historically been affected by redlining or other forms of unlawful discrimination. The OCC believes the reforms contained in the final rule will have the positive result of benefiting minority populations by increasing activities in areas that often have a high minority population. Further, a bank's CRA performance will be adversely affected by evidence of discrimination or other illegal credit practices.''

The agency notes that MSAs that experience high rates of poverty, unemployment, or population loss are often correlated with high populations of racial minorities. Accordingly, the proposed definitions of distressed area and underserved area would have the positive result of incentivizing CRA activities in certain areas with high populations of racial minorities. Thus, the agency's proposal achieves the benefit urged by the commenters who support explicitly addressing communities of color in the CRA regulations. Therefore, the agency is not implementing the proposed reforms.[61]

Commenters suggested several alternative methods of defining distressed or underserved census tracts, including by looking at tracts with low levels of retail lending after considering the demographics of an area or areas where there are transportation barriers. The agency agrees that it is important to encourage CRA activities in areas that experience lower than expected levels of lending and investments, often known as CRA deserts, and believes that many of these areas would likely be encompassed within distressed and underserved areas due to the demographic makeup of these communities. In the agency's judgment, the proposed definitions of distressed area and underserved area accurately identify the majority of economically distressed areas and other areas with limited access to financial services. The agency adopts these definitions as proposed.

To encourage banks to engage in qualifying activities in CRA deserts, in response to comments received on this issue, the final rule adopts a definition of CRA desert and provides multipliers for qualifying activities in these areas. The final rule defines CRA desert as an area that has been confirmed by the agency to be a CRA desert because it has significant unmet CD or retail lending needs and where: (1) Few banks have branches or non-branch deposit-taking facilities; (2) there is less retail or CD lending than would be expected based on demographic or other factors; or (3) the area lacks community development organizations or infrastructure. The final rule also provides that the agency will maintain an illustrative list of CRA deserts and includes a process for banks to obtain confirmation that an area meets the definition of a CRA desert. Because geographies that meet the definition of CRA desert are subject to change based on increases in the level of CRA activities directed to the area, each bank that seeks to use a multiplier for an activity in a CRA desert must obtain confirmation from the agency that the geography is or continues to be a CRA desert.

Federal Housing Administration (FHA) loan products. Commenters stated that the proposal did not address certain single-family FHA loan products provided to LMI individuals. These comments reflect a misunderstanding of the proposal. The proposed qualifying activities criteria do not include any reference to single-family FHA loan products; however, the CRA illustrative list included in the proposal did include some examples of qualifying activities involving FHA loan products. As noted below, the CRA illustrative list provided along with the proposal is a non-exhaustive, illustrative list of examples of qualifying activities. If a loan originated through an FHA loan program is provided to an LMI individual or family, it will receive credit because it meets the qualifying activities criteria even if it is not included on the illustrative list. However, in response to comments, the OCC has revised the examples to clarify that FHA-guaranteed loans to LMI individuals or families qualify for CRA consideration.

Persons with disabilities. Some commenters recommended that the proposal be revised to address the needs of LMI persons with disabilities and provided several specific suggestions. They also suggested that the agency discuss the applicability of the Americans with Disabilities Act (ADA). The agency notes that activities that benefit or serve LMI individuals with disabilities would meet several of the qualifying activities criteria in the final rule. In addition, the initial CRA illustrative list includes examples of activities that support persons with disabilities. Under the final rule, banks and interested parties can request confirmation that additional activities meet the qualifying activities criteria.

Affiliate activities. In the proposal, qualifying activities included activities in which banks substantively engaged and for which they provided the economic resources, but which were done in the name of another party, such as an affiliate. The agency received comments on the treatment of qualified activities undertaken by bank affiliates. Some community group commenters stated that giving banks a choice of whether to include an affiliate's activities opens up the framework to abuse. They argued that affiliate activities should always be included because the distinction between affiliates' activities and those of a bank is often unclear. Alternatively, commenters suggested that the OCC adjust a bank's CRA ratings if its affiliate's activities varied widely from the bank's activities with respect to abusive practices and the populations served. A few members of the public and some community groups stated that if banks receive credit for affiliate activities, the agency must consider evidence of discriminatory or other illegal credit practices of those affiliates. In contrast, several commenters representing industry trade groups supported retaining the optionality. One industry commenter specifically recommended that activities conducted by an affiliated foundation, under common control of the bank's shareholders, be counted as qualifying activities of the bank. Two industry commenters recommended that the

[61] A commenter also noted that the agency failed to consider its statutory duty to affirmatively further fair housing under the Fair Housing Act, 42 U.S.C. 3608(d), because the proposed rule would have the effect of making affordable housing unavailable. *See* 42 U.S.C. 3604(a). Lending disparities correlated with race, ethnicity, or other protected status are of concern to the agency. As discussed in this preamble, the agency supervises banks' compliance with the federal fair lending laws and regulations through its examination and enforcement functions. Further, the final rule does not, on its face or through implementation, make any housing unavailable in violation of the Fair Housing Act. Moreover, the final rule increases incentives for financing housing affordable to LMI individuals and families.

agency permit banks to exclude affiliate activities from the retail lending distribution tests.

The agency has carefully considered the comments received. In the final rule, the agency decided to limit consideration of CRA activities to those conducted directly by a bank to be more consistent with the CRA statute. The agency has made clarifying edits throughout the rule to reflect this policy decision. The CRA statute grants the agency the authority to evaluate the CRA performance of insured depository institutions. The agency notes, however, that it considers qualifying activities to be conducted by a bank if the bank finances or otherwise supports a qualifying activity, even if the transaction involves an intermediary. The final rule will not require or provide the option for banks to consider affiliates' activities.

CRA illustrative list. The proposal provided that the agency would maintain a publicly available, non-exhaustive, illustrative list of examples of qualifying activities that meet the rule's qualifying activities criteria, as well as examples of activities that the agency has determined, in response to specific inquiries, do not qualify. The proposal also established a process for a bank or interested party to submit a form through the OCC's website to seek agency confirmation that an activity is a qualifying activity and stated that the CRA illustrative list would be updated each time an activity is confirmed to be or determined not to be a qualifying activity. In addition, the proposal provided that the list would also be published in the **Federal Register** at least every three years, at which time the agency would seek public comment on the list. Following this, the agency could add activities to the list that meet the qualifying activities criteria or remove activities that no longer meet the criteria.[62]

The agency received a number of comments on the proposed CRA illustrative list of qualifying activities and the processes for updating the list. Several commenters expressed concern that the list would be viewed as a complete list of permissible activities, as opposed to an illustrative list of examples. Others stated that a list would serve to discourage banks from engaging in activities that are not on the list, thereby limiting innovation. Some community group commenters stated that the CRA illustrative list included examples of activities that would not provide community members with financial inclusion and economic opportunity, with one commenter referencing the examples involving in-kind donations of computer equipment and provision of homebuyer education to buyers of single-family housing. One community group commenter suggested that the housing tax credit example on the illustrative list should be clarified so that only 60% of the units meet the 30% of 80% of the area median income requirement. Certain community group commenters opposed the list but supported the confirmation process. A few commenters also suggested that a best practice guide, informed by community and consumer-serving organizations and public input, would be better than a list.

In response, the agency reiterates that the list is illustrative only. It is not a complete list of activities that meet the regulatory criteria; no such list exists, nor will it exist under the final rule. Banks will receive CRA credit for any activity that satisfies the qualifying activities criteria, regardless of whether it is on the CRA illustrative list. Moreover, the OCC encourages banks to engage in innovative activities that are responsive to the needs of their communities and, where there is uncertainty, to confirm with the agency that an activity not on the CRA illustrative list is qualifying.[63]

Commenters also addressed the process in the proposal for banks to seek agency confirmation that an activity is a qualifying activity. Commenters noted that limiting this process to banks would deprive interested persons of the opportunity to gain important clarity and participate in the CRA process. Two community groups recommended that local input should inform the confirmation process, and one industry commenter suggested that a joint group consider confirmation requests, including representatives from the originating district or regional office. The agency agrees that public input and active stakeholder engagement is important to achieve the goals of the CRA, and the final rule allows any interested party to request confirmation that an activity is a qualifying activity. Because the question of whether an activity meets the qualifying criteria is a matter of agency interpretation, the agency will make these decisions based upon all available information.[64]

After considering the specific suggestions the agency received, the OCC will endeavor to publish the CRA illustrative list on its website in a searchable format. The final rule provides that the agency will respond directly to requests for confirmation and post those responses to its website. The OCC will do so consistent with its internal processes, policies, and procedures. Banks can reference those responses as interpretive guidance to determine whether particular activities meet the qualifying activities criteria. The agency plans to update the CRA illustrative list on an annual basis with the activities that were determined to meet and not to meet the qualifying activities criteria during that year.

Other commenters requested that the CRA illustrative list identify CD lending, CD investment, and CD services separately. Because any CD loan, investment, or service qualifies under the rule if it satisfies one or more CD criteria, the agency does not plan to further segregate the list by type of CD activity unless it is necessary based on the facts and circumstances (*e.g.,* the activity can only be a CD investment). Another commenter requested that the list include guidance on the necessary documentation for each activity. As noted above, the agency plans to provide guidance on the application of the final rule.

One industry commenter recommended expanding the confirmation process to include confirmation of whether a branch would be included in the numerator of the branch distribution component of the CRA evaluation measure, discussed below. Branches in LMI census tracts and other identified areas of need are not qualifying activities. As such, the qualifying activities confirmation process does not include these branches. Under the final rule, as discussed below, if a branch is not

[62] The initial proposed illustrative list was available for review on the agency's website at the time the proposal was published, as well as in section V of the proposal.

[63] In this regard, the agency notes that the final rule encourages innovativeness and responsiveness through multipliers to the quantified dollar value of the activities and through consideration of these qualitative aspects of CRA activities as part of performance context.

[64] Commenters also addressed the statement in the proposal's preamble that the agencies would collaborate on the CRA illustrative list, stating that the manner in which this collaboration would occur was unclear. One industry commenter recommended that the agencies respond jointly to confirmation requests. One community group recommended that the CRA illustrative list reflect consensus among the OCC, FDIC, and the Board. A state regulator recommended that state regulators have input as well. State regulators may provide input on the illustrative list using the confirmation or notice and comment process described in the final rule. The FDIC and the Board are not joining this rulemaking, and therefore presumably will not be maintaining illustrative lists comparable to the OCC's list. However, the OCC notes that it coordinates with these agencies on a routine and ongoing basis regarding areas of common interest.

located in an LMI census tract or other identified area of need, a bank must demonstrate that it serves one of those areas to be included in the numerator of the branch distribution component of the CRA evaluation measure.

A few community groups argued that the periodic updates to the CRA illustrative list each time an activity is confirmed to be or determined not to be a qualifying activity should be subject to notice and comment under the Administrative Procedure Act (APA). The agency disagrees. The CRA illustrative list is a non-exclusive compilation of activities that the agency has determined do or do not meet the qualifying activities criteria. The list itself does not set forth the regulatory qualifying activities criteria, nor do changes to the list in any way alter or otherwise affect these criteria. Under the final rule, the periodic updates of the list will reflect the agency's opinions on whether specific scenarios presented by banks or interested parties meet the qualifying activities criteria. These opinions on the applicability of the rule are interpretive rules, which are commonly issued by a government agency in response to requests for guidance from the public on how statutes and regulations apply in specific situations.[65] These interpretations provide stakeholders and other interested parties with timely information and foster a more nimble and responsive government. Under the APA, an interpretive rule is exempt from notice and comment.[66]

With respect to the periodic publication of the CRA illustrative list in the **Federal Register** every three years, some commenters stated that this should take place no more often than every five years because a more frequent review could impede banks' ability to rely on the CRA illustrative list. Moreover, the commenter argued, frequent revisions could make the list susceptible to changes based on political pressure, rather than public policy rationales. The commenter also suggested that activities removed from the list should qualify for credit for two additional years to further enable reliance on the list and allow banks to better modulate product development and political headwinds. The agency agrees with the commenter that a five-year review would increase the ability of banks to rely on the list and provide them with certainty, particularly in light of how long some activities take to start up and wind down, and the agency has made this change in the final rule. With respect to the two-year grace period, the agency does not believe such change is necessary because a bank that received credit for an activity that is subsequently removed from the list (because it no longer meets the regulatory criteria) will continue to receive CRA credit while the activity remains on the bank's balance sheet.

In response to suggestions that the CRA illustrative list be updated more frequently, the agency notes that it plans to update it on an annual basis in response to requests from any bank or interested party for confirmation that an activity qualifies. For the reasons described above, the agency is not adopting a more frequent public notice and comment update process.

Certain community groups recommended that banks only receive credit for activities on the CRA illustrative list if they benefit LMI individuals. The agency is not adopting this recommendation because the final rule, like the current regulations, provides CRA credit for some activities with benefits that extend beyond LMI individuals and families.

The agency received numerous comments requesting that the approval time for a request for consideration of a new activity should be shorter than the six months that was proposed. Other commenters recommended a conditional review and approval process, potentially with a prompter conditional determination. The agency does not think that a conditional approval process is warranted because it could create uncertainty. The agency does agree, however, that to be useful, the approval process should be shortened, and the final rule provides for a 60-day approval process, with the option of a 30-day extension. To manage the agency's resources effectively, the agency expects to prioritize those requests relating to activities with definite terms and parameters and in which banks are ready to engage. The proposal also established a process for a bank to submit a form through the agency's website to seek agency confirmation that an activity is a qualifying activity.[67] The final rule adopts this process.

The CRA illustrative list issued on the OCC's website in conjunction with this final rule includes additional or modified examples conforming to changes in the regulatory text, along with technical and clarifying changes. Additionally, the OCC added several examples to provide further guidance or to address input from commenters, including examples addressing activities that respond to the current pandemic and the technology and health services needs of LMI individuals.

Other than the changes discussed above, the final rule adopts the CRA illustrative list and confirmation process provisions as proposed.

Qualitative aspects of qualifying activities. At least a few community groups and individual commenters stated that the proposal's failure to consider qualitative criteria for CRA activities could result in products receiving credit even though they do not support pathways for LMI individuals to move to lower-cost products. Other commenters suggested that qualitative performance context considerations should only supplement a bank's presumptive rating. As previously noted, the general policy direction of the agency's reform is to increase the level of transparency, objectivity, and consistency of application throughout the CRA regulation. The need for transparency, objectivity, and consistency is a point of general agreement among commenters throughout the reform process, in which the agency has engaged over the past several years. Increasing transparency, objectivity, and consistency will increase business certainty and in turn, incentivize a greater amount of qualifying activities. The qualifying activities criteria and CRA evaluation measure, for example, provide this increase in transparency, objectivity, and consistency. At the same time, as discussed in the performance context section below, the agency recognizes that not every aspect of CRA can be quantified and made objective. Moreover, the agency believes that qualitative considerations are an important component of CRA

[65] The critical feature of interpretive rules is that they are issued by an agency to advise the public of an agency's construction of the statutes and rules that it administers. Attorney General's Manual on the Administrative Procedure Act 30 n.3 (1947); *accord Perez* v. *Mortgage Bankers Association,* 575 U.S. 92 (2015) (citations omitted). While interpretive rules do not require notice and comment, and therefore may be issued more expeditiously than legislative rules, interpretive rules may not set legal expectations that extend beyond the underlying statute or regulation. *Id.* (noting that interpretive rules do not have the force and effect of law).

[66] 5 U.S.C. 553(b)(A). *See also Shalala* v. *Guernsey Memorial Hospital,* 514 U.S. 87, 99–100 (1995) (noting that an APA rulemaking is not required for an interpretive rule that does not effect a change in agency regulations); *cf. American Mining Congress* v. *Mine Safety & Health Administration,* 995 F.2d 1106, 1112 (D.C. Cir. 1993) (noting that one indicia of an interpretive rule is whether, absent the interpretive rule, the agency would have a legal basis for taking an enforcement action or other action to confer benefits or ensure the performance of duties).

[67] Under the final rule, an activity is confirmed as a qualifying activity if the requestor is not informed of an objection within the time allotted for confirmation.

evaluations and, therefore, will consider qualitative aspects of banks' CRA performance through the application of performance context, including whether the bank is being responsive to community needs. As discussed below, the performance context factors contained in the proposed and final rules and the standardized application of those factors will help ensure greater transparency and consistency in application of even the qualitative components of the CRA review.

Retail banking services and CD services. The proposal did not include a service test, which under the current framework is used to evaluate banks' retail banking services and delivery systems [68] and CD services. The proposal instead sought comment on how retail banking services and delivery systems, other than branch distribution, could be quantified or whether they should be considered as part of performance context. The proposal included in the CRA evaluation measure a component that accounted for the distribution of branches in LMI areas and other identified areas of need.

The proposal also sought comment on the proposed method of quantifying CD services (*i.e.,* bank employee time spent volunteering as a representative of the bank on qualifying activities or supporting qualifying activities of another bank or that are cooperative ventures with a minority depository institution, women's depository institution, or low-income credit union or CDFI).[69] The NPR quantified the dollar value of CD services based on the hourly salary as estimated by the Bureau of Labor Statistics (BLS) for the job category of the service provided for the number of hours provided. The proposal solicited feedback on other methods of quantifying CD services, including using a standard figure such as the median hourly compensation value for the banking industry, which was approximately $36 when calculated based on prior Call Report data.[70] A few industry and community group commenters objected to the method used to quantify CD services in the proposal, suggesting that it would provide varying amounts of credit for CD services, would not adequately reflect the positive impact that CD services have on communities, and would be unduly burdensome to track given the credit provided for CD services. A few commenters offered suggestions on other ways to quantify or value service hours, including the suggestion that a standard figure be used for all volunteer hours.

The agency also received comments regarding the elimination of the service test. While certain commenters acknowledged that performance under the service test can be confusing and does not rely on quantifiable criteria, many community groups, individuals, and government commenters asserted that the service test remains important. Commenters further argued that minimizing consideration of bank accounts and other services and branches that serve LMI individuals and communities would result in LMI communities becoming more dependent on check cashing and other high-cost services. These commenters argued that the service test should be retained and improved in the final rule to provide banks greater incentive to provide affordable deposit accounts and other banking services to LMI individuals and communities. Some industry, community group, government, and public commenters indicated support for including the provision of retail banking services to LMI communities in the CRA evaluation measure. Other commenters made recommendations on various products and services that should be considered or suggested that banks be incentivized to offer retail products and services to particular communities such as LMI, minority, or immigrant communities.

The agency carefully considered commenters' concerns and believes that the proposal accounted for services appropriately and was consistent with the agency's actual examination experience. Specifically, in the agency's experience, evaluations have focused on three aspects of banks' service-related activities: (1) Branch distribution; (2) product offerings that are tailored to meet the needs of LMI individuals; and (3) CD services. The final rule does not retain the service test as it appears in the current framework. Under the final rule, retail banking services and delivery systems and CD services will be accounted for both quantitatively and qualitatively.

The agency will account for retail banking services and delivery systems qualitatively as part of performance context. The agency considered options for quantifying retail bank services and delivery systems but determined that these aspects of a bank's business do not lend themselves to quantification and are best evaluated using qualitative criteria. As discussed below, the final rule also retains the branch distribution component of the CRA evaluation measure and enhances the amount of credit that a bank may receive for branches in LMI census tracts and other identified areas of need.

With regard to CD services, the agency revised the treatment of CD services in the final rule. To reduce the burden associated with tracking the compensation rates associated with the different job categories in the BLS data, the final rule quantifies CD services based on the standard figure for the median hourly compensation value for the banking industry calculated using Call Report data, which is $38 based on 2019 Call Report data. In addition, as discussed below, the quantified dollar value of CD services will be adjusted by multipliers, as applicable.

In administering the CRA regulations, the agency will take appropriate steps—such as providing examination tools and guidance—to ensure consistent application of performance context. The agency will incorporate consideration of a bank's retail banking services targeted to LMI individuals, record of opening and closing branches, and availability and effectiveness of its alternative systems for delivering retail banking services in LMI census tracts and to LMI individuals, the qualitative aspects of its branch distribution, and the qualitative aspects of CD services in the standardized application of performance context. In the agency's view, these are important aspects of a bank's CRA performance that are best considered qualitatively, not quantitatively.

Commenters also requested clarity on whether activities conducted in a middle-income census tract which is surrounded by LMI tracts will qualify as a CD service. Under the final rule and

[68] Under the current framework, the service test is used to evaluate a bank's distribution of branches, record of opening and closing branches, the availability and effectiveness of the bank's alternative systems for delivering retail banking services to LMI individuals and in LMI census tracts, and the range of services provided in low-, moderate-, middle-, and upper-income census tracts and the degree to which they are tailored to meet the needs of those census tracts.

[69] A few industry commenters supported the proposal to no longer limit CD services to the provision of professional services or financial literacy. In contrast, four commenters suggested that CRA credit for volunteer services should be limited to activities that are unique to skillsets relevant to banking and financial expertise. A few community group commenters and two government commenters suggested limiting CRA credit for volunteer services, including to supporting organizations with a primary CD purpose or to the extent the activity benefits LMI individuals. The final rule, like the proposal, no longer requires that CD services be related to the provision of financial services (*i.e.,* banks would receive credit for all volunteer hours, including manual labor, provided to a CD project). As explained in the proposal, this expansion recognizes that support for a CD project may take many forms, all of which are required for the project to meet the needs of a community, and that all these forms of support should qualify for CRA credit, consistent with the goals of CRA.

[70] The proposal stated that the $36 per hour figure was based on BLS data. In fact, the figure was calculated using data from the Call Report.

consistent with the guidance in the current *Interagency Q&As,*[71] if a bank can demonstrate that an activity meets the qualifying activities criteria it will receive CRA credit. Stated another way, qualifying activities do not need to occur in LMI census tracts or other identified areas of need to benefit or serve those areas.

Purchases of qualifying activities. The proposal provided that qualifying activities are retail loans and CD activities that help meet the credit needs of a bank's entire community, including LMI communities, if they meet the qualifying activities criteria at the time the activity is originated, made, or conducted. The proposal further stated that if an activity is subsequently purchased by another bank, it is a qualifying activity if it meets the criteria in this section at the time of purchase.

The agency received comments indicating that it was unclear whether banks were required to requalify purchased loans and investments by collecting data on the activity at the time of purchase or whether the purchasing bank could rely on the information provided at the time the loan was originated or the investment was made. The final rule includes clarifying edits to the qualifying activities criteria section regarding the subsequent purchase of activities. In particular, the agency clarified how a bank determines whether an activity that is subsequently purchased by another bank is considered a qualifying activity. The final rule clarifies that if a bank purchases a loan or investment that was a qualifying activity, it remains so unless the agency determines prior to the sale that the activity is no longer a qualifying activity. Essentially, if a bank purchases a loan or investment that met the qualifying activities criteria when it was originated or made, and based on the facts provided at that time it still meets the qualifying activities criteria, it remains a qualifying activity (*i.e.,* banks do not have to requalify purchased activities based on the facts at the time of purchase by, for example, obtaining the current income of a borrower who was LMI when the loan was originated). Rather, whether activities qualify is based on the facts at the time originated or made). In contrast, if a loan or investment no longer meets the qualifying activities criteria at the time of purchase based on the information provided when it was originated or made then it will not be a qualifying activity for the purchasing bank. The OCC also made several technical and conforming edits related to these changes throughout the final rule.

Other suggested qualifying activities. Some commenters suggested the agencies identify additional activities that would qualify for CRA consideration, including for example, CD corporations; CD venture capital organizations; work done to enhance digital literacy and/or broadband and digital access; disaster relief efforts; programs and products focused on general education; and environmental initiatives. Commenters also suggested miscellaneous housing activities should be considered, including housing counseling, foreclosure prevention efforts, loss mitigation efforts, and activities of state housing finance agencies. Other commenters suggested qualifying activities should include investments, lending, and services involving legal assistance for LMI individuals or supporting interest on lawyer trust accounts; efforts to remove language barriers; hours of bank operation; equity investments in minority depository institutions, women's depository institutions, or low-income credit unions and loan participations sold to and from minority depository institutions, women's depository institutions, or low-income credit unions, including investments made by those institution in other such institutions, loans to non-profits and other support of social and racial justice advocacy non-profit organizations; activities related to rural development; SBA 504 loans and 7(a) loans; microloan intermediaries (as defined in 13 CFR 120.701); financing or support for SBICs regardless of the location of the SBIC or its investments; activities that support communities of color; tax credits and other community reinvestment grants; and lending that helps reduce the combined cost of housing and transportation, including vehicle loans that support transportation to and from employment.

Other commenters suggested qualifying activities should include activities such as payday loan alternatives, including small dollar loans benefitting LMI; activities related to child-care; activities related to revitalization efforts; financing in support of projects under a local government's Community Development Block Grant; creative placemaking projects; activities that provide borrowers access to asset building products; activities that increase credit scores; investments in account opening partnerships that measurably improve financial inclusion; investments into the Puerto Rico Housing and Human Development Trust Fund; products and services of military banks; national or regional funds; documented, verified collaboration with community partners, such as investments in workforce development programs, financial education partnerships, and microlending or small-dollar loan programs; and membership in and all activity in their region's Federal Home Loan Bank.

Regarding revitalization and stabilization efforts, some community group, industry, and government commenters stated their opposition to the removal of the revitalization and stabilization criteria from the definition of CD or stated that the criteria should be added back into the regulation. Regarding the consideration of various activities, a few commenters offered suggestions on possible criteria to consider activities. A few commenters discussed whether LMI individuals should be the focus of qualifying activities. Community group commenters stated that no new CD financing should count as qualifying if those investments decrease a bank's investments in core CRA activities, which include lending to LMI individuals. Community group commenters stated that all investments should be analyzed for their impact on historically redlined communities. Other commenters offered suggestions on qualifying activities criteria that could be used to consider activities, including that the agency could require banks to secure endorsements of activities from local community leaders; consider community wealth building models; and incentivize prime products rather than high-cost products.

The final rule addresses these suggestions by providing clear, yet flexible, criteria describing what activities will count as CRA qualifying activities. Many of the suggestions made by commenters are likely to meet the qualifying activities criteria and some are included in the CRA illustrative list. In addition, the agency will consider additions to the CRA illustrative list on a case-by-case basis and periodically seek public comment and update the list.

Quantifying a bank's qualifying activities, general. Except for retail loans sold within 90 days of origination and activities that are not held on a bank's balance sheet, the proposal would have generally quantified qualifying activities based on their average month-end on-balance-sheet value.[72] The proposal

[71] *See Interagency Q&As,* § ____.12(g)—2, 81 FR at 48525.

[72] One industry commenter suggested that there was a conflict between: (1) The proposed regulatory text's description of the value of an activity as the average of the dollar value as of the close of

included separate provisions for quantifying activities that are not held on a bank's balance sheet. The proposal quantified most activities based on their on-balance-sheet value to recognize the value of stable commitments to communities and disincentivize churning of activities. However, the agency also recognizes that providing initial credit to borrowers or organizations is enormously valuable. To account for this value, the proposal quantified retail loans that were sold within 90 days of origination at 25 percent of the dollar value at origination.

At least a few community groups expressed the view that the proposal's approach to retail loans sold within 90 days of origination may result in fewer retail loan originations and penalize banks that originate loans to sell in the secondary market. At least a few industry commenters voiced similar concerns that the proposal undervalued originations for retail loans that are sold and disfavored the originate-to-sell business model.[73] Both community group and industry commenters focused on this issue as it pertained to mortgage loans.

The agency understands the concerns that these commenters have raised and agrees that retail loan originations are an important type of credit for populations and communities of need. Further, the agency's intent is not to favor one business model over another. To examine the impact of various weighting schemes, the agency used the 2018 HMDA data[74] to estimate: (1) How many banks have originate-to-sell business models and how many are portfolio lenders;[75] (2) what percentage of the LMI home mortgage origination market those banks represent; and (3) how assigning different weights would impact the CRA evaluation measures of portfolio lenders and banks with originate-to-sell business models. The agency's analysis revealed that originating and selling retail loans accounts for a non-trivial portion of the LMI home mortgage market and a weight equivalent to three months of holding the loan on the bank's balance sheet may not sufficiently reflect the magnitude of the origination dollar volume for banks that originate to sell vis-à-vis banks that hold the loans in portfolio. Thus, the agency has revised the rule so that retail loan originations sold at any time within 365 days will receive credit for 100 percent of the origination value. Specifically, under the final rule, retail loans originated and sold within a year are quantified based on their full origination value. This method increases the valuation of these loans as compared to how they would have been valued based on an on-balance-sheet quantification. For example, a $100,000 mortgage loan that was originated in month one and was on a bank's balance sheet as of the last day of the month for months one, two, and three, before being sold in month four would receive a value of $100,000 for that twelve-month period. If that loan was valued based on its on-balance-sheet value, assuming the on-balance-sheet value remained constant, it would have received a value of $25,000 toward that year's on-balance-sheet value. By providing that additional credit to retail loans originated and sold within one year, the agency recognizes the importance of originations and also ensures that banks with an originate-to-sell business model are not disadvantaged. The agency believes the change to the rule addresses any concerns about an inconsistency between the proposed regulatory text and preamble regarding the treatment of loans originated and sold within 90 days. The agency also is clarifying that this treatment applies only to retail loans.

The agency received comments from community groups, individuals, and government commenters suggesting consideration of originations and investments instead of or in addition to balance sheet activity. These commenters suggested that considering only balance sheets, and not originations, could result in banks meeting targets based on their current balance sheets and engaging in less CRA activities. Additionally, community group and industry commenters suggested that the agencies should factor into ratings whether banks have decreased originations of equity investments or affordable housing loans relative to the prior assessment period. One government commenter suggested that there should be a minimum level of affordable housing investment required and community group commenters and a government commenter suggested there should be minimum holding periods for CRA qualifying activities. Industry and community group commenters discussed potential harm caused to the bank by using the balance sheet approach, which included increasing safety and soundness risks and penalizing banks with limited portfolio capacity. One industry commenter suggested the treatment is inconsistent with the Basel III capital rules, which recognize that ownership of servicing assets entails an ongoing financial commitment even when the loan is sold.

With regard to CD loans, the agency believes that the on-balance-sheet value of these activities best reflects the value to the community.[76] Further, considering the on-balance-sheet value encourages banks to provide the credit and investment terms that best fit the needs of the beneficiary. Therefore, the agency is not changing the general treatment of CD loans and CD investment.[77]

A few community groups, some government commenters, and one individual commenter argued that the

business on the last day of the month for each month the activity remained on-balance sheet; and (2) the preamble's description of the value of a mortgage backed security (MBS) purchased and sold over a one-month period. The agency recognizes the ambiguity created by the text of the proposed regulation and has removed the phrase for each month the loan or investment is on-balance sheet from the final rule. The agency also made a technical change in the final rule by adding the word quantified before the phrase dollar value.

[73] These commenters gave several reasons for their position, including: (1) Originating mortgage loans is costly because banks have to create and maintain consumer compliance infrastructure, ensure adherence to the underwriting guidelines of the Government Sponsored Entities (GSE) and other secondary market participants, and conduct marketing and outreach; (2) selling to the secondary market helps banks manage interest rate risk and expands a bank's ability to finance mortgages; (3) product offerings that are retained on balance sheet (such as balloon or adjustable rate mortgages) are not as affordable to LMI individuals; (4) holding loans on book to avoid the 75 percent haircut would not be an efficient use of capital; (5) limiting CRA credit would drive banks from residential mortgage lending and cede this territory to non-banks; (6) this undervaluation would drive banks to sell fewer mortgages on the secondary market and cause the CRA and GSE Affordable Housing Goals to not be aligned; and (7) incentivizing the retention of LMI loans in portfolio could threaten safety and soundness.

[74] Only banks with assets of $2.5 billion or greater were included in the analysis. Also excluded were: (1) Institutions regulated by the National Credit Union Administration and HUD; (2) institutions for which the agencies did not have deposit or asset size information; (3) institutions reporting no home mortgage loan balances on the Call Report; and (4) loans where the values of income, area median family income, or loan amount were missing.

[75] For the purposes of this analysis, to determine how many loans were sold by a bank, the agency used the purchaser code in the HMDA data that identifies whether the loan was sold within the HMDA calendar year. This may underestimate the number of loans an institution sells, particularly loans originated near the end of the 2018 that were sold in 2019. Subject to these assumptions, the agency assumed a bank was a portfolio bank if the proportion of LMI loans originated in 2018 that were sold in 2018 was less than 25 percent. Conversely, the agency assumed a bank was an originate-to-sell bank if the proportion of LMI loans originated in 2018 and sold in 2018 was at least 75 percent.

[76] The final rule also quantifies CD investments that are held on a bank's balance sheet based on their on-balance-sheet value.

[77] As discussed below, the agency revised the quantification method for commitments to lend and LIHTC and NMTC syndications.

proposal undervalues Low Income Housing Tax Credit (LIHTC) and New Markets Tax Credit (NMTC) syndications or sponsorship activities, thus discouraging banks from supporting activities such as affordable housing. These commenters observed that syndication activities are largely not reflected on banks' balance sheets. If syndicators or sponsors were not willing to take on this role, these commenters expressed concern that other banks that make investments in funds supporting these projects (community banks in particular) might not be able to participate in these activities. Several industry commenters suggested that the agency provide substantial CRA credit for these activities. Some commenters suggested credit for a percentage, such as 50 percent, of the total value of the syndication for the term of the investment.

After careful consideration of these comments and the agency's experience, the agency agrees that appropriate consideration should be given to the activities of syndicators and sponsors.[78] To this end, the final rule provides credit for these activities as follows: Banks serving as syndicators or sponsors of funds supporting LIHTC or NMTC projects will receive credit for the total dollar value of the fund in the year it was originated, without the application of a multiplier, to provide CRA credit for the bank's role in syndicating or sponsoring the LIHTC or NMTC investment. The syndicating or sponsoring bank will also receive additional credit for the LIHTC or NMTC investment after the transaction is complete. If the bank holds a portion of the syndication on its balance sheet, it will be quantified in the same manner as other CD investments. Specifically, the syndicating or sponsoring bank will receive credit for the portion of the investment that it retains on its balance sheet based on the average on-balance-sheet value of the investment, as adjusted for applicable multipliers. The syndicating or sponsoring bank will also receive credit for the portion of the syndication that is sold. For the syndicating or sponsoring bank, the portion of the investment that is sold is quantified as 50 percent of the dollar value of the portion of the syndication sold in the year it is sold without the application of multipliers. In addition to the credit provided to the syndicating or sponsoring bank, a bank that purchases an interest in a LIHTC or NMTC syndication and holds the investment on its balance sheet will also receive credit for the quantified dollar value of the investment, adjusted for applicable multipliers. In the agency's view, the final rule's treatment of syndication or sponsorship activities supporting LIHTC and NMTC funds will give appropriate credit to these activities without overvaluing them in comparison to other qualifying activities.

Quantifying a bank's qualifying activities, pro-rata credit. The proposal also expanded the circumstances in which banks receive pro-rata credit for qualifying activities beyond those activities that receive credit under the current framework. Under the current framework, only activities involving mixed-income housing that includes a set-aside required by federal, state, or local government for affordable housing for LMI individuals receive pro-rata credit. Under the proposal, in quantifying the value of CD activities, certain CD activities that provide some benefit to, but do not primarily benefit, specified populations, entities, or areas would receive *pro-rata* credit equal to the partial benefit provided.

Some commenters, including members of Congress, government, community groups, and industry, opposed the proposal to provide pro-rata credit for activities that only partially benefit LMI communities. Certain community groups expressed concern regarding the provision for pro-rata credit for certain qualifying activities and stated that such credit should be given only if the benefit to LMI individuals or communities can be reliably estimated and verified. Some industry commenters expressed support for the provision of pro-rata credit but asked for clarity on how to assign such credit to qualifying activities. The agency believes that pro-rata credit is appropriate and that such credit should be given only where the bank can provide a reasonable estimate of the benefit to LMI individuals or families, CRA-eligible businesses or farms, or LMI census tracts or other identified areas of need. The burden is on the bank to demonstrate the impact of its investment, including providing support for the pro-rata share of credit used to quantify its qualifying activities. Given the variety of CRA activities and the array of facts and circumstances that may be involved, however, the agency does not believe that a one-size-fits-all approach for calculating the proportion of benefit is feasible or appropriate. The agency will accept reasonable methods for calculating the pro-rata share of a qualifying activity. An example of a reasonable method of calculating the pro-rata share that the agency would accept was illustrated in the comments from one community group: The construction of a new rail line that goes through 10 census tracts and serves four LMI tracts with multiple stations would clearly benefit LMI tracts.[79] In this scenario, the pro-rata credit could reasonably be 40 percent of the dollar amount of a bank's construction loan for the project because four of the 10 census tracts are LMI. Similar calculations based on the facts and circumstances of a given qualifying activity would likewise be reasonable. Other examples of a reasonable basis for the calculation of pro-rata LMI benefit of a qualifying activity would include, as applicable, the percentage of: (1) Students at a school that are eligible for free or reduced-price meals under the USDA's National School Lunch Program; (2) individuals who receive or are eligible for Medicaid; and (3) recipients of government assistance programs that have income qualifications equivalent to, or stricter than, the definitions of LMI as defined by the CRA regulations.[80] In the agency's judgment, the process for determining and supporting the use of pro-rata credit is sufficiently robust and involved that banks are unlikely to spend resources piecing together small prorated amounts of CRA activities to meet their CRA evaluation measures.[81] Other than the changes described above, the agency is adopting the quantification provisions as proposed.

Qualifying activities value, general. Under the proposal, banks evaluated under the general performance standards would have determined their bank presumptive ratings and assessment area presumptive ratings by first calculating their *qualifying activities values,* which are the sum of the quantified dollar value of qualifying activities that receive credit after being adjusted by multipliers. The final rule makes several changes to the quantification of the qualifying activities included in banks' qualifying activities value and assessment area qualifying activities values. The final rule also clarifies that a bank's

[78] *See* GAO–17–285R, Low Income Housing Tax Credits: The Role of Syndicators at 7 (Feb. 16, 2017) (describing multiple roles of syndicators in developing and monitoring LIHTC projects) *available at https://www.gao.gov/products/GAO-17-285R .*

[79] *See, e.g.,* Comment letter, *National Community Reinvestment Coalition (NCRC),* from J. Van Tol and J. Taylor, at 25 (Apr. 8, 2020).

[80] These examples are reasonable proxies derived from the *Interagency Q&As. See Interagency Q&As* § ____.12(g)(2)—1, 81 FR at 48526.

[81] The agency also made a clarifying change related to the calculation of the partial benefit and primary benefit associated with certain qualifying activities. Specifically, the final rule defines the terms partially and primarily as opposed to partially benefit and primarily benefit.

qualifying activities value and assessment area qualifying activities values include the quantified dollar value of all qualifying activities originated, made, performed, or on the bank's balance sheet during the year and removes language related to the consideration of affiliate activities. Aside from these revisions and the changes described below with regard to multipliers, the agency is adopting the qualifying activities value provisions as proposed.

Qualifying activities value, multipliers. Under the proposal, banks would have calculated their qualifying activities value and assessment area qualifying activities values (*i.e.,* the numerator in the CRA evaluation measure) using the quantified dollar value of their qualifying activities, as adjusted for applicable multipliers. In the proposal, multipliers would have applied to several different types of qualifying activities including: (1) All CD loans, CD investments, and CD services undertaken in conjunction with CDFIs, except activities related to mortgage-backed securities; (2) all other CD investments, except for CD investments in mortgage-backed securities and municipal bonds; and (3) all other affordable housing-related CD loans. The purpose and design of the multipliers was to incentivize banks to engage in activities that were particularly valuable and important from a CRA perspective by giving banks additional value towards their CRA evaluation measures for these activities.

The agency received comments that both opposed and supported the use of multipliers. Some community groups stated that the use of multipliers and the proposal's reliance on banks conducting their own analyses would lead to a decrease in CRA activity. Community groups also expressed their belief that multipliers would reduce the transparency regarding whether the dollar values used in CRA evaluations reflected the raw dollar amount or multiplied dollars, frustrating the purpose of the CRA and making it more challenging to determine whether banks were meeting community needs. These commenters suggested that the agency should apply less weight to activities that are less responsive, similar to how current evaluations weigh retail lending by volume. In the alternative, these commenters recommended that if multipliers are used, the agency should disallow them for banks that reduced the dollar amount of CD activity conducted in the current evaluation period compared to what the bank conducted in the prior evaluation period. These commenters also asserted that the agency would have to update and refine the multipliers frequently to respond to new circumstances and questions. Community group, industry, and public commenters also suggested a range of additional restrictions for use of a multiplier.[82]

In contrast, certain industry commenters supported the concept of multipliers and stated that the agency should provide larger multipliers.[83] Commenters also recommended providing multipliers for additional qualifying activities.[84] Additionally, two industry commenters recommended counting the value of a donation or grant for at least one full evaluation period.

The agency agrees that certain activities are particularly valuable to LMI communities and other identified areas of need. Further, the dollar value of certain activities may not accurately reflect the positive impact that the activities provide to these communities. However, the agency also recognizes the potential for multipliers to result in banks to achieving certain levels of performance while conducting less dollar volume of CD activities, which could have a negative effect on those same communities.

After considering the comments received in opposition and in support of the use of multipliers for certain qualifying activities, the OCC made several revisions to the treatment of multipliers in the final rule. First, to ensure that the use of multipliers does not reduce the level of CD activities that banks conduct, a bank is not eligible for multipliers until the quantified dollar values of its current period CD activities are approximately equal to the quantified dollar values of CD activities considered in its prior evaluation period. Second, in response to comments that branches in LMI census tracts and CD services were not appropriately valued in the proposal, the final rule adds retail loans generated by branches in LMI census tracts and CD services to the list of activities eligible for a two times multiplier. Third, to recognize the importance of minority depository institutions, women's depository institutions, or low-income credit unions to the communities they serve, the final rule includes a two times multiplier for qualifying activities involving those institutions. Fourth, the final rule includes an additional two times multiplier for qualifying activities in CRA deserts. The CRA desert multiplier applies to all qualifying activities conducted in a CRA desert and would be in addition to the multipliers that apply based on the type of qualifying activity or whether it was generated by a branch in an LMI census tract. A bank must request that the OCC confirm that an area is a CRA desert before receiving the CRA desert multiplier. The final rule includes a process for confirming that a geographic area is a CRA desert where multipliers would apply to banks' qualifying activities. Lastly, under the final rule, the agency may determine that because of the responsiveness, innovativeness, or complexity of certain qualifying activities eligible for a multiplier, the activities should receive an increased multiplier of up to four times their quantified dollar value. A bank may request a determination that an activity is eligible for an increased multiplier as part of the qualifying activity confirmation process or during a CRA evaluation. In addition to multipliers that may apply to these activities, the impact of these activities to the LMI community and other identified areas of need will be considered as part of performance context.

One industry commenter expressed concern that, in their view, purchases of mortgage-backed securities (MBS) are effectively disfavored under the proposal because they do not receive the benefit of a multiplier. The commenter noted that MBS provide a significant source of liquidity to the mortgage market by enabling banks to make additional loans and that MBS are a tool used by state housing finance agencies to provide opportunities for LMI borrowers to purchase first homes. The agency agrees with the commenter—MBS play an important role in the mortgage market, particularly with respect to liquidity in the financial marketplace. The absence of a multiplier for MBS should not be interpreted as an expression of disfavor. However, in the context of CRA, the agency believes that other activities are more impactful to a bank's community and it is these activities that the agency sought to encourage by applying a multiplier. The final rule continues to balance these considerations by

[82] Commenters also suggested recalibration of multipliers including a regular public feedback process.

[83] Recommendations included increasing multipliers for (1) capital investments in CDFIs and minority depository institutions, women's depository institutions, or low-income credit unions; (2) donations and grants; (3) CD services; and (4) other activities that support CDFIs and affordable-housing related CD loans.

[84] Commenters suggested adding additional multipliers for (1) small dollar loan programs; (2) mortgage loans to LMI borrowers; (3) other housing-related activities, such as first-time homebuyer loans; and (4) activities involving housing finance agencies.

including MBS as a qualifying activity but excluding them from the multiplier provisions. Other than the changes described above, the agency is adopting the multipliers as proposed.

Qualifying activities value, calculation. Under the final rule, a bank would calculate its qualifying activities value and assessment area qualifying activities values by taking the sum of the quantified dollar value of all qualifying activities, adjusted by any applicable multiplier, as follows:

$$\begin{array}{c}\textit{Quantified value of } \textbf{CD loans and Retail Loans}\\ \textit{on balance sheet for at least } 365 \textit{ days, and}\\ \textbf{CD Investments} \textit{ on balance sheet}\end{array} + \begin{array}{c}\textit{One hundred percent of the orignation}\\ \textit{value of } \textbf{Retail Loans}\\ \textit{sold within}\\ 365 \textit{ days of origination}\end{array} + \begin{array}{c}\textbf{CD Services, Monetary Donations,}\\ \textit{and, } \textbf{in-kind donations}\end{array}$$

Conforming, clarifying, and technical changes. Other than the changes explained above, the agency also made conforming, clarifying, and technical changes throughout the final rule to reflect the changes to the qualifying activities-related definitions, qualifying activities criteria, CRA illustrative list and confirmation process, qualifying activities quantification, and qualifying activities value and to clarify these provisions.

B. Assessment Areas

Overview. The CRA directs the agency to encourage banks to engage in CRA activities in areas where they draw resources by collecting deposits. When the regulations were last significantly revised in 1995, bank branches closely reflected the distribution of a bank's deposits and were the primary means of delivering products and services to bank customers. By focusing assessment areas on branches where deposits are collected, the current regulation helped to ensure that banks reinvested capital and credit in the communities from which they drew resources and avoided the primary policy concern of banks taking deposits from one community and lending that capital in another, perhaps more profitable or affluent, community.

Further, the existing means of delineating assessment areas works well for most traditional banks that operate and collect deposits through their physical deposit-taking locations. The current system does not, however, account for the advent of internet banks and other banks that collect significant portions of their deposits outside of their current assessment areas. As a result, there is a gap between the way assessment areas are delineated under the current framework and where some banks receive the majority of their deposits.

To close the gap, the proposal would have required banks that collect a large portion of their deposits outside their assessment areas to delineate additional, non-overlapping deposit-based assessment areas where they draw large amounts of deposits. The proposal also retained the current regulation's requirement that banks delineate assessment areas that include their physical deposit-taking locations (*i.e.,* facility-based assessment areas), thus preserving the importance of branches. The inclusion of both facility-based and deposit-based assessment areas in the proposal reflected the agency's policy determination that banks should be required to meet the needs of their communities where they have branches, where they receive deposits, and where their customers are located.

The agency grounded this policy decision on its understanding and observations of the industry and supervisory experience. The OCC relied primarily on its regulatory understanding and observations of the industry, and supervisory experience to inform its regulatory judgment because deposit data today is incomplete and not reported in a manner that provides depositors' locations. The current data limitations make it impossible to ascertain the volume of deposits from depositors' geographic locations. The agency's proposal with respect to assessment areas received many comments. The OCC's responses to these comments are set forth in the sections below.

Facility-based assessment areas, delineation. The proposal would have required banks to delineate a facility-based assessment area anywhere it had its main office, a branch, or a non-branch deposit-taking facility, as well as the surrounding areas where the bank had originated or purchased a substantial portion of its qualifying retail loans. These facility-based assessment areas would have ensured that CRA activity continued to have a local community focus where banks maintained a physical presence and conducted a substantial portion of their lending activity.

Several industry and community group commenters stated that branches, particularly full-service ones, are important and should not be devalued in delineating assessment areas. Some industry commenters stated that the proposal's requirement that banks delineate a facility-based assessment area around deposit-taking automated teller machines (ATM) is outdated because customers can now use their smartphones and other technologies to make deposits. Some of these commenters suggested that banks should instead have the option of delineating an assessment area around deposit-taking ATMs, but not be required to do so. Similarly, one advocacy group suggested that a bank should not be required to create a facility-based assessment area in an area with only deposit-taking ATMs and no branches if the deposits in that area are 2.5 percent or less of the bank's total retail domestic deposits.

The OCC recognizes the importance of branches and believes that the proposal appropriately accounted for them in the assessment area context. In the final rule, the OCC retains the requirement to delineate facility-based assessment areas around banks' physical deposit-taking locations, including full-service branches. However, the agency agrees with concerns expressed by commenters about the delineation of assessment areas around deposit-taking ATMS. In the agency's examination experience, deposit-taking ATMs are often in the same area as a branch that would also require the delineation of an assessment area. If a deposit-taking ATM is the only means by which the bank is drawing deposits, it is likely to be a very minor amount of retail domestic deposits. This would make the assessment area delineation costly, with limited utility, because the CRA framework generally incentivizes banks to engage in CRA activities commensurate with deposits. Therefore, in the final rule, banks may, but are not required to, delineate assessment areas around deposit-taking ATMs.[85]

[85] The agency acknowledges that the statute requires it to produce written evaluations that will continue to state the agency's CRA conclusions and contain facts and data supporting those conclusions for each metropolitan area and nonmetropolitan area of a state containing a deposit-taking facility, including deposit-taking ATMs, consistent with the CRA statute. 12 U.S.C. 2906(b)(1)(B), (d)(3)(A), (e)(1). The data collection and recordkeeping requirements of the final rule, as well as CRA evaluations, will provide examiners with enough facts and data upon which to draw a conclusion in the metropolitan areas containing a deposit-taking

Some industry commenters asked for clarity on how substantial portion of lending activity is defined. The final rule requires that banks' facility-based assessment areas include locations surrounding the deposit-taking facilities where they originate or purchase a substantial portion of their qualifying retail loans. This is based on the current framework's assessment area delineation requirements, and the agency intends to interpret this concept consistent with its current treatment. Further, the final rule retains the statement that a bank's assessment areas must not reflect illegal discrimination or arbitrarily exclude LMI census tracts, taking into account the bank's size and financial condition.

Deposit-based assessment area, delineation. The proposal also would have required that banks that received more than 50 percent of their retail domestic deposits from outside of their facility-based assessment areas (50 percent threshold) delineate separate deposit-based assessment areas in the smallest geographic area from which they received five percent or more of their retail domestic deposits (five percent threshold). These deposit-based assessment areas were intended to ensure the CRA regulation keeps pace with the evolution of modern banking (including the emergence of internet banks and other banks whose business models generate deposits from areas not tied to their physical location), consistent with the CRA's purpose to ensure that banks help meet credit needs where they collect deposits.

Some industry commenters suggested that using a bank's concentration of deposits to determine where it delineated additional assessment areas would lead banks to engage in unsafe or unsound activities by requiring them to lend and invest in areas where they have no physical presence. Similarly, some expressed their view that banks may be at a disadvantage serving deposit-based assessment areas as compared to banks with physical locations in those areas because of a lack of knowledge of community needs and opportunities and that banks would not be able to serve their deposit-based assessment areas as well as their facility-based assessment areas. Industry commenters also stated that it would be burdensome to gain knowledge of deposit-based assessment areas' community needs and opportunities. Other industry commenters expressed their belief that banks may struggle to achieve the level of CD lending and investment needed to receive an outstanding or satisfactory in their deposit-based assessment areas, especially because the proposal required a bank to delineate deposit-based assessment areas at the smallest geographical areas from which it received five percent of its deposits.

The agency carefully considered these comments and believes that the proposal's use of deposit-based assessment areas will not lead to unsafe or unsound activities for several reasons. First, as specifically stated in the proposal, the regulation would not require banks to engage in any activities that are inconsistent with safe and sound operations. To the contrary, the OCC anticipates that banks can meet the standards in the proposal with safe and sound loans, investments, and services on which the banks expect to make a profit. Second, once a deposit relationship is established, banks usually build upon the relationship to establish other customer relationships and offer other products to the depositors. The proposal's five percent threshold was high enough to ensure that a bank would only be required to delineate an assessment area if it received a significant amount of retail domestic deposits from that area, which would indicate that the bank had familiarity with the market because of relationships the bank is building with these depositors.

However, the agency acknowledges that the lack of a physical presence in a bank's deposit-based assessment areas may present some difficulties, especially with respect to engaging in the level of CD activity required to receive a satisfactory or outstanding rating. To provide banks with additional flexibility, the final rule allows a bank to delineate its deposit-based assessment areas at any geographical level up to the state level, including at the metropolitan divisions, MSA, or non-MSA level, instead of requiring it to delineate at the smallest geographical area where it has a five percent concentration of its retail domestic deposits, provided the deposit-based assessment areas do not overlap facility-based assessment areas. This change will provide banks with additional flexibility to engage in safe and sound activities in a broader geographic area that includes the area from which the bank is receiving the five percent concentration of retail domestic deposits. Moreover, it will allow banks to receive assessment area credit for qualifying activities in more rural or underserved areas where banks generally do not gather deposits in a significant enough amount to warrant delineating additional deposit-based assessment areas, thereby providing additional incentives to engage in activities that benefit these areas.

However, commenters suggested a variety of different methods for delineating assessment areas beyond physical bank locations based on their favored policy outcomes. Some commenters proposed lending-based assessment areas, while others proposed assessment areas determined by a combination of lending activity and the location of deposits. Other commenters argued that the proposal's assessment area framework should require a bank to delineate assessment areas where it engages in a significant amount of lending or where it receives a substantial portion of its deposits, even if more than 50 percent of its deposits come from inside its assessment areas. Commenters also suggested that assessment areas should capture the great majority of a bank's business, including lending activity, by potentially looking to the bank's marketing and advertising.

In addition to proposing that the assessment area delineation requirements incorporate lending, commenters suggested that banks should delineate deposit-based assessment areas based on banks' market share of deposits in an area or the number of deposit accounts, instead of on the distribution of the volume of banks' own deposits. Others suggested that assessment areas should focus on where community credit needs are greatest.

While some commenters asked for the assessment area reforms to apply to all banks, other commenters advocated for the method of delineating additional assessment areas to be tailored to the type of bank. Some industry commenters asked for the option of new assessment areas around banks' affiliates.

This addition of deposit-based assessment areas was intended to further the purposes of the CRA statute and ensure that the CRA regulations keep pace with the changes the agency has observed in the banking industry in recent years. The OCC has observed an increase in the number of internet banks and the use of internet platforms for collecting deposits, making deposit-based assessment areas increasingly relevant. Additionally, by allowing banks to receive credit for qualifying activities outside of a bank's assessment areas and using a CRA evaluation measure based on a bank's total retail domestic deposits (not just the amount of retail domestic deposits in an assessment area), the proposal would

ATM, even if a bank chooses not to delineate an assessment area there.

have incentivized banks to conduct CRA qualifying activities outside of their assessment areas.

Further, instead of seeking to define non-traditional business models or to exempt or tailor deposit-based assessment area delineation requirements for different bank business models, the agency used a percentage of retail domestic deposits received from areas outside of a bank's facility-based assessment areas as a trigger for delineating deposit-based assessment areas. Specifically, the 50 percent threshold is designed to ensure that the regulation addresses those banks that receive a significant volume of retail domestic deposits from areas outside of their branch network. The 50 percent threshold provides flexibility to address the banking industry as it evolves (*e.g.,* traditional banks may increase their reliance on technology to generate deposits in areas outside of their traditional branch footprint). In addition to being flexible enough to capture the evolving nature of banking, the proposed deposit-based assessment area delineation requirements also are adaptable to different business models.

Finally, commenters voiced some concerns about the potential for negative incentives under a deposit-based assessment area framework. For example, commenters stated that the framework would have incentivized banks to chase large-dollar depositors. The OCC disagrees with this assertion. The agency's goal in adding deposit-based assessment areas was to incentivize banks to meet the needs of their customers that are located outside of their facility-based assessment areas.

Some commenters suggested that the proposal's deposit-based assessment areas would exacerbate credit deserts. Commenters also stated that the deposit-based assessment area concept would focus CRA activities in population centers that are typically already well-served by banks, thereby reinforcing—not reducing—the CRA hot spot problem. Some of these commenters voiced concerns that deposit-based assessment areas (and therefore CRA hotspots) would be created in affluent areas instead of in LMI communities, rural areas, Indian country, and other underserved areas because of the concentration of deposits. Two industry commenters specifically noted the inclusion of custody banks and corporate deposits as reasons for the potential exacerbation of CRA hot spots. However, one community group stated that deposit-based assessment areas would mitigate CRA hot spots.[86] Industry commenters also criticized the proposal's deposit-based assessment area framework as inflexible and suggested it would prevent banks from offering services to communities. They stated that the proposal would not result in additional banking services in rural areas, distressed areas, Indian country, and other CRA deserts because these areas would be highly unlikely to be deposit-based assessment areas as defined by the proposal.

The agency agrees that it is important to encourage activities in credit deserts and minimize artificial CRA hot spots.[87] But contrary to what commenters have stated, the agency believes that the framework of the proposal, including deposit-based assessment areas, would have incentivized bank activity in LMI census tracts and other identified areas of need, especially in response to the COVID–19 pandemic. The proposal would have mitigated artificial hot spots and direct CRA activity to areas from which banks receive deposits in three ways. First, the proposal would have given banks CRA credit for activities conducted in underserved and distressed areas, disaster areas, and Indian country anywhere in the country. Second, the agency notes that many commenters appear to have misunderstood the purpose of assessment areas and how the proposal would have worked. The proposal's assessment area framework, including deposit-based assessment areas, would have been a mechanism of ensuring banks are serving the communities in which they and their customers are located and not a device to limit where banks would have been able to receive CRA credit. Because the proposal required a bank that met the 50 percent threshold to delineate deposit-based assessment areas, those banks would be evaluated on whether they conducted activities in other areas of the country outside of their facility-based assessment areas, where their depositors actually reside.[88]

Third, because a bank's CRA evaluation measure in any given assessment area would have been a portion of the volume of retail domestic deposits a bank received from that area, artificial CRA hot spots would have been reduced. To the extent that the proposed framework focused banks' CRA obligations on areas where they receive a larger volume of deposits, this is consistent with CRA's statutory purpose to ensure banks meet the credit needs of the communities where they collect deposits. However, to further mitigate the concern that deposit-based assessment areas would create new CRA hot spots, the agency is amending the proposal to add flexibility. The final rule allows a bank to delineate its deposit-based assessment areas at any geographical area up to the state level.

The agency recognizes that the proposal's method of delineating assessment areas did not, by itself, address the problem of CRA deserts. However, the agency does not believe further revisions to the proposed assessment area provisions are appropriate; instead, the agency agrees with commenters who suggested that additional incentives, such as multipliers, would encourage lending and investment in CRA deserts and have made this change in the final rule. Additionally, the agency notes that the proposal would have allowed banks to receive CRA credit in the bank's CRA evaluation measure for loans to LMI borrowers, regardless of location, and for CD activities conducted in distressed and underserved areas, regardless of whether those areas are in a bank's assessment area. Under the proposal, because a bank's CRA evaluation measure is based on its total retail domestic deposits, and not just its retail domestic deposits in its assessment areas, banks would be incentivized to conduct qualifying activities in areas outside of their assessment area, including in underserved and rural areas. The OCC does not believe the comments necessitated changes to the proposed assessment area provisions. Although the agency carefully considered commenters' concerns and suggestions, the final rule retains the deposit-based assessment area framework because it aligns more closely with the statutory purpose of the CRA.

[86] *See* Enterprise Community Partners, Inc., from P. Almodovar, at XX (Apr. 20, 2020). (''The proposed rule offers greater flexibility to banks to designate state-wide non-metropolitan [assessment areas]. This could be particularly beneficial for rural areas and may mitigate some of the problems of CRA deserts.''

[87] The current CRA regulations allow artificial CRA hot spots to develop by only allowing banks to delineate assessment areas around their physical deposit-taking locations. Since banks generally only get CRA credit for activities around their physical deposit-taking locations, including their main office, and banks may locate their main office in certain geographies for reasons unrelated to their concentration of depositors in those geographies, artificial CRA hot spots are created.

[88] This is particularly the case for internet banks, which under the current framework only receive credit for CRA activities conducted around their main offices.

Thresholds for deposit-based assessment areas. The proposal included two thresholds for delineating deposit-based assessment areas: (1) The five percent threshold; and (2) the 50 percent threshold. Some community group and industry commenters argued that the proposal's deposit-based assessment areas framework was not based on data and, therefore, analysis of it was impossible. These commenters noted that it was difficult to assess whether the five and 50 percent thresholds are appropriate, given the limited nature of existing data. Commenters encouraged the agency to conduct further testing and to further consider potential consequences before calibrating the thresholds.

With regard to the 50 percent threshold, some community group commenters remarked that the 50 percent threshold was too high and recommended eliminating it and simply delineating assessment areas where banks have five percent or more of deposits in a geographic area, such as an MSA. Other commenters suggested that the 50 percent threshold would have excluded areas where banks have only a small portion of their total retail domestic deposits but a large market share, such as rural counties and smaller cities. To ensure that more large banks have assessment areas in underserved communities, these commenters suggested lowering the thresholds for all banks or for large banks or using a market share threshold of five percent. Alternatively, other industry commenters thought that the 50 percent threshold was too low and should be higher to capture only true internet banks.

Regarding the five percent threshold, commenters had a variety of opinions. Some industry commenters thought that the five percent threshold was too low and suggested it be increased, possibly to 15 percent, to ensure that banks are only required to delineate deposit-based assessment areas where they engage in a meaningful volume of activity. In contrast, some community group commenters believed that the threshold was too high and expressed the concern that few, if any MSAs, would meet the five percent threshold.

The OCC acknowledges that there are limited data on deposits because the current reporting framework attributes deposits to a branch location,[89] rather than the account holder's address, and uses a definition of deposits different than the proposed definition of deposits. Additionally, not all banks geocode deposits by customer address. Accordingly, the OCC was unable to estimate the number of deposit-based assessment areas that banks would be required to delineate under the proposed framework. However, despite these limitations, given the importance of the CRA and the agency's policy of ensuring that banks engage in CRA activities in communities where they receive deposits, consistent with the CRA statute, the OCC believes it is appropriate to rely on its experience, knowledge of the banking system, and supervisory judgment to establish initial thresholds. The thresholds in the final rule reflect the agency's supervisory experience. Specifically, the thresholds were set high enough to ensure that internet banks would have an obligation to engage in CRA activities in those communities where these banks would be familiar enough with the area, based on the banks' concentration of deposits, to engage in lending, investment, and other activities in a safe and sound manner.[90] In the OCC's expert judgment, these thresholds are set at levels that would address the current use of technology in the banking industry and anticipate a future in which banks may increasingly leverage technology to generate deposits outside of their primary markets without overburdening banks with numerous small assessment areas. Furthermore, the proposed thresholds are sufficiently high to give the OCC confidence that, based on its supervisory experience and knowledge of the banking industry, traditional branch-based banks are unlikely to be required to designate additional deposit-based assessment areas in the near or medium term. Therefore, the final rule adopts the 50 percent and five percent thresholds as proposed.

Some industry commenters voiced concern that the frequency of changes in deposit levels that may cause banks to be over the threshold one quarter and below the next, particularly with quarterly reporting, and requested clarity about how to handle shifting deposit levels. On a similar note, some community groups voiced that deposit-based assessment areas were not transparent because they would not know banks' delineated assessment areas until after CRA examinations are complete due to the changing nature of depositors' locations. One solution that was suggested by industry commenters was to require delineation only after deposit levels in an area remain above the thresholds for one or two years. For the reasons discussed above, the OCC concludes that the five percent threshold is appropriate, but it acknowledges that deposit levels fluctuate. Although the agency does not believe that quarterly fluctuations in retail domestic deposits should obviate a bank's obligations to a community, the agency believes it is appropriate to allow banks to change their assessment area delineations if their level of retail domestic deposits falls below five percent for a longer period of time. For this reason and others discussed below, the final rule will permit banks to change their assessment area delineations once a year.

Outside of assessment area qualifying activities. The proposal included all qualifying activities conducted by a bank in the calculation of the bank's CRA evaluation measure. The proposal would not, however, have permitted a bank to receive a satisfactory or outstanding bank presumptive CRA rating unless the bank received a satisfactory or outstanding rating in a significant portion of its assessment areas that accounted for a significant amount of the bank's retail domestic deposits.

Many community group and industry commenters expressed support for banks conducting qualifying activities outside of their assessment areas. However, one commenter questioned whether providing CRA credit for activities outside of assessment areas was contrary to legislative intent. Some commenters advocated for providing more weight or credit for activities conducted within a bank's assessment areas than activities outside of assessment areas. Others recommended requiring banks to first meet a level of performance or make reasonable efforts

[89] The current framework relies on FDIC Summary of Deposits (SOD) data, which instruct banks to assign deposits to each office in a manner consistent with their existing internal record-keeping practices. FDIC SOD Instructions, June 30, 2019, retrieved Apr. 30, 2020, available at *https://www.fdic.gov/regulations/resources/call/sod-reporting-instructions.pdf.*

[90] Some commenters stated that the deposit-based assessment areas would require banks to engage in activities in areas that they may be unfamiliar with and that this could create safety and soundness problems. A core component of the OCC's mission is to ensure that national banks and federal savings associations operate in a safe and sound manner. In the OCC's expert judgment, deposit-based assessment areas will not result in unsafe or unsound activities. To receive a satisfactory or an outstanding CRA rating in a deposit-based assessment area under the final rule, banks are required to engage in qualifying activities that are commensurate with the volume of deposits they receive from that assessment area. This level of activity will not result in an outsized risk to capital. Moreover, given both the five and 50 percent thresholds, any deposit-based assessment area would include a sizeable portion of a bank's retail domestic deposits gathered from depositors located outside of the bank's facility-based assessment areas with whom the bank has preexisting relationships. These relationships will give the bank insight into the lending needs of the area.

to meet needs inside assessment areas before receiving credit for activities outside assessment areas. Some community group commenters proposed that instead of using deposit-based assessment areas, the OCC should consider allowing deposits received via the internet to be considered as being received from a cyber community rather than a geography and to allow the obligations based on these cyber deposits to be fulfilled by qualifying activities conducted elsewhere.

The OCC recognizes the concerns associated with providing credit for outside-of-assessment area activities and believes that the proposal appropriately addresses these concerns. The CRA evaluation measure takes into account all of a bank's qualifying activities, including activities outside of a bank's assessment areas, while the assessment area CRA evaluation measure ensures that adequate qualifying activities are conducted within banks' assessment areas to satisfy local needs. By accounting for qualifying activities wherever they are conducted, the CRA evaluation measure functions similar to the suggestion for a cyber community. Further, while in many instances, assessment areas capture most of a bank's community, the bank may collect deposits from areas outside of assessment areas (both facility- and deposit-based). Thus, providing credit for activities outside of assessment areas allows banks to serve their entire community, resulting in the fulfillment—not the contravention—of the statutory purpose of the CRA. Accordingly, the OCC did not adopt any of the commenters' suggestions in the final rule.

Changes to assessment area delineations. The proposal generally allowed a bank to change its assessment area delineations once during each evaluation period but specified that banks must not change their assessment area delineations within the annual period used to determine an assessment area CRA evaluation measure. Some commenters stated that the relative infrequency with which banks may update their assessment area delineations under the proposal had the effect of limiting growth and expansion. The OCC notes that the proposal accounted for expansion by also allowing banks to change their assessment area delineations pursuant to an approved application for a merger or consolidation. Nevertheless, to allow banks additional flexibility to account for other changes in branching strategies or depositor concentrations, the final rule permits a bank the option to change its assessment area delineations once a year.

Size of assessment area delineations. The proposal would have required that banks' assessment areas be at least a whole county or county equivalent, unlike the current framework which provides that banks may include only the portion of a political subdivision, such as a county, that it reasonably can be expected to serve. Some commenters expressed concern that, under the proposal, assessment areas could be no smaller than a county or county equivalent because some counties are quite large and represent geographic areas that may be unreasonable for some banks to serve. Other commenters asked the OCC to clarify that, even with county-level assessment areas, banks would not be penalized for lending, investing, and conducting services in only a portion of a county as long as the banks' activities did not reflect illegal discrimination or the exclusion of LMI areas. Some commenters expressed concerns about the burden of collecting data at the census tract level and asked that assessment areas be defined at the county level.

The OCC acknowledges commenters' concerns regarding the minimum size of assessment areas. The proposal set the county or county equivalent level as the minimum size of an assessment area to improve transparency and improve the ability to compare CRA performance across banks. Further, based upon the OCC's observations and experience, permitting banks to delineate assessment areas below the county level has produced some anomalous results where banks delineate just a few relatively small census tracts as their branches as an assessment area when their lending activity indicates that they can and do serve larger geographic areas. The agency's intent was not to impose restrictions on the size of assessment areas that would negatively impact banks. If a bank delineated its assessment area at the county level but was unable to effectively serve the entire county the agency would consider the bank's presence in the market and its competitive position as part of performance context in determining the bank's assigned rating. After considering the benefits of limiting assessment area delineations to the county or county equivalent level and the ability to account for commenters' concerns through performance context, the agency is adopting the assessment area size limitation as proposed.

Other commenters remarked that by abandoning the concept of the broader statewide or regional area that serves a bank's assessment area as set forth in the current regulation, a bank could no longer obtain assessment area-level CRA credit for CD projects in that broader area. The OCC appreciated this concern when drafting the proposal and provided a method for determining activity location that allows a bank to allocate credit for CD activities that serve a larger area to assessment areas within the larger area served by the activity. Specifically, the final rule allows banks to allocate credit for CD activities: (1) To an assessment area within a broader area served by an activity if the bank can document that the services or funding it provided was allocated to a particular project that is in or that serves the assessment area; or (2) across all of the areas served by the activity, including any assessment areas if that cannot be documented.[91] The OCC also recognized that, for deposit-based assessment areas, banks should have additional flexibility to receive credit for retail and CD activities that serve a larger area than the smallest geographic area where the bank gathers at least five percent of its retail domestic deposits. Accordingly, the final rule will provide banks with the option of delineating deposit-based assessment areas at the state level. For these reasons, the OCC concludes that it is not necessary to retain credit for qualifying activities in the broader statewide or regional area that contains a bank's assessment area.

Non-branch deposit-taking facility. The proposal defined non-branch deposit-taking facility as a banking facility other than a branch owned or operated by, or operated exclusively for, the bank that is authorized to take deposits that is located in any state or territory of the United States of America. Some industry commenters requested that the OCC clarify what constitutes a non-branch deposit-taking facility. These commenters proposed a variety of potential definitions for the term. Some advocated limiting the term to cover facilities that are authorized to take consumer deposits, rather than all deposits generally. Others requested eliminating the requirement that the facility be automated and unstaffed because that requirement creates confusion as to whether a piece of equipment, such as a banker's mobile phone or a computer tablet used by a customer to make a deposit online, would be construed as creating a non-branch deposit-taking facility.

[91] As part of its ongoing administration of the rule, the OCC plans to issue guidance, as needed, to explain or clarify the method for the allocation process described in the final rule.

Following consideration of these comments, the OCC revised the definition of non-branch deposit-taking facility in the final rule to clarify that these facilities must be available to the general public. As such, facilities that are for personal use or are located in an area that is not available to the general public do not meet the definition of non-branch deposit-taking facility. The definition of non-branch deposit-taking facility is otherwise adopted as proposed. The agency is also clarifying that the definition of non-branch deposit-taking facility as proposed and in the final rule does not include the terms automated or unstaffed.[92]

Finally, one community group commenter requested that the OCC clarify that the term maintains means that the bank has a permanent or semi-permanent branch or non-branch deposit-taking facility at the physical location. The OCC will address questions of this sort, about the particular application of the rule to a specific set of factual circumstances, through interpretation and guidance as part of the agency's ongoing administration of the rule, as is done today. Other than the changes described above, the OCC is adopting the definition of non-branch deposit-taking facility as proposed.

Retail domestic deposits. The proposal would have defined retail domestic deposits used for purposes of delineating assessment areas and in the general performance standards as the total domestic deposits of individuals, partnerships, and corporations, as reported on Schedule RC–E, item 1, of the Call Report, excluding brokered deposits.[93] This Call Report item excludes municipal deposits and deposits from foreign governments or entities.

Commenters suggested several changes to the proposed definition of retail domestic deposits. Community group commenters argued that retail domestic deposits should not exclude municipal deposits because they are a form of community wealth (derived from taxes and fees on residents) and reflect the resources of actual and potential bank customers.

Industry commenters suggested that retail domestic deposits should be defined as deposits intended primarily for personal, household, or family use rather than as proposed, which would have included deposits of individuals, partnerships, and corporations. Industry commenters argued that their suggested definition would more accurately represent a bank's capacity to engage in qualifying activities for the benefit of individuals, small businesses, and small farms.[94] Other industry commenters suggested that, in addition to brokered deposits, other types of deposits should be excluded from the rules' definition of retail domestic deposits including corporate deposits,[95] sweep deposits,[96] non-brokered reciprocal deposits,[97] health savings accounts (HSAs),[98] listed deposits,[99] and prepaid card funding.[100]

The OCC has carefully considered the comments received and adopted a few suggested changes. The agency determined that using deposits intended primarily for personal, household, or family use (RC–E, items 6a, 6b, 7a(1), 7b(1)) would be too narrow and underrepresents a bank's capacity to engage in qualifying activities. Further, there are no unique features of listed deposits that justify their exclusion from the definition of retail domestic deposits.[101] Similarly, the OCC concludes that permitting a full exclusion of non-brokered reciprocal deposits, as suggested by commenters, would not be adequately tailored to address the concerns raised.[102] Instead, the final rule requires that any deposit amount that is *sent* to another institution through a reciprocal arrangement must be included in the sending bank's measure of retail domestic deposits and assigned to the appropriate assessment area. Reciprocal deposits *received* from another bank do not need to be included in the calculation of a bank's retail domestic deposits. This treatment addresses commenters' concerns and avoids any double counting of deposits.

Consistent with the proposal, the final rule defines retail domestic deposits as the deposits of individuals, partnerships, and corporations reported in the Call Report as RC–E, item 1. In addition, the final rule clarifies that retail domestic deposits include sent, but not received, non-brokered reciprocal deposits, listed deposits, and municipal deposits. The final rule states that banks may exclude prepaid card funding, HSA deposits, sweep deposits, and brokered deposits from their retail domestic deposits. In the OCC's view, the modified definition of retail domestic deposits better reflects the

[92] In the final rule, the term ATM also does not include a requirement that the facility be unstaffed.

[93] In response to a comment requesting clarification, the OCC notes that the final rule's exclusion of brokered deposits from the definition of retail domestic deposits does not reflect a value judgment regarding brokered deposits. As stated in the proposed rule, brokered deposits were excluded from the definition of retail domestic deposits because they are not associated with any individual or community.

[94] These commenters noted that their suggested definition, which is captured on Call Report Schedule RC–E, items 6a, 6b, 7a(1), and 7b(1), is currently not required to be reported for banks with $1 billion or less in assets. As a result, these commenters suggest that if their definition is adopted, the rule should exempt banks with $1 billion or less in assets from the general performance standards and the delineation of deposit-based assessment areas.

[95] Commenters argued that these deposits should be excluded because they fluctuate greatly and unpredictably.

[96] Commenters urged the exclusion of sweep deposits (that are not considered brokered) from the definition of retail domestic deposits because they are not associated with particular communities. Commenters noted that sweep deposits are from transactions that move cash overnight from a brokerage account at a broker-dealer into an FDIC insured deposit account.

[97] Commenters suggested the exclusion of non-brokered reciprocal deposits because the bank receiving these deposits does not know the identity or location of the underlying beneficial owners and banks that receive non-brokered reciprocal deposits ordinarily have no relationship with the individual or community from which a reciprocal deposit originates. Commenters also noted that community banks are ill-equipped to bear such long-distance compliance burdens and that these deposits may trigger the creation of additional assessment areas for minority depository institution and CDFIs in high income geographies that are in less need of CRA activity.

[98] Commenters argued that HSA account deposits should be excluded because banks do not have control over the geographic distribution of HSA deposits. HSAs are owned by account holders, and banks do not necessarily maintain a direct relationship with these account holders.

[99] Commenters suggested excluding listed deposits because the associated depositors are not necessarily tied to the community in which the bank maintains a market footprint. These depositors tend to use listing services to find the best rate available for a given deposit type and, in the case of a certificate of deposit, term.

[100] Commenters urged the exclusion of prepaid card funding because prepaid cards do not have an address associated with the purchaser or end user.

[101] Listing services are, in effect, a form of advertising, just as a depositor might find information on a bank's own website or a website that makes a bank's deposit rates available to the public without the bank's authorization. Many factors distinguish deposits received via a listing service from brokered deposits including: (1) The listing service does not place the deposits with a bank; (2) the listing service is compensated solely by subscription fees, which are paid either by the subscriber or by the banks whose rates are being listed; (3) if the fees are paid by the bank, the fee is not a function of the estimated dollar amount of the deposits raised from the listing; and (4) the listing service may not steer funds to a specific institution. Given these differences from brokered deposits, listed deposits that are included in Call Report Schedule RC–E, line 1 are included in the definition of retail domestic deposits.

[102] In a reciprocal deposit network, banks act as agents placing deposits at other banks in the network. The amounts sent out by a bank exactly match the amounts received from the bank. Within the network, each bank that directly accepts a deposit from a depositor can obtain the address of the depositor whose deposit is parceled out to other banks. The bank that receives deposits directly from depositors also knows the total amount of those deposits (*i.e.,* the portion retained by the bank, and the portion that the other receiving banks have received). In contrast, the banks that receive the deposits from another bank in a network have no ongoing relationship with the depositor (or the community where that depositor lives).

capacity of a bank and the resources it could appropriately use to engage in CRA activities. The agency adopts the proposed definition of retail domestic deposits with the changes described herein.

Finally, two industry commenters asked how the FDIC's brokered deposit rulemaking could impact the proposed definition of retail domestic deposits for CRA purposes. Because the FDIC has not yet finalized its rulemaking on brokered deposits,[103] the OCC determines that it is not appropriate to make changes to the final rule based on potential future changes. The agency will continue to monitor and consider any impacts the FDIC's changes may have on the CRA regulations and provide additional guidance or propose changes to its rules, as needed.

Other issues raised. Commenters raised questions about specific issues, such as how geographic units should be clustered to receive credit for the deposit-based assessment area thresholds, how brokered deposits should be calculated, and what measures the agency will put in place to ensure accurate reporting of deposit-based assessment area delineations. The OCC plans to issue guidance to address these more specific issues relating to the application of the rule, as appropriate.

Conforming changes. The agency made conforming changes throughout the final rule to reflect the changes related to the assessment area provisions and related definitions but is otherwise adopting these provisions as proposed.

C. Objective Method To Measure CRA Performance

Overview. As described above, the current CRA regulatory framework provides a framework for examiners to use their judgment in assessing performance criteria and assigning ratings. Under the current framework, ratings may not always correlate with the amount or value of CRA activity that banks conduct and may vary from bank to bank, even if those banks engaged in a similar volume of comparable activities.

Without a clear method to quantify their observations, examiners have developed a variety of more objective approaches that they use to assess performance and assign ratings. While these processes vary, they all consider two attributes of a bank's CRA activity—the *distribution* and the *impact* of CRA activity. When measuring distributions today, examiners evaluate the geographic and borrower distribution of a bank's retail lending activity using retail lending distribution tests. When measuring impact today, examiners measure and assess the dollar value of a bank's CD lending and investment and the level of retail lending activities. Examiners also consider qualitative factors that are more difficult to quantify such as retail banking services and CD services and the responsiveness, innovativeness, and complexity of a bank's activities.

The proposal built upon current practices to provide more objective and consistent means of evaluating the distribution of the number of qualifying activities (*e.g.,* units) and the impact (*e.g.,* dollar value) of the activities. The proposal did so in three ways. First, the proposal would have included almost the same tests used for evaluating retail loan distribution under the current framework but would have added clarity by describing the tests and including objective thresholds. Second, the proposal would have assessed the impact of all of a bank's CRA's activities, as opposed to focusing on CD loans and investments, as is done under the current framework. Assessing all activities would give a more complete picture of the *impact* or dollar value of a bank's CRA activity. Finally, the proposal would have provided a mechanism for consistent consideration of the more qualitative attributes of CRA activity by including a set of regulatory factors for evaluating performance context.

Performance standards in general. The proposal set out general performance standards to provide a more objective method of assessing CRA performance. These general performance standards would have evaluated banks' CRA activities in an assessment area by assessing: (1) The distribution of the number of qualifying retail loans to LMI individuals, CRA-eligible farms, CRA-eligible businesses, and LMI geographies in a community as measured through the retail lending distribution tests;[104] (2) whether the quantified dollar value of a bank's qualifying activities met specific ratings thresholds;[105] and (3) whether the bank engaged in a specified minimum level of CD lending and investments. The bank performance standards would have evaluated banks' CRA activities throughout the country by assessing: (1) The rating a bank received in a significant portion of its assessment areas and in assessment areas representing a significant portion of its deposits; (2) the impact of a bank's qualifying activities; and (3) whether the bank engaged in a minimum level of CD lending and investments.

The proposal also would have retained the qualitative considerations that apply under the current framework for important factors that are difficult to quantify, such as responsiveness, complexity, and innovativeness. The proposal would have introduced standards for the consideration of performance context to enable the OCC to recognize and account for specific facts and circumstances relating to a bank's CRA capacity and opportunities in a transparent manner.

The proposal allowed small banks to opt into the general performance standards; those small banks that chose not to opt in would be evaluated under small bank performance standards consistent with the current regulations.[106] The proposal also continued to give all banks the option to be evaluated under a strategic plan. Unlike the current framework, the proposal did not include separate performance standards for intermediate small banks or for wholesale or limited purpose banks.

Although many commenters agreed that the current CRA framework should be reformed, they disagreed with specific elements of the proposal or had alternative suggestions for specific reforms. These differences simply reflect different policy preferences. For

[103] *See* Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, 85 FR 7453 (Feb. 10, 2020).

[104] The distribution component would have been the same method the agency uses to assess retail lending today. The only change in the proposal was based on ideas shared with the agencies by the Board. These ideas provide a quantifiable method for determining if a bank's portion of major retail lending activities targeted to LMI individuals or in LMI areas is sufficient to achieve a rating of satisfactory or outstanding. Specifically, the proposal would have established thresholds for the demographic and peer comparators based on a review of historical CRA PEs.

[105] The impact component responds to stakeholder comments about the need for more lending, investment, and services in banks' assessment areas and in other identified areas of need. It would have provided a transparent means of evaluating the impact of a bank's qualifying activities by establishing empirical benchmarks for assessing the dollar value of qualifying activities that, if set high enough, could incentivize more CRA activities. These benchmarks would have been tied to a bank's level of retail domestic deposits, consistent with the CRA statute's purpose of encouraging banks to engage in activities in areas where they draw resources by taking deposits.

[106] As proposed, a small bank was a bank with assets of $500 million or less in each of the previous four calendar quarters. Like the current asset-size thresholds, the $500 million threshold would have been adjusted annually based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers. *See CPI For Urban Wage Earners And Clerical Workers,* Social Security Administration, available at *https://www.ssa.gov/OACT/STATS/cpiw.html.*

example, arguing that the CRA evaluation measure lacked empirical support and would cause a decrease in CRA activities, some commenters recommended taking an approach that would retain the subjective approach of the current framework.[107] These commenters do not object to measuring the dollar value of activities per se; in fact, they support retaining the current framework, which measures the dollar value of CD activities.[108] In essence, the commenters disagree with the agency that the dollar value of retail lending activities should be measured.

After a careful review of these comments, the OCC has determined that the proposal's objective approach is more effective in achieving the purposes of the CRA statute: Incenting more CRA dollars into LMI communities and other identified areas of need. Commenters generally seek to retain as much subjectivity in the CRA regulations as possible on the premise that assessing CRA performance should largely involve judging difficult qualitative factors related to a bank's activities. The OCC disagrees with this policy course. While subjectivity may be viewed by some as an effective mechanism for enabling advocacy, a more subjective and qualitative framework is limited in its ability to encourage banks to invest more money into communities, which is ultimately the goal of the CRA.

Moreover, the commenters' assertions incorrectly suggest that the CRA evaluation measure is the proposal's only method of evaluating banks' CRA performance and, therefore, misunderstands how the proposal operates. As the agencies noted in the preamble to the proposal, like the current framework, the proposal includes multiple measures that operate together to assess both qualitative and quantitative aspects of a bank's performance. Other facets of the proposed framework—such as multipliers, CD minimums, and the quantification of LMI branches—operate in conjunction with the CRA evaluation measure to ensure that the framework continues to incentivize important (and at times smaller dollar value) activities that are presently accounted for and incentivized through qualitative evaluations. Further, the agency believes that providing credit in the CRA evaluation measure for CD services and branch distributions, while evaluating other retail banking services and alternative delivery systems through the application of performance context, obviates the need for a separate test for services in the final rule.

With respect to commenters' assertions that the proposed general performance standards would decrease the level of CRA spending, the agency notes that one analysis provided to support some of these assertions was flawed.[109] As noted in the preamble to the proposal, the CRA evaluation measure and associated benchmarks were based on the agencies' analysis of the available data about banks' on-balance-sheet qualifying activities. The preamble to the NPR explained the data used for this analysis, the method of analysis, and the limitations of existing data. It also explained that over time the data collection, recordkeeping, and reporting requirements in the proposal would remedy limits in the current data collection and allow the agencies to fine-tune the CRA evaluation measure benchmarks, if appropriate. The benchmarks were set to provide clarity and objectivity about the minimum level of activities that would result in a rating of satisfactory. The OCC believes that its method of estimating the CRA evaluation measure benchmarks for corresponding rating categories was economically sound and resulted in reasonable estimations of the benchmarks. In addition to these benchmarks, the proposal included other design features to incentivize banks to engage in a higher volume and variety of activities, and in more areas, to benefit the communities they serve.

In addition to general policy differences about the direction of reform and critiques about data, some commenters disagreed with specific details. For example, some commenters expressed support for keeping both the current small bank and intermediate small bank size categories in the final rule and allowing both categories of banks to be evaluated using the current performance standards.[110] Some of these commenters disagreed with the proposed small bank definition. Some industry commenters advocated for raising the asset size for small banks.[111] Commenters noted that when the small and intermediate small bank thresholds were established in 2005, 70.8 percent of banks qualified for the small bank test and 21.8 percent qualified for the intermediate small bank test. Applying those same percentages to the distribution of bank asset sizes today, these commenters suggested that eligibility for the small bank test should be capped at approximately $500 million, and eligibility for the intermediate small bank test should be capped at approximately $2.5 billion.[112] Another community group argued that small banks should be required rather than permitted to opt in to the proposal's general performance standards.[113]

The OCC agrees with commenters who stated that the current small bank asset size threshold does not reflect the current state of the banking industry and with the commenters who recommended retaining the current

[107] *See* Comment letter, NCRC, from J. Van Tol and J. Taylor, at 9 (Apr. 8, 2020) (''NCRC supports reform, but NCRC believes that incremental reforms building on the existing regulations would more effectively and transparently clarify what counts, achieve assessment area reform (where activity counts) and establish how those activities count in determining bank CRA ratings.'')

[108] *Id.,* at 80 (Apr. 8, 2020) (''Instead of using a ratio measure as the presumptive rating, a ratio such as CD financing divided by deposits (or assets or Tier 1 capital) could continue to be used on a [CD] test as one measure on that test, not the determinative measure.''). The recommendation of retaining the current assessment of CD activities, which measure the dollar value of these activities, shows commenters do not object to measuring the dollar value of activities.

[109] One commenter's assertion that the proposal will cause a loss of lending activity is based on an analysis developed more than a year in advance of the issuance of the NPR and is based on a misperception. Specifically, the analysis was based on a Federal Reserve Bank of Philadelphia study published in June 2017, which described what could happen in Philadelphia if activities in certain areas became ineligible for CRA credit. The proposal, however, does not eliminate eligibility for activities in any geographic areas. In contrast, the proposal would require certain banks to create additional assessment areas, expanding the geographic areas where the agencies would evaluate banks' CRA performance.

[110] One community group advocated for applying the small bank exemption to mission-focused banks, including CDFIs, regardless of asset size.

[111] Specifically, some commenters recommended raising the proposal's small bank threshold to the current small bank threshold applicable to intermediate small banks of $1.305 billion; other commenters suggested other thresholds, both higher and lower than $500 million. These commenters generally felt that, given the extent of the regulatory changes applicable to banks evaluated under the general performance standards, the $500 million threshold provided an insufficient accommodation for community banks, many of which have more than $500 million in assets.

[112] Other commenters suggested keeping the intermediate small bank category and raising the intermediate small bank threshold to various levels including $5 billion or $10 billion.

[113] The commenter argued that the $500 million small bank threshold would result in classifying some banks that are currently intermediate small banks as small banks and, because the small bank performance standards do not have a CD test, those banks would no longer be required to engage in CD activities. The agency notes that although the commenter argued against the proposal's objective approach and for the subjective evaluation methods of the current framework, community group commenters also argued that that if the agencies adopted the proposed objective approach, all banks should be subject to the approach. This all-or-nothing approach to reform would conflict with the community group's stated opinions about the superiority of the current subjective framework and the need for an incremental approach to reform. Another commenter recommended that the OCC apply the general performance standard to small banks if small banks perform as well as larger banks.

intermediate small category. As a result, the final rule preserves the current categorization of banks: Small, intermediate small, and large banks, while making some adjustments to the current thresholds and terminology. The final rule includes a $600 million threshold for small banks, which is consistent with other government standards for small financial institutions.[114] Although some small banks previously classified as intermediate small banks will no longer have express CD requirements in the final rule, CD lending activities conducted by any small bank will continue to be evaluated as a part of that bank's CRA evaluation.[115] The final rule retains the intermediate small category, renaming it intermediate banks, and adopts the commenters' proposed ceiling of up to $2.5 billion, based on commenters' analysis of where the intermediate small bank threshold would have to be set to capture the same portion of the industry as it captured in 2005. In the final rule, banks with greater than $2.5 billion in assets are subject to the general performance standards and banks with less than $2.5 billion in assets can opt in to the general performance standards.[116]

Both small banks and intermediate banks will also be subject to the final rule's clarified qualifying activities criteria and the assessment area provisions, including the requirement to delineate a deposit-based assessment area if a bank receives more than 50 percent of its deposits from areas outside of its facility-based assessment areas.[117] In this way, the final rule's approach will provide additional flexibility to smaller institutions without sacrificing the OCC's goal of achieving transformational CRA reform that provides clarity and encourages banks to conduct more CRA qualifying activities. In particular, because larger banks engage in a larger share of the CRA activities today and hold much of the nation's deposits, allowing the opt-in for smaller institutions and requiring larger banks to meet the new requirements will ensure that, on the whole, the banking industry is incentivized to engage in more qualifying activities. The OCC also no longer uses the term ''bank-level'' to refer to bank ratings or components of bank performance under the performance standards and make other conforming changes throughout the final rule.

Some industry commenters recommended that the agencies retain the separate performance standards for wholesale and limited purpose banks that are in the current regulation because those banks engage in no or limited retail activity. Some of these commenters noted that some elements of the general performance standards, such as the retail lending distribution tests and the branch distribution measure, would disadvantage wholesale and limited purpose banks and recommended retaining the current treatment of these banks. Under the proposal, these banks would have been evaluated under the general performance standards or a strategic plan. The OCC agrees with these commenters and believes that the current performance standards applicable to wholesale and limited purpose banks are well suited to evaluating those banks. Therefore, in the final rule, wholesale or limited purpose banks have the same definition and are subject to the same CD test as under the current regulations.[118]

The agency is also clarifying that the proposal did not eliminate consideration of services accounted for under the current framework's service test. Instead, the final rule continues to give qualitative consideration to services as commenters suggested through the use of performance context, and the final rule quantifies those service activities that are readily quantifiable.[119] Compared to the current service test, the proposed approach, which is adopted in the final rules, better achieves the OCC's goals of increasing objectivity while also giving due consideration to the qualitative nature of service activities.

General performance standards. Under the proposal, a bank evaluated under the general performance standards would have received a presumptive assessment area rating based on: (1) Its performance on the geographic and borrower lending distribution tests for each of its major retail lending product lines with at least 20 loans in that assessment area; (2) the average of its annual assessment area CRA evaluation measures; and (3) the quantified value of its CD loans and investments in that assessment area. A bank evaluated under the general performance standards would be assigned a bank rating based on: (1) Its rating in a significant portion of its assessment areas and in assessment areas that represent a significant portion of its deposits; (2) the average of its annual CRA evaluation measures; and

[114] For example, the SBA defines a small bank one with less than $600 million in assets.

[115] The OCC has clarified this by adding retail and community development to describe the type of CRA activities that the agency will evaluate.

[116] The OCC also made several other changes to the definition of small banks and to the opt in process in the final rule. Specifically, one commenter recommended that the agencies use an eight-quarter lookback to determine if a bank is a small bank. The OCC recognizes the importance of certainty regarding the bank size category and applicable CRA requirements but does not believe that allowing banks to be above the next highest size threshold for two years before becoming subject to the applicable requirements is appropriate. Therefore, the final rule classifies banks as small banks or intermediate banks if their assets are within the applicable threshold for four of the previous five quarters. The final rule does, however, provide an intermediate, wholesale, or limited purpose bank that ceases to meet the definition of an intermediate, wholesale, or limited purpose bank two years to comply with the general performance standards-related provisions of the final rule.

Commenters supported limiting the number of times a small bank that opts in to the general performance standards can opt out again or even eliminating the one-time opt out option. The agency is retaining the one-time opt out option as proposed in order to preserve some flexibility for community banks. Some commenters stated that agencies should not require that small banks opt in or opt out of the general performance standard six months prior to the start of its next evaluation period as provided in the proposal. Moreover, the agency agrees that the requirement to opt-in or opt-out at least six months before the start of its next evaluation cycle is not needed and has removed it from the final rule.

[117] Small and intermediate banks would be subject to the same performance standards as they are subject to today, including the same retail lending distribution tests.

[118] Other community group and industry commenters suggested a number of alternative performance standards and frameworks including, for instance, suggestions that the general performance standards could be optional for all banks or could apply initially to only a small number of large banks. Industry commenters suggested that the agencies add tailored standards for certain banks, such as CDFIs and military banks as well as specific requirements associated with lending outside of a bank's assessment areas. The agency considered these comments and, as explained in the preamble to the proposal, have considered various alternatives to evaluating CRA performance for banks other than small banks. The agency is making various revisions to the proposed rule, including adding intermediate banks and making various changes to the performance standards as explained below. The agency believes the performance standards set out in the final rule will provide greater regulatory consistency and certainty in evaluating banks' CRA performance.

[119] Commenters that urged retention of the current method of evaluating services argued that services should be considered qualitatively and that quantifying the value of services would minimize consideration given to services, which they believe would result in LMI communities being more dependent on fringe non-bank services. For example, these commenters oppose quantifying and adding the value of retail services to the CRA evaluation measure because they argue that such an objective approach would not give enough consideration to LMI deposit accounts, which are usually small. These commenters suggested a number of methods for continuing to evaluate services qualitatively, but more consistently. For example, these commenters suggested the use of standardized tables to present information such as service hours, giving qualitative factors 20 percent to 30 percent of the service test score, and providing guidelines for comparing pricing for LMI and non-LMI customers within and across banks.

(3) the quantified value of its total CD loans and investments.

i. Assessing a Bank's Distribution of the Number of Retail Loans

As proposed, a major retail lending product line would have been defined as any retail lending product line that composed at least 15 percent of a bank's overall dollar volume of retail loan originations during the evaluation period. Such product lines would have been evaluated under the retail lending distribution tests in each assessment area in which the bank originated 20 loans in that product line during the evaluation period. The retail lending distribution tests contained in the proposal are analogous to the retail lending distribution tests applied under the current CRA framework, however, the proposal made minimal alterations to add clear, objective standards that are consistently applied across all banks.

Under the proposal, a bank could have passed the geographic distribution test or the borrower distribution test by meeting or exceeding a threshold associated with the demographic comparator (which would be based on the demographics of the given assessment area) or a threshold associated with the peer comparator (which would be based on peers' performance in the given assessment area). Assessment under the peer comparator would be based on the loans originated by all banks subject to the general performance standards.

Community groups and industry commenters opposed the proposed pass/fail nature of the proposal's retail lending distribution tests and supported establishing gradations for the retail lending distribution test. Industry commenters noted that a bank would have failed the retail lending distribution test for an assessment area if it failed the test for a single product line. They further noted that this would have disadvantaged banks with fewer assessment areas because it would have been more difficult for them to achieve a satisfactory rating in a significant portion of their assessment areas.

Community group commenters recommended assigning ratings and numerical scores, which could be used to average scores across assessment areas, based on performance relative to the comparators. Some community group commenters also opposed allowing banks to pass the retail lending distribution tests by meeting or exceeding either the demographic or peer comparator thresholds, rather than requiring banks to meet or exceed both. Noting that it was unclear why the agencies proposed this approach, these commenters stated that a bank could pass the proposed distribution test with the peer comparator even if it reduces lending to LMI borrowers and communities and failed the test with the demographic comparator. Further, many community group and other commenters contrasted the approach in the proposal with the current framework, expressing the view that retail lending distribution currently counts for much more of the overall rating.[120]

The OCC considered several options to provide additional flexibility to the application of the retail lending distribution tests, including allowing banks to still receive a rating of satisfactory or outstanding, even if they failed one or more retail lending distribution tests. The OCC also considered assigning numerical scores which could be averaged across assessment areas. The OCC believes that the retail lending distribution tests are a very important method of evaluating a bank's CRA performance. Further, with respect to assigning a numerical score to each assessment area, the OCC determined that this overly complex approach did not provide additional benefit.

The OCC believes the proposed approach was sufficiently flexible to account for anomalies in assessment area performance and differences among banks but rigorous enough to incentivize banks to engage in originations to LMI borrowers, CRA-eligible businesses, CRA-eligible farms, and in LMI areas. As noted above, the proposed retail distribution tests are similar to the retail lending distribution tests applied under the current CRA framework, which many commenters support. Allowing banks to pass the geographic distribution tests using either the demographic or peer comparators allows the tests to be sensitive to market fluctuations and accounts for variance in demand tied to local demographic and economic conditions—something many commenters supported. Further, the proposed retail lending distribution tests would have only evaluated a bank's major retail lending product lines, a definition, which as described above, has been further refined in the final rule, and only would have assessed the distribution of those loans in assessment areas where a bank engaged in a non-trivial volume of originations. If a bank does not receive a presumptive rating of satisfactory or outstanding solely because it narrowly failed one retail lending distribution test, examiners may consider that factor when applying performance context to determine a final rating.[121]

In the agency's view, requiring a bank to pass all applicable retail lending distribution tests with respect to its most important retail lending product lines in an assessment area is consistent with the purpose of the retail lending distribution tests. Accordingly, the retail lending distribution tests in the final rule are pass/fail as proposed and banks must pass all applicable retail lending distribution tests in a given area to be eligible to receive a presumptive rating of satisfactory or outstanding.[122]

The agencies received conflicting comments on the proposed definition of major retail product line. A few community group commenters said that the retail lending distribution tests should be performed on all retail lending product lines with at least 20 originations during the evaluation period because a bank could be a major lender in an area even if the product line does not account for 15 percent of its overall retail lending portfolio. Those commenters stated that this method would avoid excluding lending in rural and underserved areas and would be consistent with the statutory mandate,

[120] Additionally, some commenters urged the agencies to reformulate the retail lending distribution tests. These commenters suggested a variety of options, including evaluating distribution only at the bank level rather than at the assessment area level, excluding assessment areas where the bank has a small market share, or providing a single borrower and geographic distribution test for each assessment area applicable to all major retail lending product lines. Further, a few commenters addressed application of the test to deposit based assessment areas, urging that these assessment areas should be excluded from the test, subject to a modified test, or subject to the test at the bank's option. As discussed in this section, the OCC believes that requiring banks to pass all applicable retail lending distribution tests in all assessments is appropriate because the tests assess the bank's significant product lines in areas where the bank has a significant relationship with the community, as demonstrated through its physical presence or concentration of deposits. This is especially true in light of the final rule's changes to the assessment loan threshold and the definition of major retail lending product line.

[121] The agency notes that, with respect to banks with specialized business models, the final rule will provide banks with the option of receiving a wholesale or limited purpose designation and being evaluated under separate performance standards. Small and intermediate banks will have the option of being evaluated under the general performance standards, including the retail lending distribution tests, or separate standards. Further, banks may also request approval of a strategic plan. Accordingly, the final rule provides ample flexibility to accommodate banks of different sizes and with different business models.

[122] Although some commenters stated that this framework did not provide an appropriate weight to the retail lending distribution tests, in reality, under the proposal and the final rule, a bank's performance on its retail lending distribution tests is just as important as its performance on the CRA evaluation measure or the CD minimums.

which they argue includes the obligation to evaluate banks' responsiveness.

In the OCC's judgment, eliminating the definition of major retail lending product lines would be problematic. As a preliminary matter, the OCC notes that the definition in the proposal did not introduce a new concept; instead, it articulated in regulation the varying unwritten processes that examiners use under the current framework to determine which retail lending products are significant enough to subject to retail lending distribution tests. The OCC continues to believe that CRA evaluations should account for banks' business models and strategies by applying the retail lending distribution tests to major retail lending product lines. Applying the retail lending distribution test to product lines where a bank only conducts a nominal amount of lending could disincentivize a bank from serving the unique needs of its community. However, a retail product that represents at least 15 percent of the bank's retail loan originations is a significant enough part of the bank's business strategy that the retail lending distribution tests should apply. As explained elsewhere in this rulemaking, the OCC believes that the other components of the general performance standards will sufficiently motivate banks to engage in qualifying activities in rural and underserved areas.

Commenters from industry and trade groups sought clarification on the meaning and application of various elements of the proposed retail lending distribution tests. Specifically, these commenters sought clarity on the meaning of the phrase bank-level dollar volume of total retail loan originations in the proposed definition of major retail lending product line. To provide additional clarity, the OCC revised the phrase the bank-level dollar volume of total retail lending originations to the bank's dollar volume of total retail loan originations. A bank's dollar volume of total retail loan originations is the sum of the origination value of all of the bank's qualifying and non-qualifying retail loans. These commenters also asked detailed questions about specific situations such as: Whether the current balance or the available amount for credit cards and lines of credit would constitute a major product line; whether credit line increases would constitute originations and how renewals, extensions, and other modifications would be treated under the new framework; and whether direct and indirect auto lending would be evaluated separately. In the agency's view, these detailed questions regarding the application of the rule are better addressed as part of the agency's ongoing administration of the CRA framework, including through examiner and other interpretive guidance.

Additionally, community group, industry, and trade group commenters suggested changes to the definition of major retail lending product line. These commenters suggested: (1) Raising the threshold for major retail lending product lines to 30 percent; (2) lowering the threshold for major retail lending product lines; (3) using a market share threshold; (4) using a range of 15 to 30 percent to define major retail lending product lines; (5) a number of methods for determining whether a product line is a major retail lending product line, including relying on a lookback period and only considering a product line if it remains within a specified range for three to five years; and (6) not applying the retail lending distribution tests to product lines that cross the 15 percent threshold during an evaluation period.[123]

The agency carefully considered commenters and have made a number of changes in the final rule. The final rule includes minor changes to clarify that, although the 15 percent threshold for major retail lending product line remains unchanged, each of the three consumer lending product lines will be treated as a separate product line for purposes of reaching that threshold. Additionally, the final rule provides that a bank will only be required to have at most two major retail lending product lines. If more than two retail lending product lines compose more than 15 percent of a bank's retail lending, the two largest retail lending product lines will be considered major retail lending product lines.

In addition, the OCC agrees with commenters that basing the definition of major retail lending product lines on the origination volume during the evaluation period would not provide banks with enough clarity and notice. Therefore, the final rule provides that a major retail lending product line will be based on the bank's originations in the two years preceding the beginning of its evaluation period and will not change during the evaluation period. The OCC acknowledges that using this definition means that if a bank makes a meaningful shift in its business strategy during its evaluation period, the bank's major retail lending product lines may not accurately reflect the bank's business strategy. In the OCC's experience, major shifts in business models generally take time to be realized, and, thus, the benefits of providing additional certainty by defining major retail lending product lines prior to an evaluation period outweigh any drawbacks to this approach. However, the final rule also allows banks to select more than two retail lending product lines, at their option.

Some industry commenters said the 20-loan threshold for applying a retail lending distribution test in an assessment area: (1) Was too low to be statistically valid; (2) could affect banks' willingness to conduct accommodation lending; and (3) did not account for the length of an evaluation period. These commenters suggested various alternatives including that: (1) The 20-loan threshold be increased to a threshold ranging from 30- to 100-loans on an annual or evaluation-period basis; (2) that the final rule adopt a threshold of either 15 percent of originations or 20 loans, whichever is lower; or (2) the threshold be higher for smaller loans. The OCC agrees that the 20-loan threshold is too low for an entire evaluation period and may lead to banks being evaluated for loans in areas where they engage in a very low volume of lending or where one additional (or one fewer) qualifying origination would likely affect the outcome of a retail lending distribution test. To address this, the final rule adopts a 20-loan *per year* threshold.

Industry commenters noted that the proposed retail lending distribution tests did not evaluate purchases in addition to originations, thereby deviating from the retail lending distribution tests performed as a part of the current CRA lending test. According to these commenters, many retail loans, such as CRA-eligible business loans, home mortgage loans, and various credit card products, can span multiple evaluation periods. In order to encourage banks to originate these loans on a consistent basis and across a wide array of assessment areas, these commenters asserted that it is crucial that: (1) There be a market where banks

[123] Other commenters opposed allowing consumer lending product lines to be major retail lending product lines or suggested they should only be major retail lending product lines at the bank's option or if consumer lending constituted a substantial majority of a bank's lending. These commenters expressed a number of concerns, for example, that evaluating consumer lending could lead to expanding risky or harmful lending to LMI individuals and burdensome information collection. The OCC considered these comments and concerns, but as discussed in this preamble, the definition of major retail lending product line has been modified in the final rule to ensure it only captures significant product lines. The agency feels it is appropriate to assess whether the bank's most significant retail lending product lines serves LMI individuals and geographies. Any evidence of discriminatory or other illegal credit practices associated with these products will be considered prior to assigning a final rating, as discussed below.

can sell these loans to other banks with CRA responsibilities; and (2) banks continue to have both purchased loans and originated loans evaluated in all retail lending distribution tests.[124]

The OCC appreciates these commenters' concerns but notes that, unlike the current framework, the proposal would have also evaluated a bank's CRA performance based on the on-balance-sheet value of its qualifying activities, including purchased qualifying retail loans. The purpose of the retail lending distribution tests is to evaluate whether a bank's retail loan originations are serving the needs of LMI individuals and communities when compared to the bank's total retail loan originations. Because purchases of qualifying retail loans are sufficiently accounted for in the CRA evaluation measure, the OCC is not making any changes to the final rule in response to these concerns.

The agencies did not apply a geographic lending distribution test to the home mortgage loan product line or the consumer loan product line in the proposal. The preamble to the proposal explained that the geographic distribution tests for home mortgage and consumer loans was not included because the agencies did not want to give positive consideration to loans that could have been provided to middle- or high-income borrowers in LMI areas. Industry and community group commenters recommended applying a geographic distribution test to the home mortgage loan product line under the general performance standards. These commenters emphasized the importance of encouraging banks to engage in mortgage lending in LMI areas. They argued that such lending, even if it results in mixed-income neighborhoods, has a stabilizing effect on LMI areas. These commenters suggested that evaluating all of a bank's home mortgage lending in LMI areas would help LMI people and areas.[125]

Upon careful consideration of the comments received, the OCC agrees that encouraging mortgage and consumer lending in LMI communities can help the economic development of these communities.[126] This goal is consistent with the agency's objective of encouraging banks to lend to areas of need and can be accomplished concomitantly with the goal of encouraging mortgage lending to LMI individuals by continuing to limit consideration in the CRA evaluation measures to mortgages made to LMI individuals.[127] Accordingly, in the final rule, a geographic distribution test applies to the home mortgage loan product line for all banks, consistent with the current framework.

Industry commenters opposed the proposed peer comparator for several reasons. They cautioned that it was both underinclusive and overinclusive because it did not include banks not subject to the general performance standards (*e.g.,* Board-regulated banks), but included all banks subject to the general performance standards without accounting for size, capacity or specialization. Instead, commenters suggested that the agencies consider using multiple peer comparators based on bank asset size. Industry commenters also stated that peer consumer lending data was limited, and that peer data generally could be stale by the time of its release. Further, one industry commenter asked for clarification regarding the demographic comparator for consumer loans, noting that the FFIEC demographic database does not contain such an income demographic.[128]

In the agency's view, comparing all banks subject to the general performance standards is appropriate and the data would be sufficient for its purpose: To determine whether a bank's distribution of retail lending to LMI individuals or CRA-eligible businesses or in LMI areas is significantly lower than expected in a given market based on the performance of other market participants subject to the general performance standards. Accordingly, the OCC is not making any changes to how the peer comparators are defined, but the final rule does clarify the description of the peer comparators by more clearly describing the components of what is being compared. Additionally, the final rule corrects the inadvertent error in the proposal by revising the consumer loan demographic comparator to low- and moderate-income households.

Under the proposal, the agencies would have collected and provided public data that would have allowed banks to apply the borrower distribution tests for home mortgage and consumer loans, small loans to businesses, and small loans to farms, and the geographic distribution test for small loans to farms and small loans to businesses. However, the agencies recognized that, even if the proposal were implemented, banks would have needed to rely on private datasets for the small loans to businesses and small loans to farms borrower distribution tests. The agencies invited comment on options for tailoring this requirement, which may have required banks to purchase datasets, by, for example, allowing banks below a certain asset size to use publicly available data as a proxy.

Industry commenters asserted that the requirement that banks perform their own retail lending distribution tests would increase compliance costs, particularly for community banks, by shifting distribution calculations from examiners to banks. They noted that this would likely necessitate additional employee training and hiring. Several commenters recommended that the agencies prohibit the use of private datasets and instead provide datasets to banks. Commenters suggested that, even if the agencies provided a dataset that banks could use at their option, large banks would be able to shop around for the dataset that provided the best available comparators. Some commenters recommended exemptions from the retail lending distribution tests when the agencies' data is insufficient.

The OCC understands and agrees with the concerns about the use of proprietary data and is revising the final rule to require examiners, not banks, to calculate the retail lending distribution tests, consistent with the current framework. Banks will not be required to purchase any data. The OCC believes that it has access to datasets, including

[124] In addition, at least two commenters suggested that MBS be considered within the retail lending distribution tests rather than as a CD activity.

[125] However, a few commenters that expressed concern about displacement of LMI individuals in LMI census tracts suggested other alternatives, including limiting consideration of home mortgage lending in LMI geographies to middle income households, high-cost geographies, or based on property values.

[126] Many studies have shown the importance of encouraging mixed-income housing. *See* Diane K. Levy, Zach McDade, Kassie Bertumen, Urban Institute, *Mixed-Income Living: Anticipated and Realized Benefits for Low-Income Households,* Cityscape: A Journal of Policy Development and Research, Jul. 2013), at 15; Diane K. Levy, Zach McDade, Kassie Dumlao, Urban Institute, *Effects from Living in Mixed-Income Communities for Low-Income Families: A Review of the Literature* (Nov. 2010). This research found that mixed-income communities provide benefits to low-income families. However, it also noted that not all expected benefits have materialized.

[127] Although the OCC remains concerned about avoiding displacement, the agency believes that looking at lending in LMI census tracts for the retail lending distribution tests, while only allowing home mortgages to LMI individuals to count in a bank's CRA evaluation measure, will mitigate any displacement concerns while encouraging banks to lend in LMI areas that may need additional access to credit.

[128] Several other commenters argued that using peer comparators sets up a race to the bottom. The OCC believes that the final rule's evaluation framework, including the specific CRA evaluation measure benchmarks that will be established, will encourage banks to engage in more qualifying activities. Additionally, the agency will be able to review the performance standards, including the thresholds associated with the retail lending distribution test peer comparators on an ongoing basis to ensure the framework is achieving the agency's goals.

the datasets used today, that are sufficient to establish the demographic comparators for the small loans to business and small loans to farms retail lending distribution tests.

ii. Assessing the Impact of a Bank's Qualifying Activities

To provide clarity and consistency to the CRA evaluation process, the proposal included a uniform method of measuring the impact of a bank's qualifying activities and specified clear benchmarks required to achieve specific ratings categories. Under the current framework, examiners measure the impact of banks' CRA activities in a number of ways and examiners make their own varying judgments about how much activity is enough to receive a rating of satisfactory or outstanding. In the proposal, the impact of a bank's qualifying activities would have been assessed through the calculation of its CRA evaluation measure and banks would have known the benchmarks for the level of qualifying activity necessary to achieve any particular rating category.

In the proposal, a bank would have calculated its bank CRA evaluation measure and assessment area CRA evaluation measure annually by taking the sum of: (1) A bank's qualifying activities value *divided by* the average of its quarterly retail domestic deposits; and (2) a calculation that accounts for a bank's branch distribution. The CRA evaluation measure would have been calculated as follows:

$$\frac{\boldsymbol{Qualifying\ Activities\ Value}}{Average\ quarterly\ \boldsymbol{Retail\ Domestic\ Deposits}} + .01\left(\frac{Branches\ in\ Specified\ Areas}{Total\ Branches}\right)$$

The agencies received many comments opposing the proposal's one ratio approach for measuring CRA performance. These comments misapprehend what was proposed; the proposal did not contain one ratio. The proposal's performance standards that the agencies would have used to assess banks' CRA performance would involve tens, if not hundreds, of measures for most banks. Furthermore, the proposal would have retained the concept of performance context, which would have provided a mechanism for qualitatively evaluating a bank's capacity and opportunity to engage in qualifying activities and its responsiveness to community needs. While some elements of the general performance standards would have looked at a bank's qualifying activities compared to its deposits, a bank's ratings under the proposal would also have been based on the bank's performance on the retail lending distribution tests and performance context information. Therefore, the term one ratio, which was used in many comments, is simply a misapprehension or a mischaracterization of the OCC's approach.

One community group commenter stated that using a ratio-based framework to assess past performance by measuring loans-to-deposits in a primary service area is contrary to the CRA statute because this type of model was proposed in the first version of the 1977 bill, was criticized in congressional hearings about the bill, and ultimately was not enacted.[129] The OCC disagrees. The hearing witness testimony cited by the commenters was not aimed at a methodology to assess past performance. Instead, the testimony criticized a proposed provision that would have required banks to predict what *future* ''proportion of consumer deposits . . . will be reinvested by a lender in [an] area.'' [130] The witness made no similar criticism of using a ratio-based framework for assessing *past* performance. Rather, the same witness stated ''the past record of the ratio of aggregate loans made to deposits received for a submarket area can be useful. . . . Presumably, the regulatory agencies would obtain such data'' in order to evaluate whether a bank is meeting the credit needs of areas it is already chartered to do business.[131]

These commenters also observed that witnesses and senators participating in the 1977 hearings claimed that encouraging banks to meet the credit needs of the areas from which they receive deposits was an attempt at credit allocation that would lead to market inefficiency.[132] The OCC disagrees with the commenters' interpretation of these statements. These statements in the hearings more broadly opposed any governmental pressure through the CRA to reinvest deposits in depositors' communities and are not conclusive for understanding congressional intent regarding any ratio-based approach for measuring bank performance. CRA was passed despite this opposition and, rather than detailing in the statute how performance would be measured, Congress has authorized the agencies to determine through regulation the appropriate approach for evaluating and examining banks' performance.[133] Consistent with that authority, the OCC's approach to measuring CRA performance advances the purpose of the statute.[134]

Advocating for a more subjective approach to CRA, a community group commenter expressed concern that the CRA evaluation measure may not be consistent with the CRA statutory requirement that a bank must help to meet the credit needs of its entire community in a safe and sound manner. To the contrary, the OCC expects that *all* bank activities are conducted in a safe and sound manner. The OCC will use performance context as necessary to address factors such as financial condition, loan product demand, or relevant demographic conditions that may affect a bank's ability to engage in

[129] This commenter also stated that a single loan-to-deposit ratio was rejected during the 1995 regulatory revisions in favor of multiple metrics. Like the current regulations, the proposal contained multiple metrics.

[130] *Hearings Before the S. Comm. on Banking, Housing, and Urban Affairs,* U.S. Senate 95–1 (Mar. 23, 24, and 25, 1977) at 151 (testimony of Henry Schechter, Director of Department of Urban Affairs, AFL–CIO) (''[t]here is almost no way of knowing how large a demand for various types of credit will emanate from residents and business people of the local community, and how much of such a volume of credit could be granted consistent with the safe and sound operation of such institutions'').

[131] *Id.*

[132] *See, e.g., id.* at 153; 315–16; 324; 335; 368; 428. Sen. William Proxmire, Chairman, S. Comm. on Banking, Housing, and Urban Affairs refuted these concerns. *Id.* at 2 (''To criticize reinvestment incentives as a form of credit allocation is disingenuous . . . . I think that debate in the context of the reinvestment bill as a red herring.'').

[133] 12 U.S.C. 2905, 2906.

[134] *See, e.g.,* 123 Cong. Rec. 17630 (1977) (statement of Sen. Proxmire) (describing CRA's purpose as follows: ''I am talking about the fact that banks . . . will take their deposits from a community and instead of reinvesting them in that community . . . they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood. The agency also knows that small town banks sometimes ship their funds to the major money markets in search of higher interest rates, to the detriment of local housing, to the detriment of small business, and farm credit needs . . . Therefore, the committee included [CRA] to reaffirm that banks and thrift institutions are indeed chartered to serve the convenience and needs of their communities, and as the bill makes clear, convenience and needs does not just mean drive-in teller windows and Christmas Club accounts. It means loans.'').

CRA activities in a safe and sound manner. Once the empirical benchmarks are set, as discussed below, the OCC also anticipates adjusting the empirical benchmarks periodically based on available data.

Some community group commenters voiced concerns that the proposed CRA evaluation measure would have been more complex and rigid than the current system and the measures and benchmarks would not be tailored to local credit needs. Some industry commenters expressed similar concerns that the CRA evaluation measure and associated benchmarks would not have taken into consideration the diversity of bank business models, community needs and opportunities, and local economic conditions. They recommended that the final rule implement more tailored measures or benchmarks.

Although the OCC considered explicitly tailoring the CRA evaluation measure to account for local community conditions, it did not believe the incremental benefits of such an approach were worth the added complexity. Further, the agency believes that the proposed CRA evaluation measure was already sufficiently flexible and adequately tailored to local needs. The proposed CRA evaluation measure and benchmarks provided an objective standard for assessing a bank's reinvestment in the communities from which it receives deposits and would have scaled the bank's obligation to reflect its presence in the market, as measured by the dollar volume of retail domestic deposits it receives from an area. Furthermore, prior to assigning assessment area and bank ratings, the OCC would have assessed performance context factors, which would have accounted for the specific facts and circumstances that affect a bank's CRA capacity and opportunities. Because the proposed CRA evaluation measure, and the entire general performance standards framework, is sufficiently flexible to account for the variance in bank business models, community needs and opportunities, and local economic conditions, the OCC did not adopt any changes to the CRA evaluation or its calculation to address these concerns.[135]

Some industry commenters stated that the CRA evaluation measure disproportionately advantages large banks because these banks have greater opportunity to participate in large development projects, which will boost their qualifying activities values more than smaller-dollar loans and investments. The OCC does not believe this concern will be realized because the denominator of the CRA evaluation measure in the proposal would have depended on a bank's market presence, as measured by its retail domestic deposits. Small banks have fewer deposits and thus would have had smaller CRA obligations than large banks. Accordingly, even though large banks may be better able to engage in large projects, that would not disadvantage smaller banks. The OCC believes that the CRA evaluation measure adequately accounts for bank size by using retail domestic deposits in the denominator and did not make any changes in response to this concern in the final rule.

The first component of the CRA evaluation measure would have measured the value of qualifying activities as a proportion of total retail domestic deposits. The proposal would have valued most qualifying loans and investments based on their average on-balance sheet value during the evaluation period. Community groups and some industry commenters opposed the on-balance sheet approach of the first component of the CRA evaluation measure. Community groups described the CRA evaluation measure as a simplistic, narrow measure that would: (1) Reduce reinvestment; (2) encourage large, long-term, and easy deals that banks finance in the ordinary course of business;[136] (3) be inconsistent with the statutory written evaluation requirement; and (4) solely determine a bank's rating at the expense of other factors, including qualitative ones.[137] Community group and government commenters suggested that the measure was too simplistic because it aggregated all types of activities and failed to distinguish between types of activities, like CD activities and retail activities, and product categories that may be more or less useful for LMI borrowers.[138] Community group and industry commenters also cautioned that the balance sheet-based approach would not provide enough credit for smaller-dollar activities, such as LMI mortgage lending and CRA-eligible business lending, thereby disincentivizing them. Other commenters were concerned that the CRA evaluation measure would de-emphasize mortgage lending or other specific activities like bank investments in CDFIs. Community groups commented that disincentivizing lower dollar loans would particularly disadvantage rural areas, underserved areas, and persistent poverty counties, which receive a higher proportion of small-dollar mortgage loans. At least one industry commenter disagreed with these commenters, stating that banks would need to engage in smaller-dollar activities because there were too few large dollar activities available. Several community group commenters stated that using the CRA evaluation measure and CD minimums to determine a bank's presumptive rating could allow a bank to determine it has met its presumptive rating goal before the end of its evaluation period. Then a bank would be able to cease or slow CD activities for the remainder of its evaluation period which could disrupt local CD efforts. Other commenters thought banks would not be incentivized to partner with community organizations after they met the minimums because responsiveness will no longer be evaluated.

To address these concerns, commenters offered a number of potential solutions. Community groups recommended the inclusion of a single transaction limit and evaluating the number of retail loan originations and purchases, as is done under the current framework, rather than their on-balance sheet dollar value, to encourage originations and purchases of loans. Some industry and community group commenters recommended that the proposal focus on the number of loans more broadly, not just with respect to retail lending. Other industry commenters recommended giving banks a percentage goal for the number of each type of retail loan category that should be qualifying loans. One commenter even recommended adding a floor for different types of activities. Community groups also recommended retention of the separate lending, investment, and service tests from the current framework

[135] Because the agency acknowledges the limitations of the existing data, the final rule does not include specific CRA evaluation measure benchmarks associated with each rating category.

[136] Alternatively, one commenter suggested that the approach could overvalue LMI home mortgage lending and recommended an alternative that would include the lesser of originations or the amount on the balance sheet.

[137] Some commenters stated the framework would effectively short-change CD activities in comparison to other CRA activities. Some commenters also suggested that qualitative criteria account for 20 percent to 30 percent of a component test score.

[138] Some commenters also argued that aggregating different types of activities would reduce transparency about how the bank is serving its community's needs. The OCC notes that although the final rule aggregates activities for the purposes of the CRA evaluation measure, stakeholders will still have information about a bank's performance with respect to different types of qualifying activities by observing its performance on the retail lending distribution tests and CD minimums, its data reporting, and through the information included in its CRA PE.

to provide a more holistic approach.[139] Other commenters suggested measuring large dollar loans and investments separately from other activities.

Prior to the issuance of the proposal, the agencies heard many complaints from stakeholders that the current framework's focus on new activity inappropriately incentivized short-term over long-term activities and investments.[140] Commenters indicated this was problematic because many businesses, individuals, and CD programs and projects need stable, long-term funding. As discussed in the preamble to the proposal, evaluating the outstanding dollar value of on-balance sheet CRA activities would have solved this issue by assessing a bank's ongoing commitment to its communities and encouraging stable sources of funding. The CRA evaluation measure's focus on the value of on-balance sheet loans and investments would also have disincentivized churning of activities that provide banks CRA credit without providing new value or long-term stability to the communities that banks serve. Further, the proposal would continue to apply performance context factors that would evaluate a bank's responsiveness to communities' needs throughout its evaluation period.

The CRA evaluation measure will encourage banks to engage in more qualifying activities by providing them the flexibility to engage in qualifying activities that best fit and complement their business models and the needs of their communities. By aggregating different types of qualifying activities, the proposal does not dictate a bank's business model or strategy, but rather evaluates the impact of the full scope of a bank's qualifying activities. The OCC disagrees with commenters who suggest that the proposed CRA evaluation measure would have reduced reinvestment because the agencies would have had the ability to set the CRA evaluation measure benchmark at levels high enough to increase banks' reinvestment into the communities from which they receive deposits. Additionally, by comparing the quantified dollar value of a bank's CRA activity to a bank's retail lending deposits the CRA evaluation measure would have helped the agencies fulfill the statutory purpose of CRA, which is to encourage banks to reinvest deposits into the communities from which they receive them, without requiring a specific business model. Furthermore, by providing multipliers for activities conducted in CRA deserts and using performance context factors to examine the responsiveness of activities, the final rule will encourage smaller dollar activities and activities in CRA deserts.

The agencies recognized that the CRA evaluation measure alone is not adequate to assess a bank's CRA performance. For this reason, the proposal included other quantitative and qualitative assessments of a bank's CRA performance. For example, at the assessment area level, the proposal also would have included the retail lending distribution tests, which would have evaluated the distribution of a bank's number of originations and a measure of a bank's CD activities as compared with its retail domestic deposits. A bank's presumptive rating would have been based on its rating in a significant portion of its assessment areas, its CRA evaluation measure, and a measure of its CD activities. Performance context factors would have been used to assess many qualitative factors for the bank, including in each assessment area. A bank's assigned rating would have been based on its presumptive rating. The assigned rating and the explanation for the rating, along with the facts and data supporting the rating and conclusions would have been included in a bank's PE. This robust framework, with its many methods of evaluation, makes the retention of the separate tests used today superfluous.

The OCC considered including a single transaction limit in the proposal, but as stated in the preamble to the proposal, because the proposal would have assessed the performance of banks that are subject to the general performance standards by considering the distribution of retail lending activities and the dollar value of qualifying activities, the OCC does not believe that a single transaction limit is necessary. Moreover, a single transaction limit could discourage activities like affordable housing and infrastructure projects that have a large dollar value, but help meet the needs of LMI communities and other underserved communities.[141] Moreover, the other elements of the final rule would address commenters' concerns, including the retail lending distribution tests, some modifications that have been made to the quantification of certain types of retail loan originations in the rule,[142] and the addition of some multipliers for retail lending activities.[143] For these reasons, the OCC is not adding a single transaction limit in the final rule.

Some industry commenters stated that assets or Tier 1 capital should be the denominator for the CRA evaluation measure instead of retail domestic deposits because assets better reflect a bank's capacity to engage in qualifying activities. These commenters noted that using deposits would result in larger obligations for community banks because of their business models than if the CRA evaluation measure used assets. These commenters also suggested that using Tier 1 capital or assets would be easier for banks to implement than requiring banks to geocode deposits. The OCC believes that the introduction of the intermediate bank category and intermediate bank performance standards in the final rule will address most of these commenters' concerns. Furthermore, the OCC believes that for most banks, retail domestic deposits adequately reflect a bank's capacity to engage in qualifying activities. To the extent a bank is subject to unique constraints, examiners will consider those constraints when applying performance context factors or a bank may submit a strategic plan.

[139] A number of community group commenters specifically opposed elimination of the investment test. They expressed concerns that doing so would decrease investment in affordable housing projects, make it more difficult for CDFIs to raise equity, and decrease the availability of grants. The OCC believes that the retention of a separate investment test is not necessary to encourage these types of activities. As discussed above, the final rule provides a number of incentives for banks to engage in CD investments and activities with CDFIs, including by providing a multiplier for those activities.

[140] Many ANPR commenters mentioned this problem. *See* National Association of Affordable Housing Lenders at 12, *https://www.regulations.gov/document?D=OCC-2018-0008-0981* (''Currently, only investments (but not loans) made in prior exam periods continue to generate CRA credit. This system perversely gives banks more credit for making and then renewing a short-term loan than for making a long-term loan in the first place. We also observe that examiners do not consistently recognize the value of investments made in prior exam periods.''); American Bankers Association at 25, *https://www.regulations.gov/document?D=OCC-2018-0008-0583;* Opportunity Finance Network at 5, *https://www.regulations.gov/document?D=OCC-2018-0008-0525.*

[141] Infrastructure projects are critical for underserved communities. *See* Kolby Kickingwoman, *Infrastructure in Indian Country needs to be 'fair and equitable,'* July 12, 2019, available at *https://indiancountrytoday.com/news/infrastructure-in-indian-country-needs-to-be-fair-and-equitable-6gL-b6cvqUuWkVx91Z64fg* (discussing the need to improve infrastructure in Indian country); Donna Kimura, *Developers Reveal the Costs of Doing Business,* July 1, 2017, available at *https://www.housingfinance.com/news/developers-reveal-the-costs-of-doingbusiness_o* (discussing the cost associated with building affordable housing).

[142] The OCC recognizes the importance of encouraging retail loan originations and, in response to commenters who suggested that the proposed CRA evaluation measure does not adequately value originations that are sold within one year, the final rule will provide additional credit for those loans.

[143] The OCC has added multipliers for retail lending activities in CRA deserts and generated from LMI branches.

In the second component of the CRA evaluation measure, the number of the bank's branches located in LMI census tracts, Indian country, underserved areas, and distressed areas during the same annual period used to calculate the qualifying activities value would have been *divided by* the bank's total number of branches in that annual period and *multiplied by .01.* This calculation would have quantified a bank's distribution of branches and increased a bank's CRA evaluation measure by up to one percentage point based on the proportion of a bank's branches in those specified areas.

Community group commenters opposed the CRA evaluation measure's method for quantifying branches on the grounds that it would reduce consideration of branches.[144] They stated that branches were likely to account for a small portion of the CRA evaluation measure when compared with the current 25 percent weighting for the service test, which they recommended be retained. They also noted research suggesting that the current service test has prevented branch closures in LMI communities and warned that the CRA evaluation measure would likely lead to branch loss by reducing the weight given to branches. A number of industry commenters also recommended that the agencies increase the credit provided for the measure of a bank's distribution of branches.

The agencies sought to give a bank's branch distribution appropriate weight. Under the current CRA regulations, for a bank evaluated under the service test, a bank's branch distribution generally accounts for 50 percent of the service test, which is 25 percent of a bank's CRA rating. This means that branch distributions today technically account for approximately 12.5 percent of a bank's CRA rating. However, because branch distributions are not quantified and there are no objective targets, it is not clear how much credit a bank will receive for a given branch distribution. In the proposal, a bank could have received up to one percent credit for its branch distribution, which would be one sixth, or 16.7 percent, of the six percent CRA evaluation measure that would have been required to satisfy the CRA evaluation measure prong of the general performance standards for a satisfactory rating. However, a bank would have only received the one percentage point of CRA evaluation measure credit if 100 percent of its branches were in an LMI, distressed, underserved, or Indian Country. The OCC used branch information from the FDIC's Summary of Deposit (SOD)[145] data and demographic information from various sources to identify the bank branches in distressed, underserved, and LMI census tracts and in Indian country and other tribal and native lands census tracts.[146] The OCC used that information to analyze the proportion of branches in distressed, underserved, LMI, and Indian country and other tribal and native lands census tracts by bank and calculate the median proportion of branches in distressed, underserved, LMI and Indian country and other tribal and native lands for branches with assets of $2.5 billion or more. The analysis showed that, for banks subject to the general performance standards, the median percentage of a bank's branches in those areas in 2019 was approximately 28 percent. To ensure that banks are still receiving appropriate credit for their branch distribution, the final rule provides that a bank's branch distribution will be multiplied by .02, meaning that a bank with a branch distribution close to the median will receive .56 percent of credit as part of its CRA evaluation measure. However, banks will not be able to receive more than one percent credit for their branch distribution as a part of its CRA evaluation measure.[147]

Industry commenters noted that the CRA evaluation measure does not account for branches that serve LMI neighborhoods, Indian country, underserved areas, and distressed areas but are not in those areas, such as those in an adjacent or nearby census tract. The OCC agrees that branches that are in adjacent or nearby census tracts can still serve those areas. The final rule includes in the numerator of the branch distribution measure both: (1) The number of branches in LMI census tracts, Indian country and other tribal and native lands census tracts, underserved areas, and distressed areas; and (2) the branches that serve those areas, divided by the total number of branches in that assessment area. However, banks will need to demonstrate that the branch serves a sizable portion of individuals from those communities for the branch to be included in the numerator of the branch distribution measure. The agency does not expect to give credit to branches not located in LMI tracts and that serve only a small or nominal amount of the nearby LMI community.

Three industry commenters requested clarification as to how the CRA evaluation measure would be calculated for banks following a merger or acquisition, noting that it is common for merging institutions to operate different systems for a period of time after the transaction closes. The OCC intends to evaluate the surviving bank under the terms of the final rule when a merger occurs during an evaluation cycle, similar to how evaluations are conducted in these circumstances under the current framework. For banks subject to the general performance standards, investments that remain outstanding after the merger will included in the calculation of the CRA evaluation measure, and the surviving bank will be subject to the data collection, recordkeeping, and reporting obligations of the rule.

[144] Additionally, some community group and other commenters expressed concern that the proposal would not incentivize branches in LMI communities. Other commenters noted that the proposal would not consider branch openings and closings and would treat a bank with one branch in an LMI area more favorably than a bank with a large number of branches (but not 100 percent) in LMI areas. Commenters offered a number of suggestions for giving additional credit to branches, such as deducting CRA value for branch closures in underserved neighborhoods, increasing the multiplier to .025, or more or giving credit for maintaining unprofitable branches.

[145] *See* Deposit Market Share Reports—Summary of Deposits, FDIC, available at *https://www7.fdic.gov/sod/.* Only branch types 11, 12, and 23 were included in this analysis.

[146] The OCC used the FDIC SOD data to obtain the address of branches with branch codes 11 and 12. The agency identified distressed middle-income census tracts using the definitions in the proposal, along with FFIEC census data files, BLS County Unemployment data, American Community Survey data, and the Census 2000 and Census 2010. Consistent with the proposal and the final rule, the OCC identified underserved middle-income census tracts relying on the most recently available data maintained by the Economic Research Service of the U.S. Department of Agriculture as well as tract centroid coordinates from a mapping software application to identify census tracts where there were no branches in the census tract and no branches within a specified distance to the tract centroid. LMI census tracts were identified based on FFIEC census data files. Indian country was identified by using the most Census Bureau's American Indian Alaska Native and Native Hawaiian (AIANNH) TIGER geography file. The OCC included Indian other tribal and native lands census tracts in this calculation based on the changes made to the final rule.

[147] The OCC considered alternative ways to provide credit for branches, including the myriad of ways suggested by commenters. However, the OCC believes that the incremental benefits that these approaches would provide in some unique circumstances do not warrant the additional complication. By giving banks credit for their branch distribution directly through the CRA evaluation measure, the final rule provides a simple and clear mechanism of providing banks a predictable amount of credit for their branch distribution. The final rule also gives examiners the flexibility to consider other elements of a bank's delivery systems and branching strategy while applying performance context factors.

iii. Ensuring Banks Are Responsive to Local Needs

As proposed, to receive a bank presumptive rating of satisfactory or outstanding, a bank had to receive at least a satisfactory or outstanding, respectively, in those assessment areas: (1) That represent a significant portion of its assessment areas; and (2) where it receives a significant portion of its retail domestic deposits. The proposal did not define significant portion but asked commenters for suggestions for how this phrase should be defined.

Many negative comments on this provision were based on the misapprehension that the agencies had defined significant portion as 50 percent. Some community group commenters expressed concern that requiring a bank to achieve a satisfactory or outstanding in a significant portion of its assessment areas to receive those bank ratings could result in the bank disregarding some assessment areas, which could exacerbate the problem of CRA deserts, and would be inconsistent with the statutory mandate to evaluate banks' efforts to serve their entire communities. These commenters advocated for a CRA rating system that takes into consideration performance in all assessment areas and has gradations of performance (not just pass/fail thresholds). One commenter suggested a 100-point scoring system or an averaging of assessment area scores in all aspects of the rating system, not just the CRA evaluation measure. However, at least one of these commenters stated that if the term significant portion had to be defined, they supported an 80 percent threshold over a 50 percent threshold. Other commenters, representing community groups and industry, suggested thresholds that ranged from 40 percent to 100 percent. Other industry commenters said that the pass-fail thresholds in the proposed rating system did not account for nuances inherent in banks' CRA activity in communities with varying needs. Although these commenters also advocated for gradations, they stated that if gradations were not adopted, then the agencies should adopt a significant portion threshold that is no more than 50 percent. One community group commenter recommended that the agencies distinguish between the percentage required for a satisfactory rating and an outstanding rating, which they suggested should be 65 percent and 75 percent, respectively.

The OCC reviewed the suggestions of commenters, used its supervisory judgment and experience and conducted data analysis to determine how to establish a numerical threshold to define significant portion in the final rule. Some commenters recommended a threshold of 80 percent, but some were concerned that an 80 percent threshold would effectively apply a higher standard to small banks, which typically have fewer assessment areas. The OCC recognizes that, for banks with fewer assessment areas, defining significant portion as 80 percent would effectively require these banks to achieve satisfactory or outstanding in 100 percent of their assessment areas, imposing a higher requirement on them. Using the FDIC's SOD data as a proxy for the number of assessment areas,[148] the OCC was able to estimate the number of assessment areas for banks in different asset size categories and the distribution of those assessment area counts. For banks with assets between $2.5 billion and $10 billion, the median estimated number of assessment areas is five. After considering this analysis, along with commenters' suggestions and the OCC's supervisory judgment, the final rule does not use the term significant portion. Instead, the final rule provides that for a bank with more than five assessment areas to receive a presumptive rating of satisfactory or outstanding, the bank must receive at least the corresponding rating in: (1) 80 percent of its assessment areas, and (2) in assessment areas from which the bank receives at least 80 percent of the retail domestic deposits it receives from its assessment areas. For a bank with five or fewer assessment areas, the final rule provides additional flexibility and states that, to receive a presumptive rating of satisfactory or outstanding, a bank must receive at least the corresponding rating in: (1) 50 percent of its assessment areas, and (2) in the assessment areas from which it receives at least 80 percent of its retail domestic deposits received from its assessment areas.

iv. Ensuring Banks Engage in a Minimum Level of CD Activities

The general performance standards in the proposal established minimums for a bank's quantified dollar value of CD lending and investment as compared to retail domestic deposits to achieve a satisfactory or an outstanding rating. To achieve a presumptive rating of satisfactory or outstanding, the sum of the quantified dollar value of CD loans and CD investments, *divided by* the average of the bank's retail domestic deposits would have needed to meet or exceed two percent. The CD minimums would have applied for both the bank presumptive rating and the assessment area presumptive rating.

Some industry commenters said that the CD minimums would have been too rigid because they did not account for local community conditions. Some of these commenters recommended that the CD minimums, on their own, account for community needs and local conditions and that there was no need for a separate application of performance context factors.[149] A few other commenters criticized the pass or fail nature of the CD minimums and suggested various alternatives. A few commenters suggested that the minimum apply only at the bank level, or that a lower minimum apply at the assessment area level than at the bank level.[150]

The OCC believes that accounting for local community attributes is important. The proposed CD minimums would have been only one of three performance standards and were meant to reflect the minimum amount of CD activity that the agencies expect all banks to engage in. The CD minimums would have automatically accounted for local conditions because they would have been based on the level of retail domestic deposits a bank receives from a given area. The agencies would have further assessed local community conditions and needs through the application of performance context factors. The performance context factors

[148] For branches in MSAs, each MSA with at least one branch was counted as an assessment area for the bank. Branches in non-MSA areas, the number of non-MSA counties in which the bank has at least one branch, was divided by two to obtain an estimate of the bank's count of assessment areas for branches in non-MSA areas.

[149] A few industry and community group commenters criticized the proposed CD minimum, stating that it would favor larger transactions over small ones. A few community group and other commenters suggested further refinements such as applying minimums to both lending and investment activity or weighting favored activities more heavily. As discussed in this preamble, the agency believes that other elements of this framework, including performance context factors and multipliers, will ensure that smaller-dollar transactions and other responsive activities are appropriately incentivized.

[150] Community groups raised concerns that the minimums would have been reached easily because of CD multipliers and the expanded qualifying criteria. Additionally, some commenters, including community groups, expressed concern that banks could meet the CD minimum through lending alone, which might decrease investments. As noted below, the final rule does not adopt a specified minimum level of CD activities. The OCC will gather additional data and conduct additional analysis to ensure that the CD minimums are set at an appropriate level for the framework in the final rule, which also adopts some changes that restrict the applicability of CD multipliers and the qualifying activities criteria, including the adoption of a CD floor that must be met before any multipliers apply.

in the proposal provided consideration of a bank's ability to engage in the volume of CD lending and investment required to meet the CD minimums, as well as local needs, opportunities, and economic conditions. Such information would have been considered by examiners as they assessed whether a bank's presumptive rating should be adjusted.

Some industry commenters stated that by only providing credit for CD activities that occur outside of banks' assessment areas in the bank CRA evaluation measure, the proposal would have made it harder for banks to meet the assessment area CD minimums.[151] The OCC does not agree with this assertion. Under the proposal, banks subject to the general performance standards are required to engage in a minimum level of CD activities in each of their assessment areas based on their retail domestic deposits received from the assessment area. These banks would also have to engage in a minimum level of CD activities across the country based on their total retail domestic deposits. Providing banks credit for engaging in qualifying activities outside of their assessment areas was designed to incent activities in underserved communities that are often not a part of any bank's assessment area and to provide banks with flexibility to achieve their overall CD obligations.

One community group noted that if the final rule does not distinguish between prior period and new CD investments for the purposes of the CD minimums, then banks will not have an incentive to engage in new activity. Others were concerned that the CD minimums aggregated both CD loans and investments into one category. Some commenters suggested separate thresholds for CD loans and CD investments.[152] The OCC recognizes the importance of incentivizing new CD activities and, accordingly, has revised the final rule to provide that a bank cannot receive a multiplier for any activities conducted unless the quantified dollar value of its current period CD activities approximately equals the quantified dollar value of its prior period CD activities. Additionally, although the final rule does not provide a separate minimum for investments, the rule provides a multiplier for most CD investments to ensure banks are incentivized to conduct investments.

The OCC believes that the CD minimums as proposed provide a meaningful assessment of whether a bank has engaged in a sufficient level of CD activities, as a proportion of the retail domestic deposits, to be eligible to receive a satisfactory or outstanding. Consistent with the statute, the final rule creates an obligation for banks to serve their assessment areas and their entire community, including by requiring banks to provide a minimum amount of CD activities to be eligible to receive a rating of satisfactory or outstanding. However, as discussed below, the final rule does not set out a specific level of activity for the CD minimum.

v. Presumptive Ratings Benchmarks, Thresholds, and Minimums

The proposal would have established the empirical benchmarks for the average CRA evaluation measure[153] associated with each rating category, thresholds for passing the retail lending distribution tests, and a two percent minimum for CD activities as a percentage of retail domestic deposits.[154] The proposal set 11 percent as the initial CRA evaluation measures benchmark for outstanding, six percent as the initial benchmark for satisfactory, and three percent as the initial benchmark for needs to improve. An average CRA evaluation measure of less than three percent would have been associated with the substantial noncompliance rating category. The proposal set the benchmark for passing the retail lending distribution tests at 55 percent of the relevant demographic comparator and at 65 percent of the relevant peer comparator.

Commenters described the rationale for the proposed CRA evaluation measure benchmarks, CD minimum, and retail lending distribution tests thresholds as unclear and inadequate. Commenters expressed differing views on whether these benchmarks, minimums and thresholds would be difficult or easy to satisfy or whether they should be increased or decreased.[155] They argued that the agencies did not sufficiently describe the data, rationale, or methodology for the establishment of these thresholds, making it difficult to assess and comment on them.[156] Both community group and industry commenters recommended that the agencies disclose the data used to determine the benchmarks, thresholds, and minimums and recommended alternative numbers based on their own analyses. Community group commenters also recommended more gradations to encourage more CRA activity, address the high share of banks receiving satisfactory ratings, and develop more rigorous grading. Some industry commenters stated that the agencies were limited in their ability to leverage existing data to test the proposed performance standards and thus should not finalize the proposal at this time. Other commenters suggested the agencies issue a new proposal.

The proposed performance standards were based on analyses of currently available historical data, using some assumptions to estimate how banks would have performed from 2011 through 2017 under the proposal's framework. The historical data used was the best available data and included CRA PEs, Call Report data, FFIEC CRA data, HMDA data, and credit bureau data. The proposal clearly explained the sources used and the analysis methods and also acknowledged that data limitations existed for the purposes of determining the appropriate benchmarks. Commenters had sufficient access to the data utilized by the agencies in formulating the proposed benchmarks to enable meaningful comment on the proposed benchmarks. As discussed in the preamble to the proposal, the agencies were able to rely

[151] The agency notes that, actually, under the proposal, activities that serve a broader geographic region that includes one or more assessment areas would still have received some credit in those assessment areas, as described in the activity location section of the final rule.

[152] In particular, many commenters were concerned that banks would gravitate toward debt instead of providing investments, unless a separate CD investment minimum is established.

[153] The average CRA evaluation measure refers to the average of a bank's annual CRA evaluation measures for an evaluation period or the average of the bank's annual assessment area CRA evaluation measure for an evaluation period.

[154] The agencies used the FFIEC's CD lending data and CD investment data from a sample of over 200 CRA PEs from OCC-regulated banks completed between 2011 and 2018 to estimate the on-balance sheet value of all banks' CD activities as a proportion of retail domestic deposits in the sample of banks analyzed in 2017. This data set did not include estimates of qualifying municipal bonds or mortgage-backed securities. This analysis showed that the estimated median on-balance sheet value of CD loans and investments *divided by* retail domestic deposits in 2017 was 1.9 percent for banks with assets of $2.5 billion or more. The OCC also reviewed the publicly available Board data, which is based on a sample of CRA PEs. While it does not include all CD loans and investments or all retail domestic deposits because the data does not include information on all assessment areas, the OCC's analysis of the Board's data shows that the estimated median on-balance sheet value of CD loans and investment *divided by* retail domestic deposits was about 2.3 percent for banks with assets of at least $2.5 billion within a bank's evaluation period.

[155] For example, some industry and other commenters expressed concern that the CD minimum was set too high and may be difficult to achieve in some assessment areas, such as those where there is intense competition for CD activities, or for certain banks.

[156] Some commenters complained that the OCC relied on historical data without explaining why that was appropriate.

on this data to propose potential benchmarks and thresholds based on a reasonable range of potential benchmarks and thresholds and solicit comment. Over time, the data collection, recordkeeping, and reporting requirements in the proposal would have remedied the existing data limitations.

Although the OCC was not limited in its ability to leverage the existing data, the agency agrees that the existing data was limited, rendering the agencies' and commenters' choice of thresholds uncertain. While the proposed thresholds for each of the three components of the objective evaluation framework were reasonable, the agency believes it would be appropriate to gather more information and further calibrate the benchmarks, thresholds, and minimums. In addition, although the OCC issued a Request for Information (RFI) to gather additional information to assist in revising the thresholds and benchmarks in the proposal as appropriate,[157] the data that the OCC gathered in response was too limited to reliably calibrate these measures for all banks subject to the general performance standards. Accordingly, the final rule does not contain benchmarks for the CRA evaluation measure, a specific CD minimum, or thresholds for the retail lending distribution tests. The OCC has concluded it is appropriate to finalize each component of the objective evaluation framework contained in the proposal (with revisions as described above) and to separately gather more data and conduct further analysis to calibrate the benchmarks, thresholds, and minimums associated with each of the three components of the framework. The framework in the final rule is the product of the careful application of the OCC's supervisory experience and policy judgments, analyses of available data, and consideration of public comments. Finalizing the framework achieves the agency's goal of producing a more objective, transparent, and consistent way to evaluate CRA performance. The OCC will issue another Notice of Proposed Rulemaking shortly that will explain the process the agency will engage in to calibrate more precisely the requirements for each of the three components of the objective evaluation framework. After receipt and consideration of comments to another Notice of Proposed Rulemaking and additional data collection and analysis, the OCC will set specific benchmarks, thresholds, and minimums. The OCC still expects to periodically review and adjust these benchmarks.

Community groups criticized the proposal's lack of explanation for the statement in the preamble that the agencies expect to review the CRA evaluation measure benchmarks every three years and questioned how the agencies would adjust for economic cycles. Similarly, industry commenters expressed concern that the benchmarks would lag the economic cycle, as well as subject banks to political volatility. One industry commenter suggested a three-fold approach: (1) Providing banks the option to use benchmarks set shortly after their evaluation periods ended; (2) establishing dynamic thresholds that do not lag the market but are adjusted as infrequently as possible; and (3) using general downward adjustments during evaluation periods in the case of a market-altering event. A few industry comments included additional suggestions, such as providing banks with at least one full evaluation cycle of notice before applying higher benchmarks.

Although the OCC considered ways to adjust the CRA evaluation measures automatically to account for changing economic conditions, it did not adopt any such measures in the final rule because, depending on the nature of the circumstances affecting the banking industry, different adjustments might be necessary. Additionally, implementing dynamic adjustments to the CRA evaluation measures would sacrifice the certainty provided by establishing measures at the beginning of a bank's evaluation period. Further, all sources of data the OCC could use to make such adjustments would likely also be lagging indicators. Instead, the final rule would allow examiners to consider various external factors affecting a bank or all banks' ability to meet their CRA evaluation measures, including unanticipated market factors or economic disruptions, through the application of performance context factors prior to assigning a final rating. Banks would be subject to the performance standards in place at the beginning of their evaluation period, which the OCC believes provides banks with ample notice.

Small and intermediate bank performance standards. Under the proposal, small banks would not have been evaluated pursuant to the general performance standards that consider a bank's CRA evaluation measure and the retail lending distribution tests. Instead, small banks would have continued to be evaluated according to the small bank performance standards applicable to small banks that are not intermediate small banks in the current CRA regulations, including the currently retail lending distribution tests, unless they were evaluated under an approved strategic plan or elected to opt into the general performance standards. Performance context factors and discriminatory and other illegal credit practices would have continued to be considered in evaluating a small bank's performance. The proposal's definitions of qualifying loans and CD services also would have applied to small banks. Small banks that engaged in qualifying activities as described in the proposal would have received consideration for those activities to the extent that they were consistent with the small bank performance standards and Appendix A. Small banks also would have been subject to the proposal's changes to the assessment area delineation requirements and would have been required to delineate deposit-based assessment areas to the same extent as other banks. In addition, under the proposed framework, small banks would have continued to refer to relevant guidance in the *Interagency Q&As* and existing policies and procedures, including with respect to state and multistate metropolitan statistical area (MMSA) ratings.

Some commenters were concerned that by raising the small bank threshold to include banks that are currently intermediate small banks the agencies would not encourage those banks to engage in CD activities. That is not the case. Although the proposed small bank performance standards did not include a separate CD test, banks subject to the small bank performance standards would have been able to engage in such activities. Under the current small bank performance standards that the proposal carried forward, as explained in *Interagency Q&As,* if a small bank performs any CD lending or CD lending-related investment activities, those activities are considered during the evaluation of the bank's performance. As stated in Appendix A of Part 25, all CD investments, even those that are not lending related, are considered in assessing whether a bank's performance is outstanding. The proposal would not have changed the current approach to evaluating small bank performance. However, to clarify that to the extent that small banks can and do conduct CD lending and CD lending-related activities, such activities will be looked upon favorably in CRA evaluations, the OCC revised the final rule to change lending-related activities to retail and community development lending-related activities. Other than this

[157] *See* 85 FR 1285 (Jan. 10, 2020).

change, the OCC finalized the small bank performance standards as proposed. The OCC finalized Appendix A as proposed because it specifically mentions that all CD investments are considered in assessing whether a bank's performance is outstanding.

The final rule also reintroduced the intermediate small bank performance standards used in the current framework, with one change. Intermediate small banks are now called intermediate banks to achieve better clarity in terminology; however, they will be evaluated in the same manner as intermediate small banks are currently. In addition, both intermediate and small banks can continue to refer to relevant guidance in the *Interagency Q&As* and existing policies and procedures, including with respect to state and MMSA ratings.

Other than the changes explained above and technical and conforming edits, the small bank provisions are adopted as proposed. In relation to the addition of the intermediate bank provisions and changes to the small bank provisions, the agency has made conforming changes throughout the final rule.

Wholesale and limited purpose banks. The proposal did not carry forward the separate performance standards for wholesale and limited purpose banks that are in the current rule. Commenters objected to this approach and stated that wholesale and limited purpose banks have been appropriately granted distinct CRA treatment in the past 25 years because their business models can differ markedly from most other banks. These commenters noted that designation as a wholesale bank means that the bank cannot be in the business of extending home mortgage, CRA-eligible business, CRA-eligible farm, or consumer loans to retail customers, but these wholesale banks may engage in limited retail lending on an accommodation basis. For designation as a limited purpose bank, an institution must offer only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market. The commenters asserted that it is inappropriate to apply the general performance standards to these banks and that the agencies should continue to apply the wholesale and limited purpose performance standards in the current rule because those standards appropriately assess the CRA performance of these banks.[158]

Although the proposal adopted a more streamlined approach to CRA that the OCC believed was flexible enough to accommodate all types of banks, the agency acknowledges commenters' concerns about wholesale and limited purpose banks. The OCC agrees that the current wholesale and limited purpose performance standards provide an effective framework to evaluate the CRA performance of those banks. The final rule exempts these banks from the general performance standards and carries forward the performance standards for wholesale and limited purpose banks that are in the current rule.[159]

In relation to the addition of the wholesale and limited purpose bank provisions, the agency has made conforming changes throughout the final rule.

Performance context. The proposal set forth performance context factors that the agencies would have considered in determining a bank's assigned rating and assessment area assigned ratings. Banks subject to the general performance standards would have submitted performance context information in a standardized format using a form on the agencies' websites to address the performance context factors. In addition, the agencies would have established evaluation procedures to help ensure that examiners applied performance context factors consistently. The performance context factors would have focused on the capacity of the bank to engage in qualifying activities, as well as both the demand for and the opportunity to engage in qualifying activities in the communities that the bank serves.

Some community group commenters voiced concerns that public comments would be considered in a constrained manner under the proposal. These commenters stated that the proposal did not expressly provide that the public could comment on banks' CRA performance. These commenters also observed that the agencies did not discuss whether they would facilitate public comments.

The final rule ensures that the OCC will be able to gather and assess valuable written public comments about local needs and opportunities submitted to a bank or the evaluating agency as a part of applying performance context factors. As these comments are considered prior to the issuance of CRA ratings, the rule does not diminish the impact of public comments on CRA performance ratings. With respect to submissions of these comments, the OCC will continue to explore technological and other methods to facilitate these submissions.

Some community groups stated that performance context factors should identify community needs through analysis of economic and demographic data, as well as community comments.[160] The OCC agrees and notes that the proposal provided for this type of identification of community needs both directly and indirectly through several performance context factors. Because of the diversity of the banking industry, however, a one-size-fits-all approach to community engagement does not exist. There are currently many methods of assessing the local demand for qualifying activities and the available opportunities to satisfy this demand by engaging with their communities. For instance, banks may sponsor events, forums, and other activities where community organizations, such as religious organizations, CDFIs, CD practitioners, and housing-related non-profits, can attend and provide feedback on local needs and opportunities. Banks may also respond to written comments from community stakeholders on different qualifying activity opportunities that arise or conduct demographic and economic research on finance needs in their community. Finally, banks may look to reliable sources that articulate local needs and opportunities based on interactions with the community and other types of research.

Two examples of such reliable sources include the Federal Home Loan Banks' Targeted Community Lending Plans (FHLB TCLPs) and local or state Consolidated Plans submitted to HUD for community planning and development programs.[161] FHLB TCLPs, which were referenced in the proposed regulation text, evaluate community lending and affordable housing needs, reflect market research conducted in and localized to a FHLB's district, and are developed in consultation with the FHLB's Advisory Council, members, housing associates, and public and private economic development organizations in the FHLB's district.[162] Each FHLB Advisory Council has 7 to 15 persons drawn from community and non-profit organizations actively involved in providing or promoting LMI

[158] One commenter additionally noted that the strategic plan option is a poor fit for banks that currently are designated as wholesale banks.

[159] Based on the agency's determination that the final rule will only consider activities conducted by a bank, the final rule does not carry forward the provision on affiliate activities in the current framework's community development test for wholesale and limited purpose banks.

[160] Community group commenters also advocated for requiring banks to meet with community groups or other stakeholders and specifically suggested recognizing community benefits agreements for identifying community needs.

[161] 12 CFR 1290.6(a)(5); 24 CFR part 91.

[162] 12 CFR 1290.6(a)(5).

housing in the district.[163] HUD Consolidated Plans, which the agency has added as an example in the regulation text as a source that identifies local needs and opportunities, provide information on the local or state jurisdiction's estimated affordable housing and CD needs and market conditions based on U.S. Census data, local studies, consultation with social service agencies, and other public input.[164] The final rule was revised to refer to both the FHLB TCLPs and HUD Consolidated Plans and to clarify that these plans are only examples of two reliable sources that articulate local needs and opportunities.

The OCC recognizes the value of banks' engagement with their communities. Community engagement enables banks to better determine and understand local needs and the availability of local opportunities to address these needs. The agency encourages banks to actively engage their communities in a manner commensurate with the banks' size, scope of activities, capacity, and resources. The final rule evaluates the effectiveness of a bank's engagement with its community, regardless of its method of engagement, as a part of the application of performance context factors. The agency will assess the responsiveness of a bank's qualifying activities to local needs, as well as the innovativeness, complexity, and flexibility of these activities; the availability of market opportunities to meet the local needs; and written comments about local needs and opportunities submitted to the bank or the OCC.

Some community groups and a few members of the public recommended lowering ratings if banks finance activities that cause displacement or other harm. The OCC agrees that it is important to consider both positive and negative qualitative aspects of a bank's CRA performance. Accordingly, certain qualifying activities criteria require that a bank demonstrate that its activities benefit or serve a targeted population, entity, or areas. Further, the rule considers the responsiveness of a bank's qualifying activities to local needs as part of the application of performance context factors. Lastly, as discussed below, the rule retains consideration of discriminatory and other illegal credit practices, which also can result in downward adjustments to ratings.

Many commenters expressed concern that the proposed CRA evaluation measure would not appropriately capture qualitative factors, such as the responsiveness of an activity to certain local needs. Although the proposed framework did not assign an explicit value to qualitative factors, such as the responsiveness of an activity, it would have evaluated these factors through the application of performance context factors. Although the OCC continues to believe that the application of performance context factors is the appropriate place to evaluate these and other qualitative factors, as discussed above, the final rule also adds a multiplier of up to four times an activities' quantified dollar value based on the OCC's determination of the activity's responsiveness, innovativeness, or complexity.[165] Although the proposed framework was designed to bring clarity and consistency to the agency's evaluation of a bank's CRA performance, it also sought to provide flexibility for a bank to engage in the CRA activities most appropriate for its unique context. The OCC and commenters agree about the importance of assessing qualitative factors. The OCC believes that framework in the final rule that allows multipliers for some qualitative factor along with providing for some qualitative application of examiner judgment in a more systematic manner is the best approach. Accordingly, the final rule will continue to assess qualitative factors, like responsiveness, through the application of performance context factors and allows for the application of multipliers for qualitative factors in some cases.

Some industry commenters asked for the agency to clarify how performance context factors would be factored into the proposed CRA benchmarks and associated ratings and how banks can provide the information on the relevant factors. Other industry commenters suggested that the performance context factors should only be additive to a bank's overall CRA score, as a downgrade would defeat the purpose of a quantitative system or should not be required if a bank was satisfied with its presumptive rating. Community group commenters expressed concern that the proposal did not sufficiently value performance context factors. Some community group commenters stated that the proposal's discussion of performance context factors suggests that it would be used mainly to excuse banks' failure to hit the targets.[166]

As proposed, no element of performance context factors would have had a predetermined weight and consideration of performance context factors could have resulted in examiners adjusting a bank's rating upwards or downwards. To provide clarity, the proposal set forth the criteria the agencies believed generally affect a bank's ability and opportunity to engage in qualifying activities. The agencies would have also considered the responsiveness, innovativeness, and complexity of a bank's qualifying activities. Due to the wide variety of factors and circumstances that may affect bank performance or opportunities, the OCC continues to believe that it is important to allow examiners to assess these specific qualitative factors by applying performance context factors for the bank and in each assessment area. Accordingly, other than the changes described above, OCC has adopted the performance context section as proposed. However, the OCC plans to issue guidance to examiners to promote consistent application of the performance context factors.

Discriminatory or other illegal credit practices. As proposed, the agencies' evaluation of a bank's CRA performance would have been adversely affected by evidence of discriminatory or other illegal credit practices. Specifically, in assigning a CRA rating, an agency would have first evaluated a bank's performance for the applicable time period and then made any adjustments to the presumptive rating that would have been warranted based on the application of the performance context factors, as described above, and any evidence of discriminatory or other illegal credit practices, consistent with the agency's policies and procedures.

Commenters expressed differing views on the appropriate effect of discriminatory or other illegal credit practices on banks' ratings. Some commenters requested additional information on the effect of evidence of discriminatory or other illegal credit practices on bank ratings. Such

[163] 12 U.S.C. 1430(j)(11).

[164] 24 CFR 91.205, 91.305.

[165] At least one community group commenter thought that the range of retail banking services should not be evaluated in performance context because it asserted that the application of performance context factors is largely bank driven. As described in the preamble to the proposal, the agency plans to issue additional guidance for examiners on how to evaluate the performance context factors in the final rule, including how to evaluate the range of retail banking services.

[166] Industry and community group commenters also suggested different elements that could be considered as part of performance context, such as (1) a bank's free retail banking services; (2) a bank's affordable housing activities; (3) a bank's available loan terms and conditions; (4) the unique issues related to military-base banks; (5) a standard for measuring diversity and inclusion; and (6) specified CD activities. The OCC notes that most of these elements are covered by the performance context factors in the proposal and the final rule.

evidence, whether within or outside an assessment area, affects bank ratings under the final rule. An assessment area rating only considers evidence of discriminatory other illegal credit practices that occur within the assessment area. This rule does not change the OCC's policy for determining the effect of evidence of discriminatory or other illegal credit practices on the CRA rating of a bank. Several commenters suggested that the agencies apply additional scrutiny and bolster reviews for evidence of discriminatory, abusive, predatory, or otherwise illegal credit practices in connection with evaluations of banks' CRA performance, such as by including quantitative analysis of lending to communities of color and more detailed descriptions of banks' compliance with anti-discrimination and consumer protection laws. One commenter suggested that CRA evaluations should ensure that communities of color have fair access to the banking system. Two community groups recommended that the agencies retroactively downgrade CRA ratings when fair lending examinations find violations that occurred during a prior period and that the agencies wait to issue CRA ratings and approve licensing applications until the completion of ongoing fair lending examinations.

The OCC assesses and examines banks for compliance with consumer protection laws and regulations as part of its ongoing supervisory activities and takes such action as may be appropriate under the applicable laws and regulations to address any deficiencies or violations.[167] As in the past, the OCC will continue to take evidence of discriminatory or other illegal credit practices into account in evaluating CRA performance. Depending on the circumstances, a bank's assigned rating may be lower than its presumptive rating due to such evidence. After considering the comments, the agency is finalizing the discriminatory and other illegal credit practices section as proposed. The OCC will apply its current policies and procedures regarding the consideration of discriminatory and other illegal credit practices.

Strategic plans. Under the proposal, a bank would have had the option to develop a strategic plan for addressing its CRA responsibilities and to be evaluated based on its performance under the plan. Under the proposal, a bank's strategic plan would have been developed with public participation and would have included measurable goals for helping to meet the credit needs—particularly the needs of LMI census tracts and individuals—of its assessment area(s) and entire community through qualifying activities.

Some industry commenters stated that the proposal's strategic plan option appeared to be limited to larger or non-traditional banks and recommended that the agencies make this option more accessible to all banks. The OCC believes that these commenters may have misunderstood the availability of the strategic plan option. This option is open to all banks, not just larger or non-traditional banks. However, as performance context factors will be applied for all banks under the general performance standards, and the final rule includes separate performance standards for small, intermediate, wholesale, and limited-purpose banks, there may be only limited circumstances where strategic plans will be beneficial to banks.

Some commenters also recommended exempting strategic plan banks from the assessment area requirements of the general performance standards. Allowing banks to propose the areas where they are evaluated without any constraints would cause great uncertainty in CRA evaluations. Banks evaluated under the strategic plan option are subject to the same statutory provisions that require the OCC to evaluate performance in certain geographic areas. For these reasons, the OCC has decided to not exempt strategic plan banks from the assessment area requirements. However, the rule does not otherwise tie the evaluation of a strategic plan to evaluation under the general performance standards. The strategic plan option provides flexibility but does not result in lower expectations for bank performance.

Some industry commenters requested guidance on how to draft strategic plans.[168] Since there is more than one appropriate way to draft a strategic plan, the OCC plans to provide general guidance for banks on this issue. However, the OCC notes that each strategic plan should be tailored to the unique characteristics and needs of the bank.

Some industry commenters expressed concern that the nine-month timeframe for regulatory approval of a strategic plan is too long. These commenters recommended that the timeframe should be revised to 90 days with a potential 30-day extension for good cause. They also stated that amendments to strategic plans should be approved within 90 days and that absent a change in business model, strategic plans up for renewal should always be approved. The OCC notes that the timeframe for regulatory approval of a strategic plan in the proposal was six months. The agency agrees that the timeframe for approval of a strategic plan can and should be shorter. The final rule states that the OCC will determine whether to approve strategic plans within 90 days with an option for one 30-day extension for good cause. Further, absent a change in business model or other material circumstances, the agency expects that applications for renewals of strategic plans that have previously been approved under this final rule will be approved.

In light of the reintroduction of the wholesale and limited purpose performance standards, the final rule also eliminates the requirement that small banks that do not engage in retail lending submit a strategic plan, as these banks can now receive a wholesale bank designation. Other than these changes and other technical edits, the OCC has finalized the strategic plan section as proposed.

Assigned ratings. The OCC largely adopts the assigned rating sections as proposed, with clarifying edits to accommodate the addition of the intermediate size category and the inclusion of separate performance standards for wholesale and limited purpose banks. The final rule also rectifies an inadvertent omission in the proposal by clarifying that the agency will consider any evidence of discriminatory or other illegal credit practices when assigning ratings for banks evaluated under a strategic plan. The final rule also clarifies that state or MMSA ratings will be assigned based on the ratings assigned to the assessment areas within that state or MMSA. The OCC plans to provide additional guidance to examiners about how to assign those ratings.

Conforming, clarifying, and technical changes. Other than the changes explained above and technical, clarifying, and conforming edits, the agency is the performance standards as proposed.

[167] In some instances, regulatory agencies other than the OCC may have supervisory and/or enforcement authority with respect to the law or regulation at issue. For example, the Consumer Financial Protection Bureau has supervisory and primary enforcement authority under Equal Credit Opportunity Act for insured depository institutions with more than $10 billion in total assets. 12 U.S.C. 5481(12)(D), 5481(14), and 5515(a)(1).

[168] One industry commenter suggested incorporating existing strategic plan guidelines. The OCC expects to leverage existing guidance to the extent practicable.

D. Data Collection, Recordkeeping, and Reporting

Today's CRA regulatory framework results in CRA PEs that can be in excess of 1,000 pages. Current CRA PEs are difficult to read and use and make it challenging to draw comparisons from bank to bank or from one bank evaluation period to the next. By defining qualifying activities consistently and making CRA evaluations more objective, the proposal would have enabled examiners to produce more standardized CRA PEs in less time than the current framework. More systematic and standardized information would enable the OCC to assess the level of qualifying activities being conducted by banks. More complete and accessible information will improve and accelerate decision making for regulators and stakeholders.

Greater transparency through more comparable and timely data and information will increase accountability by ensuring that ratings are more accurate reflections of the level of CRA activities that banks conduct. Common definitions and better data over time will allow the OCC to adjust the thresholds and benchmarks for delineating deposit-based assessment areas and the levels of performance necessary to achieve certain rating categories. Objective measures, reported in a transparent manner, will allow banks to assess performance and progress.

Consequently, the final rule includes enhanced data collection, recordkeeping, and reporting requirements to support the new CRA regulatory framework. Like the proposal, the final rule includes data collection and reporting requirements for banks evaluated under the general performance standards or a strategic plan and separate requirements for banks evaluated under the small bank performance standards. The final rule also adds separate requirements for the reintroduced categories of intermediate, wholesale, and limited purpose banks.

Data collection for banks evaluated under the general performance standards or a strategic plan. As set forth in the proposal, a bank evaluated under the general performance standards or a strategic plan would be required to collect and maintain a variety of data about its qualifying activities and where each activity took place. Some industry commenters and community groups expressed concerns that these proposed requirements would necessitate the development and implementation of costly new data systems for information that banks may not currently collect or have direct access to, with industry commenters noting that costs associated with information collection would outweigh benefits.

The OCC recognizes that there are costs associated with the final rule's data requirements—both the upfront costs of developing and implementing new systems and the costs of ongoing data collection and maintenance. The clarity and certainty provided to banks by the final rule will offset these costs and the added benefit to the banks and stakeholders warrants such additional costs. Third-party service providers may also be able to help banks meet these new data-related requirements in a cost-effective manner due to their economies of scale. Furthermore, certain changes to the proposed qualifying activities, assessment areas, and performance standards adopted in the final rule will likely reduce the costs of the new framework's data requirements. The data that banks will collect under the final rule may also provide them with non-CRA-related benefits, for example, by providing them with new information about, and insights into, the communities they serve as well as the activities of peers and the broader industry.

A few commenters expressed concern regarding how the OCC will address data integrity issues and made certain requests and recommendations, including that the agency provide safe harbors, clarifying accuracy expectations, and not use data inaccuracies as a basis for rating a bank less than satisfactory. One commenter recommended that the agency provide a means for offsetting the costs associated with data retention and provide a work-through period in data retention to avoid overly burdensome immediate impacts. The OCC believes that the long-term benefits will outweigh the costs.

A few industry commenters also expressed concerns about the cost of collecting data on consumer loans because banks may not have the physical addresses associated with the loans. The OCC recognizes that consumer loans present unique data challenges. To address these concerns, under the final rule, credit cards are no longer included in a bank's CRA evaluation. Having removed credit cards from the definition of consumer loan, the OCC determined that it was appropriate to simplify the compliance dates, as discussed below.

Industry commenters sought clarity on the frequency of the proposal's deposit data collections. The commenters stated that the proposed requirement that banks collect and maintain information on the value of each retail domestic deposit account at the end of the quarter and the physical address of each depositor would require that this data be captured, validated, retained, and not modified during the entire evaluation period. To do this, banks would likely have to move the data out of one system and into another, which commenters noted was not something that most banks currently do and would be costly to implement. Some commenters also voiced concerns that capturing depositors' physical address every time they move would be costly.[169] Other commenters remarked that the proposal's requirement to geocode at the census tract level would require the manual coding of some accounts. These commenters suggested that even a revision enabling banks to geocode deposit accounts to the county level would difficult, especially for small banks. A few commenters provided suggestions for reducing the burden associated with geocoding, including: (1) Using system reports based on zip codes to identify retail domestic deposits within and outside assessment areas; (2) providing a developed process to enable banks to make this determination; (3) allowing banks to use the address provided at account opening or the address on file, even if that address is a P.O box; (4) correlating deposit account addresses to counties or assessment areas; (5) geocoding retail domestic deposits only on an as-needed or annual basis, or in response to a triggering event; or (6) providing exemptions in certain circumstances for maintaining geocoded retail domestic deposit data.[170]

The agency appreciates these concerns. However, to implement the performance standards adopted in this final rule, which will enable the agency to better assess banks' CRA performance to serve their entire communities, the OCC needs to know, as of the end of each quarter, the value of a bank's retail

[169] Although the USA PATRIOT Act requires that a bank collect the physical address for a new depositor, accounts opened prior to 2001 without this information were grandfathered. Public Law 107–56, 115 Stat. 272 (2001). Some of these accounts may still be missing this information.

[170] Two industry commenters requested confirmation that banks could rely on the physical address provided by the depositor without additional verification. The OCC confirms that banks may rely on the physical address provided by the depositor. Another commenter sought clarity on the frequency of retail deposit data collection and reporting. The final rule requires quarterly collection of the value and the physical address and associated Federal Information Processing Standards (FIPS) code for each retail domestic deposit account. Banks will have to report their average quarterly retail domestic deposits annually.

deposit account and the physical address of each depositor. Furthermore, the agency does not believe that the new data collection requirements will be as burdensome as industry commenters suggest because banks are generally already collecting much of this data in the ordinary course of business, although it may not be contained on the same systems. For these reasons, the final rule adopts these provisions generally as proposed, but clarifies that retail domestic deposit accounts need to be geocoded to the county level, not the census tract level, because the county is the smallest permissible assessment area under the final rule. As provided in the final rule, the OCC will prescribe the machine-readable form for collecting and maintaining CRA data, and the OCC plans to provide further detail on the data that banks must collect and maintain.

With respect to the proposed requirement that banks collect and maintain certain balance sheet information, industry commenters were generally opposed to this provision, although some expressed a willingness to collect and maintain this information on CD activities. The agency notes, however, that the on-balance sheet values required to be collected and maintained in the final rule will provide the OCC with an important measure of a bank's qualifying activities. Because the performance standards in the final rule include consideration of this data, the final rule also retains the requirement for banks to collect and maintain this information.

As proposed, banks subject to the general performance standard would have to collect, maintain, and report their presumptive ratings and the results of their CRA evaluation measure calculations and retail lending distribution tests. The proposal did not require that banks collect, maintain, or report the results of their CD minimums calculations, which were also a component of the general performance standards. Commenters suggested that the final rule should include data collection, recordkeeping, and reporting requirements for the CD minimums. The final rule includes data collection and recordkeeping requirements for banks' CD minimum calculations and the supporting documentation associated with these calculations.

Certain industry commenters noted that the proposal is unclear about how to treat a bank's existing book of business. Commenters further noted that much of the information required by the proposal, such as addresses or income information, may not have been gathered for loans that are already on banks' balance sheets or may have been gathered at too remote a time to be relevant. Accordingly, the retroactive application of requirements to measure a bank's current portfolio would be challenging. In response to these concerns, the agency is grandfathering activities that would have received positive consideration in a CRA evaluation under the current framework and are on a bank's balance sheet on the effective date of the final rule, other than home mortgage loans and consumer loans provided to middle- and upper-income individuals in LMI census tracts. Grandfathered activities will be considered qualifying activities for purposes of calculating the bank's CRA evaluation measure but will be subject to more limited data collection, recordkeeping, and reporting requirements, discussed below.

Regarding retail lending data, industry commenters and community groups recommended that the OCC use existing datasets and reporting structures, such as those related to HMDA data, rather than create a new framework. HMDA data would not provide the OCC with the information it needs for purposes of evaluating CRA performance. First, many banks subject to CRA are not HMDA reporters. Second, HMDA data only includes information about the origination value of home mortgages and does not contain the on-balance sheet value of these loans needed under the final rule's performance standard framework. The OCC needs banks to collect and maintain this on-balance sheet information to implement the framework in the final rule.

A community group noted that if qualifying activities data includes multipliers, stakeholders will be unable to assess whether CRA activity is increasing and the needs of local communities are being met. Consistent with the proposal, the final rule requires banks to collect and maintain the quantified dollar value of activities before applying multipliers. The final rule also adds a requirement that banks collect and maintain an indicator of whether a multiplier applies. Therefore, the final rule will provide all stakeholders with more transparency regarding banks' CRA activities than exists today. In addition, multipliers will not apply to CD activities unless a bank maintains approximately the same level of CD activities as in the prior period.

One industry commenter noted that increasing the size of small loans to businesses and farms will result in the corresponding Call Report codes no longer capturing all loans that qualify for CRA credit and suggested that the OCC develop a new method to obtain information about these loans. The OCC recognizes that the new framework will not align with other existing data reporting requirements and processes but the benefits of clarity and transparency regarding CRA activities provided by the final rule outweighs the costs of maintaining and reporting data. Additionally, as discussed above, the framework in the final rule provides banks the flexibility to treat qualifying small loans to farm or qualifying small loans to businesses that also qualify under a CD criterion as CD loans for purpose of meeting the CD minimums.

A few industry commenters argued that the proposal's requirement that banks collect non-qualifying home mortgage and consumer loan origination data, should be removed in the final rule.[171] The final rule retains this provision, however, because the agency needs this information to conduct a bank's retail lending distribution test and to determine the appropriate peer comparators for those tests. Furthermore, although the proposal would not have required banks to collect data on non-qualifying small loans to businesses and small loans to farms, the final rule extends the data collection requirements to include these loans because this data is needed to evaluate bank performance, conduct a bank's retail lending distribution test, and determine the appropriate peer comparators for those tests.

The final rule includes other revisions to the data collection provisions. Specifically, to ensure that the OCC can validate banks' retail lending distribution tests, CRA evaluation measures, and presumptive ratings, banks must collect and maintain supporting documentation related to these calculations. The final rule also requires that banks collect, maintain and report information on the number of home mortgage loans originated in LMI census tracts. In addition, the final rule reduces the length of time that banks must maintain data by providing that data must be maintained until the completion of the relevant CRA evaluation.

A few industry commenters expressed concerns regarding the proposed requirements to collect, maintain, and report data on CD services, citing concerns that the costs of doing so

[171] Another commenter expressed concern that the proposal would require banks to collect and maintain information on denied consumer loan applications. The OCC notes that the final rule does not require banks to collect information on denied consumer loan applications.

would outweigh any CRA benefit.[172] The final rule's CD-related data collection, recordkeeping, and reporting requirements are necessary to assess and validate banks' CRA performance under the revised framework. Nonetheless, the OCC acknowledges the burden issues raised by commenters. The final rule revises the treatment of CD services as suggested by commenters to use a standard for the median hourly compensation value for the banking industry based on Call Report data for (1) median salaries and employee benefits from Schedule RI, Item 7.a; and (2) the median number of full-time equivalent employees from Schedule RI Memorandum Item 5.

Other commenters suggested that the agencies increase data collection related to retail banking services, in part to determine whether products and services are affordable. The agency is not including additional data collection related to retail banking services in the final rule, but it notes that banks are required to report performance context information.

One industry commenter noted that the frequency of the data collection, recordkeeping, and reporting requirements did not match the six-month review period for the qualifying activities list confirmation process, which is reduced to 60 days in the final rule. The data requirements and the qualifying activities confirmation process serve different purposes and the applicable periods would not necessarily begin at the same time, making alignment unnecessary.

One industry commenter requested that the OCC clarify that the banks can use the address of the account holder of record as the address for an omnibus or intermediate deposit account. Another industry commenter requested clarify the information and documentation needed for CD loans. The final rule requires banks to collect and maintain supporting documentation. The agency notes that banks bear the burden of establishing that qualifying activities are eligible for CRA credit and the information they collect will permit the OCC to confirm the activities' eligibility. The OCC will provide additional guidance on the final rule's data collection requirements related to the general performance standards and the other performance standards discussed below.

In addition to the changes discussed above, the final rule includes conforming and technical changes throughout the data collection section, but this section is otherwise adopted as proposed.

Evaluation under the wholesale and limited purpose bank performance standards. The final rule maintains the wholesale and limited purpose bank performance standards from the current framework, while making the expanded qualifying activities criteria in the new qualifying activities section applicable to those banks. The final rule requires banks evaluated under the wholesale and limited purpose performance standards to collect and maintain information about CD activities, including an indication of which new qualifying activity criteria these activities satisfy. These banks will also be required to collect and maintain information on retail domestic deposits, including the physical address of the depositor, and their assessment areas. This data collection is necessary to ensure that the OCC has the information required to evaluate banks' CRA performance.

Evaluation under the small and intermediate bank performance standards. As proposed, banks evaluated under the small bank performance standards were generally exempt from the data collection, recordkeeping, and reporting requirements except they would have been required to collect and maintain information on retail domestic deposits, including the physical address of the depositor. These requirements were included in the proposal to determine whether a bank was required to delineate deposit-based assessment areas and allow the agencies to validate those determinations. The proposal sought comments on whether there were other ways to limit the recordkeeping burden on small banks.

In response, some industry commenters stated that small banks should be exempt from the retail domestic deposit data collection and recordkeeping provisions in the proposal because of the burdens associated with this provision. Some community groups opposed allowing small banks to opt out of the deposit-related data collection and record-keeping requirements. The OCC believes that the proposed data collection and recordkeeping requirements for small banks evaluated under the small bank performance standards are appropriate, and the final rule adopts them as proposed and applies them to intermediate banks. Reporting small or intermediate bank retail domestic deposit data is not necessary because the OCC will validate assessment area delineations during evaluations. Therefore, the final rule does not impose any reporting requirements on banks evaluated under the small bank performance standards.

Data collection for grandfathered activities. Some industry commenters requested additional clarity on the treatment of a bank's existing book of business under the proposal. These commenters noted that the data required to be collected under the proposal may not have been gathered at origination for these loans, or that it may have been gathered at too remote a time to be relevant. The agency recognizes that identifying qualifying on-balance sheet activities may be burdensome. The final rule provides for grandfathering of existing on-balance sheet activities that either qualified in previous CRA evaluations or would have qualified under the current CRA framework. For grandfathered qualifying activities, the final rule includes only the data collection requirements necessary to determine the quantified dollar value of those activities. The agency expects that banks will identify on-balance sheet activities that would not qualify under the current CRA framework but qualify under this final rule based on the information that was or would have been gathered at the time of origination. Although there may be some data collection burden associated with the look back process for activities that now qualify for CRA credit, the agency anticipates that this look back will not be overly burdensome because full compliance with the new regulations will not be required until January 1, 2023, and the number of these now qualifying activities will likely be very small.

Activity Location. The proposal set forth provisions explaining how banks would determine the location of an activity for purposes of the data collection requirements. Industry commenters suggested alternatives for determining the location of certain activities with a broad geographic focus. The final rule does not revise the treatment of activity location. The agency believes that banks should get credit in their assessment areas for activities that serve or benefit their assessment areas because this is most consistent with the statutory purpose of CRA. For purposes of determining activity location, qualifying activities that are not conducted within assessment areas will receive credit in a bank's qualifying activities value and not in any bank assessment area qualifying activities value. Qualifying activities that are partially allocated to an assessment area will receive CRA credit in the bank's qualifying activities

[172] Other commenters suggested that the tracking of CD service hours be optional.

for the amount of the activity that is not allocated to another assessment area.

One industry commenter suggested that banks use the FFIEC website for geocoding and that banks should not be expected to conduct further research. The final rule's performance standards require banks to identify the location of their loans and other activities but do not specify the method of geocoding. If a bank cannot identify the location of its qualifying activities it will receive credit for those activities in its bank CRA evaluation measure.

One industry commenter requested clarification as to whether the rule requires aggregate or separate collection and reporting of LMI categories. The OCC confirms that data collected for LMI census tracts may be aggregated because the rule does not separately evaluate low-income and moderate-income tracts for performance standards purposes.

The agency is adopting these provisions as proposed, with a minor change to clarify that banks are expected to record the location of a consumer loan at the time of origination.[173] As explained above, under the final rule, a bank would not be expected to track, over time, the borrower's income or other qualifying criteria or re-classify qualifying activities as non-qualifying if income or other qualifying criteria change.

Finally, some industry commenters recommended that the agency clarify the data collection requirements for CD activities that serve multiple locations. The agency will provide guidance to further clarify these requirements.

Recordkeeping. As with the proposal, the final rule will require banks to collect and maintain all necessary data in machine readable form. To facilitate compliance with the data collection and record-keeping requirements, the OCC will provide additional guidance on the specific data points that a bank will need to collect and maintain and the format in which the data will need to be recorded. One industry commenter requested confirmation that CRA data may be maintained in any system and provided in any machine-readable format. The final rule requires banks to maintain the data in machine readable format, as prescribed by the OCC, to ensure the validity and integrity of the data. The agency made conforming revisions in the final rule to apply the recordkeeping requirements to intermediate, wholesale, and limited purpose banks. The final rule otherwise adopts the recordkeeping section as proposed.

Data reporting. The proposal required banks evaluated under the general performance standards to report to the OCC some, but not all, of the CRA-related data that these banks are required to collect and maintain. Community groups recommended, instead, that all CRA-related data that banks collect and maintain should be reported and made public. Several commenters recommended county-level, or ideally census tract-level, reporting of CD activities, retail lending, and deposit data. These commenters were concerned that the limited public data in the proposal would not provide the public with enough information about banks' CRA performance. With respect to concerns that the final rule will not make enough CRA-related information available to the public, the agency notes that all facts and data supporting the agency's conclusions and ratings will continue to be available in banks' publicly available CRA PEs. The OCC is committed to improving transparency under the CRA and, as it accumulates data over time, will work to develop aggregate reporting of activities by various geographies, while ensuring that confidential supervisory information, confidential commercial information, and personally identifiable information are appropriately protected. At this time, however, the final rule does not adjust the scope of the public data reporting. As with any other rule, the agency will issue guidance as part of the administration of the rule to provide clarity on when banks will have to report data to the agency.

One industry commenter recommended that the agency make reporting of presumptive ratings optional, rather than mandatory. The agency notes that the purposes of the new framework include enhanced transparency and tracking of CRA activity. Therefore, the final rule continues to require reporting of presumptive ratings, which will be validated by the OCC examiners.

One industry commenter stated that the reporting requirements for contingent commitments to lend were unclear and recommended reporting the commitment rather than the outstanding amount. The final rule, like the proposal, requires reporting of the quantified dollar value of qualifying loans and CD investments. As described above, the quantified dollar value of certain commitments to lend and legally binding commitments to invest is the full amount of the commitment. Other commitments to lend are quantified based on any on-balance sheet amount plus the allowance for credit losses related to the commitment itself.

After considering these and other comments, the agency is adopting the reporting requirements as proposed, with a few changes. The final rule requires banks to report the results of their retail lending distribution tests and their presumptive ratings at the end of the evaluation period, not annually as proposed, in recognition of the fact that banks cannot determine the test results and presumptive ratings until the end of the evaluation period. The final rule also clarifies that banks will only have to report performance context information prior to their CRA evaluations.

A few industry commenters made recommendations related to the method of reporting information including suggesting that the agency create portals or spreadsheets to assist banks with these requirements. The OCC will provide banks with a reporting form to assist them in meeting these requirements.

Several industry commenters stated that it was unclear whether over- or underreporting would result in penalties, and one commenter suggested that the agency incorporate aspects of the current framework that do not contemplate penalties regarding CRA data. The OCC notes that the CRA is designed to encourage banks to engage in activities. The agency will work with banks to ensure accuracy of reported data but, as with the current framework, the agency does not contemplate penalties regarding CRA data, especially since the CRA statute does not provide a basis for OCC enforcement actions.[174]

One industry commenter argued that any reporting or disclosure requirements that do not serve a specific purpose under the new framework, such as activities that do not count toward the CRA evaluation measure, would violate the Paperwork Reduction Act. The agency notes that all the information required by the data collection, recordkeeping, and reporting requirements is needed to determine and validate bank performance.

Industry commenters also sought clarification regarding aspects of the reporting requirements. The agency confirms that banks must report qualifying donations, which are included in the quantified dollar value of their CD investments. The agency also notes that more detailed reporting of originated loans is required for the

[173] The agency believes the proposal was clear about the time at which the bank should record the location of the activity for other types of activities and, therefore, no other clarification is needed.

[174] *Auth. of the Fed. Fin. Supervisory Agencies Under the Cmty. Reinvestment Act,* 18 U.S. Op. Off. Legal Counsel 249 (1994).

purposes of the retail lending distribution test. However, banks must also report the quantified dollar value of all qualifying CD and retail loans, whether originated or purchased.

The final rule also includes reporting requirements for wholesale and limited purpose banks. The agency included reporting requirements for these banks to be consistent with the proposal and the current framework. Specifically, under the proposal, banks that meet the definition of wholesale or limited purpose bank in the final rule would have been evaluated under the general performance standards, unless they had assets of $500 million or less. Further, wholesale and limited purpose banks have reporting requirements under the current framework. The final rule requires that wholesale and limited purpose banks report information on their CD loans and CD investments, assessment areas, and performance context. The final rule also includes conforming edits related to the reporting requirements for wholesale and limited purpose banks.

In addition to the revisions described above, the final rule includes the following clarifying and conforming revisions: (1) Adds the words as applicable to the performance standards reporting requirements to clarify that not all banks that must report data will have information to report; (2) removes the data collection certification requirement given that the final rule does not permit banks to include affiliate activities; (3) changes the term quantified value to the term quantified dollar value to be consistent throughout the final rule; and (4) makes other technical and conforming revisions related to the changes discussed above.

Certain industry commenters suggested that banks operating under strategic plans should be exempt from data collection, recordkeeping, and reporting requirements that are not measured in the bank's strategic plan. One commenter noted that the data could be misleading to those who are unaware that a bank is operating under a strategic plan. Like the proposal, the final rule generally subjects banks operating under a strategic plan to the same data collection, recordkeeping, and reporting obligations as banks operating under the general performance standards, unless determined otherwise in writing by the OCC. The agency will consider appropriate exemptions from specific data collection, recordkeeping, and reporting requirements based on individual facts and circumstances.

Several industry commenters suggested that the agency allow CDFI reporting requirements to satisfy a bank's CRA data collection, recordkeeping, and reporting requirements. Similarly, one community group suggested that the agency recognize bank data reported under certain federal programs and that regulators develop protocols and procedures to share data while protecting proprietary information. Because the data collection, recordkeeping, and reporting requirements in the final rule are necessary to assess and validate CRA performance, the agency is not adopting these recommendations. The agency cannot ensure that these alternative reporting requirements will provide the information needed for CRA purposes. Other than the changes discussed above, the agency is finalizing the reporting section as proposed.

Public disclosures. Under the proposal, the agency would have made certain information that banks provide publicly available through individual and aggregate CRA Disclosure Statements, allowing stakeholders to observe trends and monitor and compare banks' CRA activities. In addition, the agency would have published each bank's ratings and a list of banks rated outstanding. Banks that received a bank assigned rating of outstanding would have received a certificate or seal of achievement to display on their websites and in their main office and branches. One industry commenter suggested that the agency also publish a list of banks rated satisfactory. Because each bank's rating will be published in its CRA PE and the list is intended to identify and encourage outstanding CRA performance, the final rule adopts the public disclosure provisions as proposed, except for a minor change replacing quantified value with quantified dollar value to use consistent terminology throughout the rule. Banks that are rated satisfactory are encouraged to inform their customers and communities of such a rating.

One industry commenter requested that the agency take steps to protect banks' financial information and their customers' information in the CRA Disclosure Statements. The agency recognizes the importance of protecting this information and will, consistent with applicable law, appropriately protect confidential supervisory information, confidential commercial information, and personally identifiable information from disclosure in the CRA Disclosure Statements issued under the final rule.[175]

One industry commenter recommended that performance standards data not be disclosed to the public because they would not represent performance over the entire evaluation period. The agency agrees and notes that the final rule requires reporting of presumptive ratings and retail distribution tests only at the end of an evaluation period.

A few community groups and industry commenters recommended that data on the geographic location of deposits be made publicly available if deposit-based assessment areas are adopted. As described above, the agency will make public aggregate data based on the information reported by banks. However, the final rule does not include public disclosure of deposit data consistent with the current CRA framework. The information about a bank's deposit-based assessment areas will be included in banks' CRA PEs. The agency does not think additional information is necessary, especially in light of the additional reporting burden that disclosure would require.

The proposal would also have retained many of the current regulation's provisions related to the public file,[176] planned evaluation schedules,[177] public notice by banks,[178] and the CRA notice.[179] Banks still would have needed to provide public notice to the communities they serve. Banks would also have needed to provide CRA-related information to community members upon request. CRA-related information would have included information about banks' branches, locations, and services, comments received from the public related to assessment area needs and opportunities, and responses to those comments. Other than technical and conforming edits, the agency is adopting these provisions as proposed.

Under the proposal, banks would not have had to provide data reported through HMDA in the public file. Some community groups opposed removing

[175] The OCC has treated and will continue to treat confidential commercial information submitted to the agency in accordance with 12 CFR 4.16, consistent with *Food Marketing Institute* v. *Argus Leader Media,* 139 S. Ct. 2356, 2363 (2019), and the *Step-by-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential Under Exemption 4 of the FOIA* (U.S. Department of Justice, Oct. 7, 2019), available at *https://www.justice.gov/oip/step-step-guide-determining-if-commercial-or-financial-information-obtained-person-confidential.*

[176] 12 CFR 25.43, 195.43.

[177] 12 CFR 25.45, 195.45.

[178] 12 CFR 25.44, 195.44.

[179] 12 CFR part 25 Appendix B.

HMDA data from banks' public files and suggested adding supplemental requirements if HMDA data is insufficient. They also opposed replacing HMDA data with Call Report data because the latter does not include borrower income information. Because the final rule does not rely on HMDA data, the agency is not requiring that the public file include HMDA data in the final rule. HMDA data will remain publicly available on the Consumer Financial Protection Bureau's website.[180]

Additionally, under the proposal, banks would no longer have been limited to providing public notice or the public file through physical means. Instead, banks would have had the option to provide public notice or the public file on their websites. The preamble to the proposal indicated that if a community member who requested CRA-related information did not have access to the internet, banks could offer to print out the information at that person's expense, instead of copying the information from the physical file.

One community group opposed the proposal of allowing banks to charge a fee for physical copies of the public file, which is permitted by the current rule.[181] The final rule, like the proposal, allows banks to make the public file available to the public through any means. The agency encourages banks to make the public file as accessible as possible and consider not charging fees for physical copies.

Evaluation periods and issuance of CRA PEs. The proposal did not specify the length of CRA evaluation periods. However, the proposal stated that banks that received an outstanding CRA assigned rating would have been subject to a five-year CRA evaluation period, unless the data reported indicates that an earlier evaluation is warranted. Some commenters suggested that the final rule specify the length of evaluation periods. The agency believes that the current regulatory framework, in which the regulation does not specify the length of an evaluation period, continues to be appropriate and the agency will continue its current practice of publishing evaluation schedules to provide sufficient clarity and flexibility. Although the agency is finalizing the rule without specifying the length of an evaluation period, the agency expects that, in general, evaluation periods will be between three years and five years in length.

[180] HMDA data can be accessed here: *https://www.consumerfinance.gov/data-research/hmda/historic-data/*.

[181] 12 CFR 25.43(d), 195.43(d).

Some community groups expressed concern about the five-year evaluation cycle for banks rated outstanding, including that it would not sufficiently incentivize banks to consistently help to meet the credit needs of their communities and that data considered in merger transactions could be stale. In contrast, an industry commenter recommended that the evaluation period for a bank rated satisfactory be four years. The agency notes that the concern about inconsistent performance is mitigated by the fact that the final rule incentivizes banks to consistently meet the needs of their communities by using the average on-balance sheet value of many qualifying loans and investments. The agency also emphasizes that, while it is maintaining the expectation of a general five-year evaluation cycle for banks rated outstanding, the final rule requires banks to report data annually, including banks with outstanding ratings that would be evaluated every five years. In addition, the agency will continue to make available all banks' annual CRA Disclosure Statements, which include information about the aggregate quantified dollar value of the bank's qualifying activities by category and the number of retail loans in each county, by type. The annually-reported information will allow the agency and interested stakeholders to track and monitor bank performance. The agency does not plan to implement the commenters' recommendation that banks with satisfactory performance have four-year evaluation periods because it expects all banks should strive to achieve satisfactory performance and the five-year evaluation cycle was meant to recognize exceptional performance.

One industry commenter recommended that the final rule define the term evaluation period. The agency believes that the preamble to the proposal and this final rule make clear that the term refers to the multiyear period over which a bank's CRA performance is evaluated and assigned a rating. The final rule does not include it as a defined term.

Two community groups and two industry commenters recommended that the agency issue CRA PEs within a pre-determined amount of time from the end of the CRA evaluation. The agency intends to issue CRA PEs in as timely a manner as possible. Because a variety of factors can cause some CRA PEs to require more time to complete than expected, including the consideration of discriminatory and other illegal credit practices, the agency is not adopting a time limit in the final rule. The agency notes, however, with improved data and more objective evaluations, the agency expects that evaluations will be published quickly and more consistently after the close of an evaluation.

Conforming, clarifying, and technical changes. Other than the changes explained above and conforming, clarifying, and technical revisions, the OCC is adopting the data collection, recordkeeping, and reporting requirements as proposed.

E. Other Issues

Effective date, compliance dates, and transition. The agencies proposed an effective date of the first day of the first calendar quarter that would have begun at least 60 days after the issuance of the final rule. The proposal also included a transition period, implemented through varying compliance dates following the effective date, to allow banks to revise their systems for collecting, maintaining, and reporting data and to establish processes for calculating their qualifying activities values and CRA evaluation measures and determining their presumptive ratings. Specifically, the proposal provided a bank other than a small bank with: (1) One year after the rule's effective date to comply with the rule's assessment area, data collection, and recordkeeping requirements; and (2) two years after the rule's effective date to comply with the rule's reporting requirements. The proposal provided small banks with one year after the rule's effective date to comply with the rule's assessment area and applicable data collection and recordkeeping requirements. No bank had to comply with the remaining requirements of the rule—and thus be evaluated under the new framework—until it completed its evaluation period that concluded immediately after the reporting requirements compliance date in the proposal, including any extensions approved by its relevant agencies.

The proposal provided small banks that opted into the general performance standards, as of the final rule's effective date, and those banks that no longer meet the definition of a small bank with: (1) Two years to comply with the rule's assessment area, data collection, and recordkeeping requirements, after the rule's effective date or after the bank no longer met the definition of a small bank; and (2) three years to comply with the rule's reporting requirements, after the rule's effective date or after the bank no longer met the definition of a small bank. However, small banks that chose to opt into the general performance standards after the effective date would have received: (1) One year after the bank opted in to comply with the rule's assessment area, data collection, and recordkeeping requirements; and (2) two years after the bank opts in to comply with the rule's reporting requirements.

Several industry commenters suggested that the implementation period for the new regulatory framework would have been too short, specifically with respect to the data collection, recordkeeping, and reporting provisions. They offered a variety of reasons to support this view, including the COVID–19 pandemic. One industry commenter also suggested providing additional time to comply for banks that are required to delineate new deposit-based assessment areas. Another industry commenter recommended that the agencies implement a ratings floor to protect against downgrades during the transition to the new framework. Many other commenters asked for additional clarification on how the phased in compliance dates would work.

The agency has carefully considered these comments and understands that the cost and time frame associated with complying with the final rule will vary from institution to institution. However, considering that the final rule increased the small bank size threshold and reintroduced the performance standards applicable to intermediate banks and wholesale and limited purpose banks, the final rule includes more streamlined compliance dates based on the applicable performance standards. The final rule also includes a provision addressing the transition from the current framework to the framework in the final rule.

Specifically, the final rule's effective date of October 1, 2020 is the first day of the first calendar quarter that begins at least 60 days after the issuance of the final rule. The streamlined compliance dates in the final rule allow banks [182] to determine individually when to implement the various systems changes required to comply with this rule by the compliance dates in the final rule. Accordingly:

- Banks subject to the general performance standards must comply with the following sections of the final rule by January 1, 2023: (1) Qualifying activities quantification; (2) qualifying activities value; (3) assessment area; (4) performance standards, in general; (5) CRA evaluation measure; (6) retail lending distribution tests; (7) general performance standards and ratings; (8) data collection; (9) recordkeeping; and (10) reporting.
- Banks subject to the wholesale or limited purpose bank performance standards must comply with the following sections by January 1, 2023: (1) Assessment area; (2) wholesale or limited purpose bank performance standards; (3) data collection for wholesale and limited purpose banks evaluated under the wholesale or limited purpose bank performance standards; (4) recordkeeping; and (5) reporting for banks evaluated under the general performance standards, the wholesale or limited purpose bank performance standards, or a strategic plan.
- Banks subject to the small and intermediate bank performance standards must comply with the following sections by January 1, 2024: (1) Assessment area; (2) small and intermediate bank performance standards; (3) retail domestic deposit data collection for small and intermediate banks evaluated under the small and intermediate bank performance standards; and (4) recordkeeping.

The final rule also clarifies that during the period between October 1, 2020 and the compliance dates in the final rule applicable to the different types of banks, the provisions of the current regulation will remain in effect as an alternative compliance option [183] to provide flexibility for banks that have a CRA evaluation during this period. The OCC retains the authority to ensure an orderly transition between the two frameworks and will work with banks that are impacted by the transition during this time. Accordingly, the OCC may permit banks to rely on: (1) The applicable performance standards and tests, procedures, processes, definitions, or another element of the current framework; or (2) the new framework in the final rule. The final rule also provides that the alternative compliance provisions containing the current framework will expire on January 1, 2024, at which point all banks must be in compliance with all provisions of the final rule.

With respect to the possible effect of COVID–19 on a bank's ability to meet the compliance dates, the OCC notes that the economic challenges experienced in LMI communities as a result of the COVID–19 pandemic make it critical that implementation of this rule not be delayed so that the benefits of the new rule can reach these communities as soon as possible.

Industry commenters specifically discussed the compliance dates in the context of the burden of the proposal's mandatory inclusion of consumer lending, including the applicable data collection, recordkeeping, and reporting requirements. According to these commenters, consumer loan data is typically stored in multiple data systems and the costs required for compliance would discourage banks from offering these products. One industry commenter suggested removing all loans for which reporting processes are not currently in place from the qualifying activities component of the CRA evaluation measure numerator to hasten compliance.

The OCC recognizes the specific data collection challenges presented by consumer loans, particularly with respect to credit cards. Since the final rule includes a more limited definition of consumer loans that does not include credit cards, the final rule does not provide extended compliance dates for consumer lending.

Commenters also requested that the agencies provide examples of how the transition periods will apply to banks evaluated under the different performance tests and standards. The chart below provides examples:

COMPLIANCE DATES

Bank type	Qualifying activities quantification, qualifying activities value, general performance standards, and presumptive ratings	Assessment area, data collection, and record-keeping requirements, as applicable	Reporting requirements	All other requirements
Banks other than small, intermediate, wholesale, and limited purpose banks.	January 1, 2023	January 1, 2023	January 1, 2023	October 1, 2020.
Wholesale and limited purpose banks	Not Applicable	January 1, 2023	January 1, 2023	October 1, 2020.

[182] The streamlined compliance dates also apply to banks that elect to opt in to the general performance standards and banks that cease to meet the definition of a small, intermediate, wholesale, or limited purpose bank.

[183] The final rule includes a new Appendix C for the alternative compliance provisions that sets forth parts 25 and 195 in effect on the date prior to October 1, 2020.

COMPLIANCE DATES—Continued

Bank type	Qualifying activities quantification, qualifying activities value, general performance standards, and presumptive ratings	Assessment area, data collection, and record-keeping requirements, as applicable	Reporting requirements	All other requirements
Small and intermediate banks	Not Applicable	January 1, 2024	Not Applicable	October 1, 2020.

Special purpose banks. One commenter requested confirmation that banks currently designated as special purpose banks would be exempt under the final rule. Though the proposal did not include the term special purpose banks, its scope did not include certain exempt banks, which covers the same banks exempted as special purpose banks under of the current rule.[184] The final rule maintains this exemption.

Effect of CRA performance on applications. The proposal included a section on the effect of CRA performance on applications that was based on the current regulatory framework. The agency received several comments on the use and effect of CRA ratings.

A few commenters asked about the effect of presumptive ratings on a covered application. The agency intends to use assigned, not presumptive, ratings when evaluating an application for which CRA performance is considered and notes that presumptive ratings may be subject to upward or downward adjustments after considering performance context factors and evidence of discriminatory or other illegal credit practices. The agency will, however, evaluate all the facts and circumstances of each application and use all available information to inform its judgement and decision on the statutory factors.

Commenters also offered suggestions on the impact of CRA ratings including not allowing negative community group comments to delay mergers or acquisitions of a bank rated satisfactory or outstanding on its most recent CRA evaluation. The agency intends to follow its applicable guidance on the impact of CRA ratings on licensing applications.[185] Accordingly, the agency is adopting these provisions as proposed.

Minority depository institutions, women's depository institutions, or low-income credit unions, CDFIs, and other mission-focused banks. A few commenters recommended exemptions or tailoring of requirements for minority depository institutions, women's depository institutions, or low-income credit unions, CDFIs, and other mission-focused banks. The OCC has a statutory obligation to assess bank performance. Although the mission of these banks increases the likelihood that banks are helping to meet the credit needs of their communities, the agency must still evaluate and rate their performance.

One industry commenter recommended defining minority depository institutions and women's depository institutions to include banks where a majority of the directors and a majority, or a significant percentage, of senior officers are minorities or women. Because these terms are defined in the CRA statute, the OCC is not altering the definitions in the final rule.

Military banks. One industry commenter supported the proposal's inclusion of a definition of military bank but recommended that it be modified to include on-base branches of banks or to allow assessment areas to consist only of the base on which a branch is located. The commenter also recommended a separate performance standards section for military banks. The OCC believes that the general performance standards are sufficiently flexible so that separate performance standards for military banks are not necessary. They will be evaluated like other banks with similar levels of retail domestic deposits, but, as indicated in the proposal and the final rule, their assessment areas will consist of the entire United States. They will only be evaluated under the bank performance standards, not the assessment area performance standards. Thus, the agency adopts the provisions related to military banks as proposed.

Financings and renewals. One commenter indicated that it was unclear whether the term financing includes renewals as customarily defined in commercial lending as opposed to the current CRA regulation's definition. The commenter recommended using the Call Report definition of financing and recommended an expanded definition of renewals to align with common banking usage. The final rule defines financing as permissible equity or debt facilities, such as loans, lines of credit, bonds, private funds, securities, or other permissible investments. As described below, the numerator of the CRA evaluation measure considers the on-balance sheet value of qualifying activities. If a financing is on-balance sheet as of the close of business of the last day of the month, it will count toward the bank's CRA evaluation measure whether it is a new loan or a renewal.

Severability. The agency intends for each section or provision of this final rule to be severable from the remainder of the rule. In addition, although the agency has addressed four categories of CRA-related issues in this rulemaking: (1) Qualifying activities; (2) assessment areas; (3) measurement of CRA performance; and (4) data collection, recordkeeping, and reporting, it could have finalized any one or any combination of the four categories on its own because each section and provision within each section can stand and operate alone. The final rule includes language providing that if any section or any provision of any section of the final rule is held to be invalid or stayed for any reason, it is the OCC's intention that the remaining sections and provisions of the final rule shall continue in effect.

Conforming, clarifying, and technical changes. Other than the changes discussed in this section and the sections above and conforming, clarifying, and technical changes, the (1) authority, purposes, and scope provisions; (2) the effect of CRA performance on applications; and (3) the definitions in are adopted as proposed.

F. Miscellaneous

Prohibition against the use of interstate branches primarily for deposit production. The agency is adopting the provisions on the prohibition against use of interstate branches primarily for deposit production (Subpart F) as proposed with conforming changes.

Integration of Parts 25 and 195. As proposed, this final rule also consolidates the OCC's national bank and federal savings association CRA rules by applying Part 25 to savings associations and removing the current OCC's CRA rule for savings associations, 12 CFR 195. The OCC received no comments on this consolidation.

[184] *See* 12 CFR 25.11(c)(3); 195.11(c)(2).

[185] *See e.g.,* OCC Bulletin 2017–51, *Community Reinvestment Act: Impact of CRA Ratings on Licensing Applications,* (Nov. 8, 2017), available at *https://el.occ/news-issuances/bulletins/2017/bulletin-2017-51.html.*

Mapping tools. One industry commenter and one community group suggested that the agencies develop mapping tools, such as a CRA map of the United States to identify potential CRA gaps or a map to identify gaps in assessment areas. The agency will consider developing these tools over time but is not adopting them as part of the final rule.

Release of RFI data. On January 10, 2020, the agency published an RFI seeking four types of bank-specific data or information to assist in drafting a final rule.[186] Commenters argued that the OCC was required to release the data and information the agency received in response to the RFI to provide the public with a meaningful opportunity to comment on the NPR. However, the RFI included an express statement that the agency would treat any confidential commercial information submitted in response to the RFI in accordance with relevant rules, guidance, and case law.[187]

The OCC received a total of 67 comments on the RFI. Of these, 61 comments were not responsive to the information request and were posted to the RFI public docket. Because the remaining six comments, which were responsive, contained confidential commercial information, the OCC is not making them public. Because of the limited number of responses to the RFI, the agency did not rely on any RFI data in formulating the final rule. As noted above, the agency will be issuing another rulemaking to set the benchmarks for the objective evaluation measures.

CRA sunshine requirements. In addition to the proposed data collection, recordkeeping, and reporting provisions contained in this proposal, the agencies noted that Congress required the agencies to issue rules implementing the CRA Sunshine Requirements as part of the Gramm-Leach-Bliley Act of 1999.[188] The agency's Disclosure and Reporting of CRA-Related Agreements regulations define and address written agreements between financial institutions and nongovernmental entities or persons that are made in fulfillment of the CRA, and require that those agreements be made available to the public and the appropriate federal banking agency.[189] Further, the regulations require parties to a covered agreement to file reports with the appropriate federal banking agency for the duration of the agreement. The agency emphasizes again the continued importance of complying with the Disclosure and Reporting of CRA-Related Agreement regulations to ensure public awareness of the terms and conditions of covered agreements.

VI. Regulatory Analysis

Paperwork Reduction Act of 1995

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995.[190] In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC reviewed the final rule and determined that it revises certain information collection requirements previously cleared by OMB under OMB Control No. 1557–0160. The OCC has submitted the revised information collection to OMB for review under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320). OMB filed a comment in response to the OCC's submission requesting that the OCC resubmit it at the final rule stage.

Current Actions

Under the final rule:

- Interested parties may request that the OCC confirm that an activity is a qualifying activity by submitting a complete Qualifying Activity Confirmation Request Form. 12 CFR 25.05(c)(1).
- Banks must request that the OCC confirm that an area is a CRA credit desert before receiving the CRA credit desert multiplier in an evaluation period. 12 CFR 25.06(b), (c)(1).
- A bank must delineate one or more assessment areas within which the OCC evaluates the bank's record of helping to meet the credit needs of its community. 12 CFR 25.09.
- To receive a designation as a wholesale or limited purpose bank, a bank must file a request, in writing, with the OCC, at least three months prior to the proposed effective date of the designation. 12 CFR 25.15(b).
- Banks that are not small banks must submit certain information for each assessment area and for the bank level on the Performance Context Form. 12 CFR 25.16(c).
- A bank must submit a strategic plan if the bank: (1) Would otherwise be evaluated under § 25.13 and does not maintain retail domestic deposits on-balance sheet or (2) a bank not covered under paragraph (b)(1) of this section may submit a strategic plan for approval. 12 CFR 25.18.
- A bank evaluated under the general performance standards in § 25.13 and a bank evaluated under a strategic plan under § 25.18, unless otherwise determined in writing by the OCC, must collect and maintain the information required by 12 CFR 25.21 until completion of the relevant CRA evaluation. 12 CFR 25.21.
- A small or intermediate bank evaluated under the small and intermediate bank performance standards under § 25.14 must collect and maintain data on the value of each retail domestic deposit account and the physical address of each depositor. 12 CFR 25.22.
- A wholesale or limited purpose bank evaluated under the wholesale and limited purpose performance standards in § 25.15 must collect and maintain qualifying community development loan, community development investment, and community development service and retail domestic deposit data until the completion of the relevant CRA evaluation. 12 CFR 25.23.
- Banks must keep the data collected under § 25.21 through § 25.23 in machine readable form (as prescribed by the OCC) until the completion of their next CRA evaluation. 12 CFR 25.25.
- Banks evaluated under the general performance standards in § 25.13 and banks evaluated under a strategic plan under § 25.18, unless otherwise determined in writing by the OCC, must report the information required by 12 CFR 25.26. 12 CFR 25.26.
- Banks must maintain a public file that includes 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, their street addresses, and census tracts; a list of the branches opened or closed, their street addresses, and geographies; a list of services offered; a map of each assessment area; and any other information the bank chooses. Banks with strategic plans must include a copy of the plan. Banks with less than satisfactory ratings must

[186] *See* 85 FR 1285 (Jan. 10, 2020). Specifically, the RFI sought data or information on: (1) Retail domestic deposit activities; (2) qualifying activities; (3) retail loans originated and sold within 90 days; and (4) other retail loan.

[187] *See, e.g.,* 12 CFR 4.16; *Food Marketing Institute* v. *Argus Leader Media,* 139 S. Ct. 2356, 2363 (2019); and *Step-by-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential Under Exemption 4 of the FOIA* (U.S. Department of Justice, Oct. 7, 2019), available at *https://www.justice.gov/oip/step-step-guide-determining-if-commercial-or-financial-information-obtained-person-confidential.*

[188] *See* 12 U.S.C. 1831y; 12 CFR parts 35, 207, 346.

[189] *See* 12 CFR part 35.

[190] 44 U.S.C. 3501–3521.

include a description of their current efforts to improve their performance in helping to meet the credit needs of their entire community. The banks must update the description quarterly. Banks must make all of this information available to the public. This information must be current as of April 1 of each year. 12 CFR 25.28.

OCC Title of Information Collection: Community Reinvestment Act.

Frequency: On occasion.

Affected Public: Businesses or other for-profit.

Estimated number of respondents: 285.

Total estimated annual burden: 603,260 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.

Regulatory Flexibility Act

Section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq,* requires an agency to provide an initial regulatory flexibility analysis (IRFA) with a proposed rule and a final regulatory flexibility analysis (FRFA) with a final rule if the agency cannot certify that the proposed or final rule will not have a significant economic impact on a substantial number of small entities.[191] In accordance with the RFA, the OCC published an IRFA with the CRA proposed rule. The OCC is now publishing a FRFA for the final rule.[192]

A. Statement of the Need for and Objectives of the Final Rule

As discussed in the **SUPPLEMENTARY INFORMATION** section above, the OCC is issuing this final rule to strengthen and modernize implementation of the CRA. During the past 25 years, technology and the expansion of interstate banking have transformed the financial services industry, how banks deliver their services, and how customers choose to bank. These changes affect banks of all sizes and are most evident in banks that have a limited physical presence or rely heavily on technology to deliver their products and services. As banking has evolved, banks' communities have evolved beyond those that are solely identifiable by the delineated areas surrounding banks' physical locations. At the same time, communities' needs for community development (CD) lending and investment have evolved, and the OCC has gained a greater understanding of those needs. The current CRA regulatory framework has not kept pace with the transformation of banking and has had the unintended consequence of incentivizing banks to limit some of their CD loans and investments.

Furthermore, the current CRA rules have created uncertainty for banks about which activities qualify for CRA credit and how much those activities contribute to a bank's CRA rating. The current framework lacks consistent and objective evaluations and timely and transparent reporting for certain activities, which inhibits stakeholders' ability to understand how and to what extent banks are meeting community credit needs.

The goals of this final rule are to make the CRA framework more objective, transparent, consistent in application, and reflective of changes in banking. Accomplishing these goals would make the CRA framework a better tool to encourage banks to engage in more activities to serve the needs of their communities, particularly in low- and moderate-income communities and other communities that have been underserved under previous versions of the CRA regulatory framework.

Specifically, this final rule: (1) Clarifies and expands the bank lending, investment, and services (collectively, qualifying activities or CRA activities) of national banks, Federal branches of a foreign bank, Federal savings associations, and State savings associations that qualify for positive CRA consideration; (2) updates how banks delineate the assessment areas in which they are evaluated; (3) provides additional methods for evaluating bank CRA performance in a consistent and objective manner; and (4) requires reporting that is timely and transparent. Together, these changes will provide greater regulatory consistency and certainty in evaluating banks' CRA performance, which are essential for banks to achieve the intent and purpose of the statute: To help meet the credit needs of their communities, consistent with their safe and sound operations.

B. Significant Issues Raised by Public Comments on IRFA

The OCC received comments from the Office of Advocacy of the U.S. Small Business Administration (Advocacy) specifically addressing the OCC's IRFA included in the proposed rule pursuant.

Advocacy asserted that there may be less burdensome alternatives that the OCC should consider under its obligation to comply with the RFA. Advocacy further stated that requiring a small bank to incur the same regulatory burden as a much larger bank is inconsistent with the RFA. The OCC notes that the final rule imposes different requirements on small and intermediate banks than on larger banks. Specifically, the final rule provides that small banks, defined as having assets of $600 million or less, and intermediate banks, defined as having more assets than a small bank but less than $2.5 billion in assets, may operate under the current CRA small bank and intermediate small bank performance standards, instead of the final rule's more complex general performance standards. These standards are more tailored to the size of small and intermediate banks and their lending practices. This approach differs from the proposed rule, which only would have exempted banks with $500 million or less in assets from the general performance standards. In addition, small and intermediate banks are generally exempt from the enhanced data collection, recordkeeping, and reporting requirements contained in the final rule, with certain exceptions. The small and intermediate bank exemptions from the general performance standards and the data collection, recordkeeping, and reporting requirements will reduce regulatory burden for small and intermediate banks. Therefore, small and intermediate banks as defined in the final rule will not be subject to the same regulatory burden under the final rule as larger banks.

Advocacy also noted that the OCC may have misstated the economic impact on OCC-regulated small banks. However, after reviewing the IRFA we have determined that the numbers presented in the IRFA accurately reflect the OCC's estimates. The IRFA focused on where the impact was economically significant. Specifically, the OCC stated that 782 small entities would be

[191] Small Business Administration (SBA) regulations currently define small entities to include banks and savings associations with total assets of $600 million or less, and trust banks with total assets of $41.5 million or less. 13 CFR 121.201.

[192] Further OCC analysis of the final rule under the RFA is available at: *http://www.regulations.gov,* Docket ID OCC–2018–0008.

impacted, but only 72 small entities would have a significant economic impact totaling $36 million, or $500,000 per bank or small entity. We believe the Advocacy mistakenly concluded that the $36 million cost estimate was for all 782 small entities.

C. OCC Response to Chief Counsel for Advocacy of the Small Business Administration

The OCC received comments on the final rule from Advocacy in addition to those on the OCC's IRFA as described above. Advocacy generally supported efforts to update and clarify the OCC's CRA regulations but noted that the proposed rule would be unduly burdensome for small banks. Advocacy's specific comments and recommendations on the proposed rule and the OCC's response to these comments follows below.

Advocacy stated that the proposed definition of ''small bank'' ($500 million in assets) is problematic and that unless authorized by statute, a Federal agency must use the U.S. Small Business Administration's (SBA) size standard unless a different standard is approved by the SBA Administrator and published for notice and comment. The OCC agrees that the definition should be changed and adopts $600 million threshold for small banks in the final rule. This threshold is now consistent with the threshold for small banks included in the SBA's size standards defining small business concerns.[193]

Under the proposal, a small bank could elect to opt in to the general performance standards six months prior to the start of its next evaluation period. However, it could elect no more than once to opt out of the general performance standards. Advocacy suggested that there should not be a limit on the number of times that a small bank can opt in and out of the general standard. The OCC believes that providing a small bank with the opportunity to opt in or out of the general performance standards one time provides a small bank with adequate flexibility to select the CRA framework that best meets its needs.

Advocacy noted that the proposed rule provides that a bank will only receive credit for 25 percent of the origination value for loans sold within 90 days of origination. If a loan is held for greater than 90 days, the bank receives 100 percent credit. If the loan is held for less than 90 days, the bank only receives 25 percent credit. Advocacy noted that this policy may be unfair to small banks because small banks should not be punished because their business plan requires them to sell loans in less than 90 days. Advocacy stated that allowing small banks to receive 100 percent credit regardless of the length of time they hold a loan may incentivize them to provide additional service to their communities. The OCC agrees that retail loan originations are an important type of credit for certain populations and communities of need. Further, the OCC also did not intend to favor one business model over another. In response to this and similar comments, the final rule provides that retail loan originations sold at any time within 365 days of origination will receive credit for 100 percent of the origination value.

Advocacy recommended that the OCC exempt small banks from the requirement to collect and maintain information on depositors necessary for the designation of deposit-based assessment areas. The OCC disagrees with this recommendation. This collection requirement serves an important role in the CRA framework in that it will enable the OCC to identify the bank's assessment areas and therefore to better assess a bank's CRA performance. The final rule does, however, clarify that retail domestic deposits need to be geocoded to the county level, not the census tract level.

Advocacy also stated that the proposed compliance dates are confusing and that small banks should be allowed a consistent three years to comply. To minimize this confusion, the final rule adopts a more streamlined transition period for most requirements and generally increases the transition period for all banks. Specifically, small banks that do not opt-in to the general performance standards must comply with the rule's assessment areas, data collection, and recordkeeping requirements, as applicable, by January 1, 2024, which generally increases the transition time for these requirements by more than two years as compared to the proposal. Further, the final rule clarifies that the new qualifying activities criteria section, qualifying activities confirmation process, and CRA desert confirmation process will be effective as of the effective date of the final rule. As a result, small and intermediate banks will be able to immediately take advantage of the clarity provided by these elements.

Advocacy also provided several comments addressing the OCC's initial regulatory flexibility analysis. These comments are discussed in section B., above.

D. Small Entities Affected by the Final Rule

Small Business Administration regulations define ''small entities'' for banking purposes, as entities with total assets of $600 million or less.[194] The OCC currently supervises approximately 745 small entities. The final rule would affect approximately 708 of those entities.[195]

E. Projected Reporting, Recordkeeping, and Other Compliance Requirements of Final Rule

As described above, the final rule sets forth new qualifying activities criteria; assessment area delineation requirements; general performance standards; and data collection, recordkeeping, and reporting requirements. The final rule generally applies to national banks, Federal branches of a foreign bank, Federal savings associations, and State savings associations. However, the final rule exempts small banks, defined as having assets of $600 million or less, and intermediate banks, defined as having more assets than a small bank but less than $2.5 billion in assets, from the new general performance standards and the related data collection, recordkeeping, and reporting requirements, with the exception of the retail domestic deposit data requirements. Instead, small banks may operate under the current CRA small bank and intermediate small bank performance standards. These banks also may opt in to the new performance standards, in which case they would be subject the data collection, recordkeeping, and reporting requirements of the final rule or may choose to be evaluated under an approved strategic plan. A summary of the new requirements contained in the final rule is set forth below.

Assessment area delineation requirements. Generally, a bank must delineate one or more assessment areas within which the OCC evaluates the bank's record of helping to meet the credit needs of its community. The final rule requires that a bank delineate

[193] 13 CFR 121.201.

[194] *See* 13 CFR 121.201 (Sector 52, Subsector 522).

[195] The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $600 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2019, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

''facility-based'' assessment areas encompassing each location where the bank maintains a main office, a branch, or a non-branch deposit-taking facility that is not an ATM as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans. The geographic levels for delineation of facility-based assessment areas could be any of the following: One MSA; the whole nonmetropolitan area of a state; one or more whole, contiguous MDs in a single MSA; or one or more whole, contiguous counties or county-equivalents in one MSA or nonmetropolitan area. A facility-based assessment area may not extend beyond an MSA or state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends beyond a state boundary, the bank must delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends beyond an MSA boundary, the bank must delineate separate assessment areas for the areas inside and outside the MSA. The final rule also provides that banks may, but are not required to, delineate facilities-based assessment areas around deposit-taking ATMs.

In addition to requiring the delineation of facility-based assessment areas, the final rule also mandates that if a bank receives 50 percent or more of its total retail domestic deposits from areas outside of its facility-based assessment areas, the bank must delineate separate, non-overlapping ''deposit-based'' assessment areas. These deposit-based assessment areas can be delineated at any geographical level where the bank receives five percent or more of its retail domestic deposits, including a state; an MSA; the whole nonmetropolitan area of a state; one or more whole, contiguous MDs in a single MSA; the remaining geographic area of a state, MSA, nonmetropolitan area, or MD other than where it has a facility-based assessment area; or one or more whole, contiguous counties or county-equivalents in one MSA or nonmetropolitan area. With limited exceptions, an assessment area delineation can only change once per year and must not change within the annual period used to determine an assessment area CRA evaluation measure.

Small banks, intermediate banks, wholesale banks, and limited purpose banks would follow the same proposed rules on assessment area delineation as other banks, but military banks would have the entire United States and its territories as their assessment area.

For banks choosing the option of a strategic plan, the plan must include a delineation of the bank's assessment areas(s) that meets the requirements of § 25.09(a)–(d). In addition, the plan may include assessment area delineations that reflect its target geographic market as defined by the bank in its strategic plan. For a de novo bank, the assessment area delineations should include the projected location of its facilities, retail domestic deposit base, and lending activities.

Data collection, recordkeeping, and reporting requirements. For a bank evaluated under the general performance standards or a strategic plan, the final rule requires that the bank must collect and maintain, along with supporting documentation, certain performance standards data, including the bank's retail lending distribution test ratios, the bank's CRA evaluation measure and each assessment-area CRA evaluation measure, the bank's CD minimum and each assessment-area level CD minimum, and the bank's presumptive ratings. Banks are required to report the distribution test ratios and presumptive ratings at the end of the evaluation period, whereas, banks must report the CRA evaluation measure on an annual basis. For all qualifying retail and CD loans, CD investments, and CD services, banks will be required to collect and maintain data including, but not limited to: The location of the loan, investment, or service; an indicator of whether a multiplier applies to the loan, investment or service; and the qualifying activities criteria that the loan, investment, or service satisfies. On an annual basis, these banks must report the quantified dollar value of qualifying retail loans, CD loans, CD investments, and CD services. The final rule also requires these banks to collect and maintain data for originations of non-qualifying home mortgage loans, small loans to businesses, small loans to farms, and consumer loans made by the bank. Banks must annually report, among other things, the total number of retail loans (home mortgage loans, small loans to a business, small loans to a farm, or consumer loan) that are originated during the annual period; the number of these loans that are originated in low- and moderate-income census tracts at the county or county equivalent level; the number of home mortgage and consumer loans originated to low- and moderate-income borrowers; and the number of small loans to businesses and small loans to farms originated to CRA-eligible businesses and farms, respectively.

For grandfathered qualifying activities, banks evaluated under the general performance standards or a strategic plan are required to maintain and collect data on, among other things, a description of the activity and a statement certifying that the activity would have received positive CRA consideration on the day prior to the effective date of the final rule and is on a bank's balance sheet on the effective date of the final rule. These banks are also required to collect and maintain a list of their assessment areas and within each assessment area, each county or county-equivalent, MD, nonmetropolitan area, MSA, or state. This assessment area information must be reported annually. These banks must also collect and maintain information on deposit-taking facilities.

For wholesale and limited purpose banks, the final rule requires that these banks collect and maintain information about qualifying CD loans, investments, and services, including, but not limited to, the qualifying activity criteria that the loan, investment, or service satisfies. These banks must also collect and maintain data regarding assessment areas and deposit-taking facilities. Wholesale and limited purpose banks must also provide the certification described above for grandfathered qualifying activities. They also must report on an annual basis the value of CD loans and investments as well as their assessment area data, among other things.

Under the final rule, all banks must collect and maintain the value of each retail domestic deposit account and the physical address of each depositor. Moreover, banks evaluated under the general performance standards or a strategic plan must annually report their average quarterly retail domestic deposits as of the close of business on the last day of each quarter. These banks as well as wholesale and limited purpose banks must also report performance context information before the beginning of their CRA performance evaluation.

All banks must keep the data they are required to collect in a machine-readable form as prescribed by the OCC. As in the current rule, banks also must maintain a public file that includes, among other things, written comments related to assessment area needs, a copy of the public section of the bank's most recent performance evaluation, and for banks approved to be assessed under a strategic plan, a copy of that plan. Finally, as in the current rule, banks must make available to the public a notice explaining to customers that they are entitled to certain information.

F. Description of Steps Taken To Minimize the Significant Economic Impact on Small Entities and Alternatives Considered

As discussed below and in the **SUPPPLEMENTAL INFORMATION** section, the OCC has sought to incorporate flexibility into the final rule and lessen burden and complexity for smaller banking entities wherever possible, consistent with the goals of the CRA, safety and soundness, and other applicable law.

Community Bank Exemption for Certain Requirements. The OCC recognizes that, in general, community banks operate under different business plans and with more limited resources and staffing levels than larger banks. Therefore, the final rule allows small and intermediate size banks to operate under the current CRA small bank and intermediate small bank performance standards, which are more tailored to their size and lending practices, instead of the final rule's more complex general performance standards. However, community banks can take advantage of the qualifying activities criteria and the qualifying activities list in the final rule, which provide greater regulatory certainty, objectivity, transparency, and consistency for what qualifies for CRA. Small banks also follow the final rule's new assessment area delineation requirements, which update the existing requirements to reflect the modern banking environment. The OCC notes that these new assessment area delineation requirements may not increase the compliance burden as banks may be able to demonstrate that more than 50 percent of their retail domestic deposits fall within their facility-based assessment area(s). The OCC believes that this approach in the final rule will provide additional flexibility for smaller banks without sacrificing the OCC's goal of achieving transformational CRA reform that provides clarity and encourages banks to conduct more CRA qualifying activities.

The OCC notes that some commenters opposed the small bank exemption, arguing that the small bank performance standards do not adequately evaluate CD activity. These commenters instead asked the OCC to evaluate all banks, including small banks, under the general performance standards. The OCC disagrees with these commenters and has rejected this alternative approach because of the cost and regulatory burden imposing the general performance standards would have on community banks, as discussed above. Banks subject to the small bank and intermediate bank performance standards will still be able to engage in CD activities and these activities will be examined by the OCC in CRA examinations. The final rule's approach provides additional flexibility to, and minimizes regulatory burden on, smaller institutions while at the same time encourages small banks to conduct more CRA qualifying activities.

The final rule also allows small and intermediate banks to opt into the general performance standards or choose to be evaluated under an approved strategic plan. These options allow small and intermediate banks to choose the performance standards that best fit their needs and objectives. Some commenters supported limiting the number of times a small bank that opts in to the general performance standards can opt out again or even eliminating the one-time opt out option. One commenter suggested that the OCC should not limit the number of times that a small bank can opt in and out of the general standard. After considering these alternatives, OCC is retaining the one-time opt out option as proposed in order to preserve some flexibility for community banks. Some commenters stated that agencies should not require that small banks opt in or opt out of the general performance standard six months prior to the start of its next evaluation period as provided in the proposal. The agency agrees that the requirement to opt-in or opt-out at least six months before the start of its next exam cycle is not needed and has removed it from the final rule.

Intermediate banks. The proposed rule did not carryover the concept of intermediate small banks. The current rule's threshold for small banks is \$1.305 billion. Banks with assets of between \$326 million and \$1.305 billion are defined as intermediate small banks. Under the current rule, small banks with assets of under \$326 million are evaluated under a streamlined assessment method focusing on retail lending. Intermediate small banks are evaluated under the same lending performance criteria as the small institutions, but also are evaluated on their community development activities. The proposed rule defined ''small bank'' as a bank with \$500 million or less in assets and did not include intermediate small banks. The OCC has reevaluated the proposed rule's regulatory framework and agrees with commenters that banks that are considered intermediate small banks under the current rule should not be required to comply with the final rule's general performance standards and that it would be especially burdensome for intermediate small banks to transition to a new framework. The final rule therefore reintroduces the concept of intermediate small bank (renamed ''intermediate bank''), defined as a bank with assets of greater than a small bank but \$2.5 billion or under, and applies the current intermediate small bank performance standards to these intermediate banks. As a result, the OCC finds that 188 additional banks will be evaluated under the less complicated performance standards of the current rule.[196] Further, this approach will eliminate the transition cost and burden that would have been imposed on these intermediate banks that would have been subject to the general performance standards under the proposed rule.

Definition of ''small bank'' and ''intermediate bank.'' As indicated above, the current rule's definition of ''small bank'' is a bank with assets of less than \$1.305 billion and of ''intermediate small bank'' is a bank with assets of between \$326 million and \$1.305 billion, and both small banks and intermediate small banks comply with performance standards more tailored to their size. The proposed rule defined ''small bank'' as a bank with \$500 million or less in assets and did not include intermediate small banks. Some commenters recommended raising the proposal's small bank threshold to the current small bank threshold of \$1.305 billion. Other commenters opposed any increase in the small bank threshold so that more banks would be governed by the general performance standard, which they found to be a better evaluation of CD activity. Still other commenters suggested various different thresholds, both higher and lower than \$500 million. The OCC considered these various threshold alternatives and has increased the asset threshold for small banks in the final rule to \$600 million or less, to be adjusted annually for inflation. This threshold better reflects the current state of the industry and is now consistent with the threshold for small banks included in the SBA's size standards defining small business concerns.[197]

Some commenters advocated including an intermediate small bank threshold in the final rule and raising it to a higher level, including \$5 billion or \$10 billion. As indicated above, the OCC agrees that the final rule should include an exception for more smaller banks. Therefore, the OCC has included in the final rule a definition for

[196] This number is based on data accessed from the OCC's Financial Institution Data Retrieval System (FINDRS) on May 14, 2020.

[197] 13 CFR 121.201.

intermediate bank, based on the current rule's definition of intermediate small bank, and has increased the asset size threshold for these banks from $1.305 million in the current CRA rule to $2.5 billion. This $2.5 billion threshold is intended to capture the same portion of the industry as captured by the intermediate small bank threshold when it was adopted in 2005.

As a result of these increases in asset size for small and intermediate banks, only banks with greater than $2.5 billion in assets are subject to the more complex general performance standards, unless a small or intermediate bank elects to opt into the general performance standards. These threshold changes therefore increase the number of banks that are exempt from the general performance standards and the data, reporting, and most of the recordkeeping requirements.

The final rule provides that to meet the small bank and intermediate bank threshold, the banks must have $600 million or $2.5 billion, respectively, or less in assets in four of the previous five calendar quarters. The OCC disagreed with a request by a commenter to use an eight-quarter lookback instead, which the commenter stated would provide adequate lead time to comply with the general performance standards. The OCC recognizes the importance of certainty regarding bank size category and applicable CRA requirements but does not believe that allowing banks to be above the next highest size threshold for two years before becoming subject to the applicable requirements is necessary. The final rule does, however, provide an intermediate bank that ceases to meet the definition of an intermediate bank two years to comply with the general performance standards-related provisions of the final rule. The OCC believe this two-year period provides an adequate transition period for intermediate banks to implement the general performance standards.

Data Collection, Recordkeeping and Reporting. Under the final rule, small banks and intermediate banks that are evaluated under the small bank and intermediate bank performance standards, respectively, are generally exempt from the enhanced data collection, recordkeeping, and reporting requirements contained in the final rule, with the exception of the requirement to collect and maintain information on retail domestic deposits, including the physical address of the depositor. The OCC declined to exempt small banks from this collection requirement. Depositor information will enable the OCC to identify the bank's assessment areas and therefore to better assess a bank's CRA performance. However, the final rule clarifies that retail domestic deposits need to be geocoded to the county level, not the census tract level.

The OCC does not think that reporting of small bank and intermediate retail domestic deposit data is necessary because the OCC will validate assessment area delineations during examinations. Therefore, the final rule does not impose any reporting requirements on banks evaluated under the small bank performance standards.

Compliance dates. The final rule clarifies that the new qualifying activities criteria section, the qualifying activities confirmation process, and the CRA desert conformation process will be effective as of the effective date of the final rule. As a result, small banks will be able to immediately take advantage of the clarity provided by these elements. To minimize confusion with respect to other applicable requirements, the final rule adopts a more streamlined compliance period that increases the transition time available. In general, banks subject to the general performance standards (banks over $2.5 billion in assets) must comply with all sections of this rule, except those related to the new qualifying activities criteria or confirmation processes, by January 1, 2023, which generally increases the compliance time for the assessment area, data collection, and recordkeeping requirements by more than one year as compared to the proposal. Small and intermediate banks must comply with the rule's assessment areas, data collection, and recordkeeping requirements, as applicable, by January 1, 2024, which generally increases the compliance time for these requirements by more than two. The final rule also provides flexibility for banks to comply with the new provisions prior to these compliance dates. The OCC believes that these transition periods will provide small and intermediate banks with adequate time to comply with the rule without delaying the improvements the rule makes to CRA implementation.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that the OCC prepare a budgetary impact statement before promulgating a rule that includes any 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 (adjusted annually for inflation, currently $154 million) in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the OCC to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC has determined that the final rule is likely to result in the expenditure by the private sector of $154 million or more. Therefore, the OCC has prepared a budgetary impact analysis and identified and considered alternative approaches. The full text of the OCC's analyses under the Unfunded Mandates Act is available at: *http://www.regulations.gov,* Docket ID OCC–2018–0008.

Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major rule.'' [198] If a rule is deemed a ''major rule'' by OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[199]

The Congressional Review Act defines a ''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: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) 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.[200]

As required by the Congressional Review Act, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

Riegle Community Development and Regulatory Improvement Act of 1994

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 requires that the OCC, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, considers, consistent with principles of safety and soundness and

[198] 5 U.S.C. 801 *et seq.*

[199] 5 U.S.C. 801(a)(3).

[200] 5 U.S.C. 804(2).

the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[201] The OCC has considered the changes made by this final rule and believe that the effective date of October 1, 2020, along with the transition periods included in the final rule and described above, will provide national banks, State banks, Federal branches of a foreign bank, Federal savings associations, and State savings associations with adequate time to comply with the rule's requirements.

The OCC also has considered the administrative burden of the final rule's administrative compliance requirements and addressed them by exempting small banks, defined as having assets of $600 million or less, and intermediate banks, defined as having more assets than a small bank but less than $2.5 billion in assets, from the new general performance standards and the data collection, recordkeeping, and recording requirements, with a few exceptions. In addition, as discussed above, the OCC has addressed the administrative burdens in the final rule by including transition periods for compliance with the rule of between more than two to four years, depending on the size of the bank, among other things. Further discussion of the consideration by the OCC of these administrative compliance requirements is found in other sections of the final rule's **SUPPLEMENTARY INFORMATION** section.

Effective Date

The APA[202] requires that a substantive rule must be published not less than 30 days before its effective date, unless, among other things, the rule grants or recognizes an exemption or relieves a restriction.[203] Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that regulations issued by a Federal banking agency[204] imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of a calendar quarter that begins on or after the date of publication of the final rule, unless, among other things, the agency determines for good cause that the regulations should become effective before such time.[205] The October 1, 2020, effective date of this final rule meets both the APA and RCDRIA effective date requirements, as it will take effect at least 30 days after its publication date of June 5, 2020 and on the first day of a calendar quarter following publication, October 1, 2020.

[201] 12 U.S.C. 4802(a).

[202] Codified at 5 U.S.C. 551 *et seq.*

[203] 5 U.S.C. 553(d).

[204] For purposes of RCDRIA, ''Federal banking agency'' means the OCC, FDIC, and Board. *See* 12 U.S.C. 4801.

[205] 12 U.S.C. 4802(b).

List of Subjects

12 CFR Part 25

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

12 CFR Part 195

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

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 and removes part 195 as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 is revised to read as follows:

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).

■ 2. Revise subparts A through E and add subpart D to read as follows:

Subpart A—General

§ 25.01 Authority, purposes, scope, and severability.

(a) *Authority.* The authority for this part 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 2907, and 3101 through 3111.

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), Congress required each appropriate Federal financial supervisory agency to assess an institution's record of meeting the credit needs of its entire community, including low- and moderate-income communities, consistent with the safe and sound operation of such institution, and take that record into account in its evaluation of an application for a deposit facility by such institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Office of the Comptroller of the Currency (OCC) assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income communities, consistent with the safe and sound operation of the bank; and

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

(c) *Scope*—(1) *General.* This part applies to all banks as defined in § 25.03 except as provided in paragraphs (c)(2) and (c)(3) of this section.

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

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

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

(4) *Compliance dates*—(i) Banks other than small, intermediate, wholesale, and limited purpose banks must comply with §§ 25.07—25.13, 25.21, 25.25, and 25.26 by January 1, 2023.

(ii) Wholesale and limited purposes banks must comply with §§ 25.09, 25.23, 25.25, and 25.26 by January 1, 2023.

(iii) Small and intermediate banks must comply with §§ 25.09, 25.22, and 25.25, as applicable, by January 1, 2024.

(5) *Transition provision.* To provide for an orderly transition, for any CRA performance evaluation conducted on or after October 1, 2020. and before the compliance date of this part that is applicable to the bank being evaluated, the OCC may permit a bank to rely on the applicable performance standards and tests, procedures, processes, definitions or other element of:

(i) Parts 25 or 195 of this chapter, as applicable, in effect on the date prior to October 1, 2020 (as set forth in appendix C of this part); or

(ii) Part 25 set forth in this final rule.

(6) *Expiration date.* Parts 25 and 195 of this chapter that are in effect on the date prior to October 1, 2020 (as set forth in appendix C of this part) expire on January 1, 2024.

(d) *Severability.* Each section of this part is severable from the other sections of this Part. If any section or any provision of any section is held to be invalid or stayed for any reason, it is the OCC's intention that the remaining sections and provisions of this part shall continue in effect.

§ 25.02 Effect of CRA performance on applications.

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

(1) The establishment of a domestic branch or non-branch deposit-taking facility;

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

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

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

(5) A savings association charter; and

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

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

(c) *Interested parties.* The OCC takes into account any views expressed by interested parties that are submitted in accordance with the OCC's procedures set forth in part 5 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

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

(e) *Insured depository institution.* For purposes of this section, the term ''insured depository institution'' has the same meaning as this term is given in 12 U.S.C. 1813.

§ 25.03 Definitions.

For purposes of this part, the following definitions apply:

Activity means a loan, investment, or service by a bank.

Affiliate has the meaning this term is given in Regulation W, 12 CFR 223.2(a) and (b), as of October 1, 2020 and includes non-member banks.

Area median income means:

(1) The median family income for the metropolitan statistical area, if a person or census tract is located in a metropolitan statistical area, or for the metropolitan division, if a person or census tract is located in a metropolitan statistical area that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or census tract is located outside a metropolitan statistical area.

Assessment area means a geographic area delineated in accordance with § 25.09.

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

Average means the statistical mean.

Bank means a national bank (including a Federal branch as defined in part 28 of this chapter) or a savings association, the deposits of which are insured by the FDIC pursuant to Chapter 16 of Title 12, as described in 12 U.S.C. 1813(c)(2), except as provided in § 25.01(c).

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 non-profit organization. The term ''branch'' only includes a ''domestic branch'' as that term is defined in section 3(o) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1813(o)).

Call Report means Consolidated Reports of Condition and Income as filed under 12 U.S.C. 161.

Commitment to lend means a legally binding commitment to extend credit, such as a standby letter of credit.

Community Development Financial Institution has the same meaning as this term is given in 12 U.S.C. 4702(5).

Community development investment means a lawful investment, membership share, deposit, legally binding commitment to invest that is reported on the Call Report, Schedule RC–L, or monetary or in-kind donation that meets the criteria of § 25.04(c).

Community development loan means a loan, line of credit, or commitment to lend that meets the criteria of § 25.04(c).

Community development services means bank employee time spent volunteering as a representative of the bank on activities that meet the criteria of § 25.04(c) or supporting activities that meet the criteria of § 25.04(c)(2), (11). A bank employee may receive expense reimbursement for volunteer time related to the community development activity.

Compensation means the median hourly compensation value (*i.e.,* total salaries and benefits divided by full-time equivalent employees) for the banking industry based on aggregate Call Report data for median salaries and employee benefits from Schedule RI, Item 7.a and the median number of full-time equivalent employees from Schedule RI Memorandum Item 5.

Consumer loan means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 6, Loans to individuals for household, family, and other personal expenditures other than overdraft plans that is a:

(1) *Other revolving credit plan,* which is an extension of credit to an individual for household, family, and other personal expenditures arising from revolving credit plans not accessed by credit cards;

(2) *Automobile loan,* which is a consumer loan extended for the purpose of purchasing new and used passenger cars and other vehicles such as minivans, vans, sport-utility vehicles, pickup trucks, and similar light trucks for personal use; and

(3) *Other consumer loan,* which is any other loan to an individual for household, family, and other personal expenditures (other than those that meet the definition of a ''loan secured by real estate'' and other than those for purchasing or carrying securities), including *low-cost education loans,* which is any private education loan, as defined in section 140(a)(8) of the Truth in Lending Act (15 U.S.C. 1650(a)(8)) (including a loan under a state or local education loan program), originated by the bank for a student at an ''institution of higher education,'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

CRA desert means an area that the OCC has confirmed to be a CRA desert under § 25.06 because it has significant unmet community development or retail lending needs and where:

(1) Few banks have branches or non-branch deposit-taking facilities;

(2) There is less retail or community development lending than would be expected based on demographic or other factors; or

(3) The area lacks community development organizations or infrastructure.

CRA-eligible business means a business that has gross annual revenues of no greater than $1.6 million. The OCC will adjust the $1.6 million threshold for inflation every five years, and the adjustment to the threshold will be made publicly available.

CRA-eligible farm means a farm with gross annual revenues of no greater than $1.6 million. The OCC will adjust the $1.6 million threshold for inflation every five years, and the adjustment to the threshold will be made publicly available.

Distressed area means a middle-income census tract identified by the OCC that meets one or more of the following conditions:

(1) An unemployment rate of at least 1.5 times the national average;

(2) A poverty rate of 20 percent or more; or

(3) A population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

Essential community facility means a public facility, including, but not limited to, a school, library, park, hospital or health care facility, and public safety facility.

Essential infrastructure means:

(1) Public infrastructure, including, but not limited to, public roads, bridges, tunnels; and

(2) Essential telecommunications infrastructure, mass transit, water supply and distribution, utilities supply and distribution, sewage treatment and collection, and industrial parks.

Family farm has the same meaning as the term is given by the Farm Service Agency of the U.S. Department of Agriculture in 7 CFR 761.2(b) as of the effective date of this rule.

Financing means permissible equity or debt facilities, such as loans, lines of credit, bonds, private funds, securities, or other permissible investments.

Home mortgage loan means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part I, specifically:

(1) Item 1.a.(1) 1–4 family residential construction loans;

(2) Item 1.c Loans secured by 1–4 family residential properties (includes closed-end and open-end loans); or

(3) Item 1.d Loans secured by multifamily (5 or more) residential properties.

Income levels are:

(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 a census tract.

(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 percent and less than 80 percent in a census tract.

(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 percent and less than 120 percent in a census tract.

(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 a census tract.

Indian country means an area that is

(1) Covered by 18 U.S.C. 1151; or

(2) A Tribal Census Tract, an Oklahoma Tribal Statistical Area, a Tribal Designated Statistical Area, an Alaskan Native Village Statistical Area, or an American Indian Joint-Use Area, as those terms are defined by the Census Bureau.

In-kind donation means a contribution of goods, commodities, or other non-monetary resources.

Intermediate bank means a bank with assets that exceed the small bank asset size threshold provided in the small bank definition, as adjusted, and that had assets of $2.5 billion or less in four of the previous five calendar quarters; the dollar figures in this definition shall be adjusted annually and published by the OCC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest $100,000.

Limited purpose bank means a bank that offers only a narrow product line (such as automobile loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § 25.15(b).

Major retail lending product line means a bank's retail lending product line that for the two years prior to the beginning of the evaluation period:

(1) Composed at least 15 percent of the bank's dollar volume of total retail loan originations and was the first or second largest retail lending product line by dollar volume; and

(2) At the bank's option, composed at least 15 percent of the bank's dollar volume of total retail loan originations.

Low-income credit union has the same meaning as this term is given in 12 CFR 701.34.

Metropolitan division has the same meaning as published in the Office of Management and Budget's Standards for Delineating Metropolitan and Micropolitan Statistical Areas or successor publication thereof.

Metropolitan statistical area has the same meaning as published in the Office of Management and Budget's Standards for Delineating Metropolitan and Micropolitan Statistical Areas or successor publication thereof.

Military bank means a bank whose business predominately consists of serving the needs of military personnel who serve or have served in the armed forces (including the U.S. Army, Navy, Marine Corp., Air Force, and Coast Guard) or dependents of military personnel. A bank whose business predominantly consists of serving the needs of military personnel or their dependents means a bank whose most important customer group is military personnel or their dependents.

Minority depository institution means a depository institution as defined in 12 U.S.C. 2907(b)(1).

Monetary donation means a grant, monetary contribution, or monetary donation.

Non-branch deposit-taking facility means a non-branch banking facility owned or operated by or operated exclusively for the bank and available to the general public, which is authorized to take deposits and is located in any state or territory of the United States of America.

Nonmetropolitan area means any area that is not located in a metropolitan statistical area.

Other tribal and native lands means State Designated Tribal Statistical Areas, as defined by the Census Bureau, and Hawaiian Home Lands.

Partially means 50 percent or less of the dollar value of the activity or of the individuals or census tracts served by the activity.

Primarily means:

(1) Greater than 50 percent of the dollar value of the activity or of the individuals or census tracts served by the activity; or

(2) The express, bona fide intent, purpose, or mandate of the activity as stated, for example in a prospectus, loan proposal, or community action plan.

Qualifying activity means an activity that helps to meet the credit needs of a bank's entire community, including low- and moderate-income individuals and communities, in accordance with § 25.04.

Qualifying loan means a retail loan that meets the criteria in § 25.04(b) or a community development loan that meets the criteria in § 25.04(c).

Retail domestic deposit means a "deposit" as defined in section 3(l) of the FDIA (12 U.S.C. 1813(l)) and held in the United States that is:

(1) Reported on Schedule RC–E of the Call Report, as item 1 or item 3; or

(2) A non-brokered "reciprocal deposit" as defined in 12 U.S.C. 1831(f)(i)(2)(E) for the institution sending the non-brokered "reciprocal deposit" but *retail domestic deposit* does not mean:

(i) A deposit;

(A) Obtained, directly or indirectly, from or through the mediation or assistance of a "deposit broker" as defined in section 29 of the FDIA (12 U.S.C. 1831f(g));

(B) Originated from an affiliated or non-affiliated broker-dealer sweep transaction;

(C) Held in a Health Savings Account established in accordance with 26 U.S.C. 223;

(D) Held in a prepaid card account established in accordance with 12 CFR 1005.1 *et seq.;* or

(ii) A non-brokered reciprocal deposit as defined in 12 U.S.C. 1831(f)(i)(2)(E) for the institution receiving a non-brokered "reciprocal deposit."

Retail lending product line means:

(1) The home mortgage loan product line, which includes all home mortgage loans;

(2) The small loan to a business product line, which includes all small loans to businesses;

(3) The small loan to a farm product line, which includes all small loans to farms;

(4) The other revolving credit plan product line, which includes all consumer other revolving credit plans;

(5) An automobile loan product line, which includes all automobile loans; or

(6) The other consumer loan product line, which includes all other consumer loans.

Retail loan means a home mortgage loan, small loan to a business, small loan to a farm, or consumer loan.

Small bank means a bank that had assets of $600 million or less in four of the previous five calendar quarters; the dollar figures in this definition shall be adjusted annually and published by the OCC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest $100,000.

Small loan to a business means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 1.e, Secured by nonfarm nonresidential properties, or Item 4, Commercial and industrial loans, and of no greater than $1.6 million. The OCC will adjust the $1.6 million threshold for inflation every five years, and the adjustment to the threshold will be made publicly available.

Small loan to a farm means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 1.b, Secured by farmland, or Item 3, Loans to finance agricultural production and other loans to farmers, and of no greater than $1.6 million. The OCC will adjust the $1.6 million threshold for inflation every five years, and the adjustment to the threshold will be made publicly available.

Underserved area means a middle-income census tract:

(1) Identified by the OCC as meeting the criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the census tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The OCC will use as the basis for these designations the "urban influence codes," numbered "7," "10," "11," and "12," maintained by the Economic Research Service of the U.S. Department of Agriculture; or

(2) Identified by the OCC as:

(i) Not having a branch of any bank within:

(A) 2 miles from the center of the census tract if it is an urban census tract, as defined by the Federal Financial Institutions Examination Council Census data;

(B) 5 miles from the center of the census tract if it is a mixed census tract, as defined by the Federal Financial Institutions Examination Council Census data;

(C) 10 miles from the center of the census tract if it is a rural census tract, as defined by the Federal Financial Institutions Examination Council Census data; or

(D) 5 miles from the center of the census tract if the census tract is an island area, as defined by the Federal Financial Institutions Examination Council Census data; and

(ii) Not having any branch within the census tract.

Wholesale bank means a bank that is not in the business of extending home mortgage, small loans to businesses, small loans to farms, or consumer loans to retail customers, and for which a designation is in effect, in accordance with § 25.15(b).

Women's depository institution means a depository institution as defined in 12 U.S.C. 2907(b)(2).

Subpart B—Qualifying Activities

§ 25.04 Qualifying activities criteria.

(a) *General*—(1) A retail loan, a community development loan, a community development investment, or a community development service that helps to meet the credit needs of a bank's entire community, including low- and moderate-income communities, is a qualifying activity if it meets the criteria in this section at the time the activity is originated, made, or conducted.

(2) Notwithstanding paragraph (a)(1) of this section, a loan or investment that was a qualifying activity and is subsequently sold remains a qualifying activity unless the OCC determined prior to the sale that the activity is no longer a qualifying activity.

(3) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, other than home mortgage loans or consumer loans provided to middle- or upper-income individuals in low- or moderate-income census tracts, an activity that would have received positive consideration in a CRA performance evaluation on the date prior to October 1, 2020 and is on a bank's balance sheet on the effective date of this rule is a qualifying activity.

(b) *Retail loans.* A home mortgage loan, small loan to a business, small loan to a farm, or consumer loan is a qualifying activity if it is:

(1) Provided to a:

(i) Low- or moderate-income individual or family;

(ii) CRA-eligible business; or

(iii) CRA-eligible farm;

(2) Located in Indian country or other tribal and native lands;

(3) A small loan to a business located in a low- or moderate-income census tract; or

(4) A small loan to a farm located in a low- or moderate-income census tract.

(c) *Community development loans, community development investments, and community development services.* A community development loan, community development investment, or community development service is a qualifying activity if it provides financing for or supports:

(1) Affordable housing, which means:

(i) Rental housing:

(A) That is likely to be partially or primarily inhabited by low- or moderate-income individuals or families as demonstrated by median rents that do not and are not projected at the time of the transaction to exceed 30 percent of 80 percent of the area median income;

(B) That is partially or primarily inhabited by low- or moderate-income individuals or families as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government; or

(C) That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for low- or moderate-income individuals or families; or

(ii) Owner-occupied housing purchased, refinanced, or improved by or on behalf of low- or moderate-income individuals or families, except for home mortgage loans provided directly to individuals or families;

(2) Another bank's community development loan, community development investment, or community development service;

(3) Community support services which means activities, such as child care, education, workforce development and job training programs, health services, and housing services, that partially or primarily serve or assist low- or moderate-income individuals or families;

(4) Economic development, which means activities that provide financing for or support businesses or farms, including:

(i) Activities that promote job creation or job retention partially or primarily for low- or moderate-income individuals;

(ii) Federal, state, local, or tribal government programs, projects, or initiatives that partially or primarily serve small businesses or small farms as those terms are defined in the programs, projects, or initiatives;

(iii) Retaining existing, or attracting new, businesses, farms, or residents to low- or moderate-income census tracts, underserved areas, distressed areas, designated disaster areas consistent with a disaster recovery plan, or Indian country or other tribal and native lands;

(iv) A Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, a Small Business Investment Company, as described in 13 CFR part 107, a New Markets Venture Capital company, as described in 13 CFR part 108, a qualified Community Development Entity, as defined in 26 CFR 45D(c), or a U.S. Department of Agriculture Rural Business Investment Company, as defined in 7 CFR 4290.50; or

(v) Technical assistance and supportive services, such as shared space, technology, or administrative assistance for businesses or farms that meet the size eligibility standards of the Small Business Investment Company program, as described in 13 CFR part 107;

(5) Essential community facilities that partially or primarily serve:

(i) Low- or moderate-income individuals or families; or

(ii) Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country or other tribal and native lands;

(6) Essential infrastructure that partially or primarily serves:

(i) Low- or moderate-income individuals or families; or

(ii) Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country or other tribal and native lands;

(7) A family farm's:

(i) Purchase or lease of farm land, equipment, and other farm-related inputs for the family farm's use in operating the farm;

(ii) Receipt of technical assistance and supportive services for the family farm's own production, such as shared space, technology, or administrative assistance through an intermediary; or

(iii) Sale and trade of family farm products grown or produced by the family farm;

(8) Federal, state, local, or tribal government programs, projects, or initiatives that:

(i) Partially or primarily serve low- or moderate-income individuals or families; or

(ii) Are consistent with a bona fide government revitalization, stabilization, or recovery plan for a low- or moderate-income census tract; a distressed area; an underserved area; a disaster area; or Indian country or other tribal and native lands;

(9) Financial literacy programs or education or homebuyer counseling;

(10) Owner-occupied and rental housing development, construction, rehabilitation, improvement, or maintenance in Indian country or other tribal and native lands;

(11) Qualified opportunity funds, as defined in 26 U.S.C. 1400Z–2(d)(1), that benefit low- or moderate-income qualified opportunity zones, as defined in 26 U.S.C. 1400Z–1(a); or

(12) Other activities and ventures undertaken, including capital investments and loan participations, by a bank in cooperation with a minority depository institution, women's depository institution, Community Development Financial Institution, or low-income credit union, if the activity helps to meet the credit needs of local

communities in which these institutions are chartered, including activities that indirectly help to meet community credit needs by promoting the sustainability and profitability of those institutions and credit unions.

§ 25.05 Qualifying activities confirmation and illustrative list.

(a) *Qualifying activities list.* The OCC maintains a publicly available illustrative list at *www.occ.gov* of non-exhaustive examples of qualifying activities that meet, and may include activities that do not meet, the criteria in § 25.04.

(b) *Confirmation of a qualifying activity.* An interested party may request that the OCC confirm that an activity meets the criteria in § 25.04 and is a qualifying activity in accordance with paragraph (c) of this section.

(1) When the OCC confirms that an activity is consistent with the criteria in § 25.04, the OCC will notify the requestor, publish its decision, and may add the activity to the list of activities that meet the qualifying activities criteria described in paragraph (a) of this section, incorporating any conditions imposed, if applicable.

(2) When the OCC determines that an activity is not consistent with the criteria in § 25.04, the OCC will notify the requestor, publish its decision, and may add this activity to the list of activities that do not meet the qualifying activities criteria described in § 25.04.

(c) *Process*—(1) An interested party may request that the OCC confirm that an activity is a qualifying activity by submitting a complete Qualifying Activity Confirmation Request Form available on *www.occ.gov.*

(2) In responding to a confirmation request that an activity is consistent with the criteria in § 25.04, the OCC will consider:

(i) The information on the Qualifying Activity Confirmation Request Form;

(ii) Whether the activity is consistent with the safe and sound operation of the bank; and

(iii) Any other information the OCC deems relevant.

(3) The OCC may impose conditions on its confirmation to ensure that an activity is consistent with the criteria in § 25.04.

(4) Unless notified by the OCC that it is extending the confirmation period to 90 days, an activity is confirmed as a qualifying activity if the requestor is not informed of an OCC objection within 60 days of submission of a complete Qualifying Activity Confirmation Request Form.

(d) *Modifying the qualifying activities list.* In addition to updating the list in paragraph (a) of this section on a periodic basis in response to requests for confirmation described in paragraph (b) of this section, the OCC will publish the qualifying activities list no less frequently than every five years for notice and comment to determine whether the list should change. If the OCC determines that a qualifying loan or community development investment no longer meets the criteria in § 25.04, that loan or community development investment will not be considered a qualifying activity for any subsequent purchasers.

§ 25.06 CRA desert confirmation.

(a) *CRA desert list.* The OCC maintains a publicly available illustrative list at *www.occ.gov* of areas that were consistent with the definition in § 25.03 at the time a bank requested confirmation of a CRA desert.

(b) *Confirmation of a CRA desert.* A bank must request that the OCC confirm that an area is a CRA desert in accordance with paragraph (c) of this section before receiving the CRA desert multiplier in § 25.08(b) in an evaluation period, even if that area is on the CRA desert list in paragraph (a) of this section.

(1) When the OCC confirms that an area is consistent with the definition of CRA desert in § 25.03, the OCC will notify the requestor and may add this area to the list of CRA deserts as described in paragraph (a) of this section.

(2) When the OCC determines that an area is not consistent with the definition of CRA desert in § 25.03, the OCC will notify the requestor.

(c) *Process*—(1) A bank may request that the OCC confirm that an area is a CRA desert by submitting a request to the OCC detailing why the area is consistent with the definition of CRA desert in § 25.03.

(2) In responding to a confirmation request that an activity is consistent with the definition of CRA desert in § 25.03, the OCC will consider:

(i) The information provided by the bank; and

(ii) Any other information the OCC deems relevant.

§ 25.07 Qualifying activities quantification.

(a) *Community development service quantification.* The quantified dollar value of a community development service is the compensation *multiplied by* the total number of hours one or more the employees spent performing the service, as adjusted by paragraph (e) of this section.

(b) *In-kind donation quantification.* The quantified dollar value of an in-kind donation is the fair market value of the donation, as adjusted by paragraph (e) of this section.

(c) *Monetary donation quantification.* The quantified dollar value of a monetary donation is the actual dollar value of the donation, as adjusted by paragraph (e) of this section.

(d) *Qualifying loan and other community development investment quantification.* The quantified dollar value of a qualifying loan or a community development investment not included in paragraph (b) or (c) of this section, is:

(1) Except for qualifying loans in paragraph (d)(2), the average of the dollar value, as of the close of business on the last day of the month, of:

(i) The outstanding balance of a loan or investment, as adjusted by paragraph (e) of this section;

(ii) Any legally binding commitment to invest, to the extent not reflected in paragraph (d)(1)(i) of this section and as adjusted by paragraph (e) of this section; and

(iii) Any commitment to lend, to the extent not reflected in paragraph (d)(1)(ii) of this section and as adjusted in paragraph (e) of this section; or

(2) For qualifying retail loans sold within 365 days of origination, the dollar value of the loan at origination.

(3) For community development investment funds that are syndicated or sponsored by the bank for the purpose of obtaining financing from other investors and support one or more projects that are eligible for low-income housing tax credits or new markets tax credits:

(i) The total dollar value of the fund in the year of origination; and

(ii) One half of the total dollar value of the portion of the fund that is sold in the year that it is sold.

(e) *Portion of partially qualifying activities.* The quantified dollar value of a partially qualifying activity is calculated by *multiplying* the percentage of the activity that is qualifying by the full dollar value of the qualifying activity quantified under paragraphs (a)—(d) of this section.

§ 25.08 Qualifying activities value.

(a) *Bank's qualifying activities value.* A bank evaluated under § 25.13 calculates its qualifying activities value annually based on the quantified dollar value of all qualifying activities originated, made, performed, or on the bank's balance sheet during the year. The qualifying activities value equals the *sum,* during a given annual period, of:

(1) The quantified dollar value of qualifying loans and community

development investments originated, made, or performed by the bank during the year or on the bank's balance sheet during the year, as adjusted in paragraph (b) of this section; and

(2) The aggregate:

(i) Quantified dollar value of community development services conducted during the year, as adjusted in paragraph (b) of this section;

(ii) Quantified dollar value of in-kind donations made during the year, as adjusted in paragraph (b) of this section; and

(iii) Quantified dollar value of monetary donations made during the year, as adjusted in paragraph (b) of this section.

(b) *Multipliers*—(1) To be eligible for the multipliers in paragraphs (b)(2) and (b)(3) of this section, the quantified dollar value of a bank's current evaluation period community development loans, community development investments, and community development services must be approximately equal to the quantified dollar value of these activities considered in the bank's prior evaluation period. The quantified dollar value of qualifying activities originated, made, conducted or purchased by a bank during the evaluation period after this requirement is met will be adjusted using the multipliers in paragraphs (b)(2)–(b)(3) of this section, as applicable.

(2) When calculating the bank's qualifying activity value or an assessment area qualifying activities value, the quantified dollar value of the following qualifying activities, except for activities quantified under § 25.07(d)(3), will be adjusted by *multiplying* the quantified dollar value by 2.

(i) Activities provided to or that support minority depository institutions, women's depository institutions, Community Development Financial Institutions, and low-income credit unions, except activities related to mortgage-backed securities;

(ii) Other community development investments, except community development investments in mortgage-backed securities and municipal bonds;

(iii) Other community development services;

(iv) Other affordable housing-related community development loans; and

(v) Retail loans generated by branches in low- and moderate-income census tracts.

(3) In addition to any multiplier under paragraph (b)(2) of this section, when calculating the bank's qualifying activities value or an assessment area qualifying activities value, the quantified dollar value of the qualifying activities in CRA deserts, except for activities quantified under § 25.07(d)(3), will be adjusted by multiplying the quantified dollar value by 2.

(4) Qualifying activities that receive a multiplier under paragraphs (b)(2) and (b)(3) of this section may be eligible for a multiplier of up to 4 times their quantified dollar value based on the OCC's determination of the activity's responsiveness, innovativeness, or complexity.

(c) *Assessment area qualifying activities value.* A bank evaluated under § 25.13 calculates its assessment area qualifying activities value for each assessment area by using the process described in paragraph (a) of this section for qualifying activities located in the assessment area and originated, made, or performed by the bank during the year or were on the bank's balance sheet during the year.

Subpart C—Assessment Area

§ 25.09 Assessment area.

(a) *General.* A bank must delineate one or more assessment areas within which the OCC evaluates the bank's record of helping to meet the credit needs of its community. The OCC reviews the delineation for compliance with the requirements of this section. Unless pursuant to an approved application covered under § 25.02(a)(3) for a merger or consolidation with an insured depository institution, an assessment area delineation can only change once a year and must not change within the annual period used to determine an assessment area CRA evaluation measure under § 25.11(c).

(b) *Facility-based assessment area(s)*—(1) A bank must delineate an assessment area encompassing each location where the bank maintains a main office, a branch, or a non-branch deposit-taking facility that is not an ATM as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans. Assessment areas delineated under this paragraph may contain one or more of these facilities and may also contain one or more deposit-taking ATMs.

(2) A bank may delineate an assessment area encompassing locations where it maintains a deposit-taking ATM as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans. Assessment areas delineated under this paragraph may contain one or more of these facilities and may also contain one or more of the facilities in paragraph (b)(1) of this section.

(3) A facility-based assessment area must be delineated to consist of:

(i) One whole metropolitan statistical area (using the metropolitan statistical area boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(ii) The whole nonmetropolitan area of a state;

(iii) One or more whole, contiguous metropolitan divisions in a single metropolitan statistical area (using the metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made); or

(iv) One or more whole, contiguous counties or county equivalents in a single metropolitan statistical area or nonmetropolitan area.

(4) A bank may delineate its facility-based assessment area(s) in the smallest geographic area where it maintains a main office, branch, or non-branch deposit-taking facility or may delineate a larger assessment area that includes these locations, as provided in paragraph (b)(3) of this section.

(5) A facility-based assessment area may not extend beyond a metropolitan statistical area or state boundary unless the assessment area is located in a multistate metropolitan statistical area. If a bank serves a geographic area that extends beyond a state boundary, the bank must delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends beyond a metropolitan statistical area boundary, the bank must delineate separate assessment areas for the areas inside and outside the metropolitan statistical area.

(c) *Deposit-based assessment area(s)*—(1) A bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas must delineate separate, non-overlapping assessment areas where it receives 5 percent or more of its retail domestic deposits.

(2) A deposit-based assessment area must be delineated to consist of:

(i) One whole state;

(ii) One whole metropolitan statistical area (using the metropolitan statistical area boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(iii) The whole nonmetropolitan area of a state;

(iv) One or more whole, contiguous metropolitan divisions in a single metropolitan statistical area (using the metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(v) The remaining geographic area of a state, metropolitan statistical area, nonmetropolitan area, or metropolitan division other than where it has a facility-based assessment area; or

(vi) One or more whole, contiguous counties or county equivalents in a single metropolitan statistical area or nonmetropolitan area.

(3) A bank may delineate its deposit-based assessment area(s) in the smallest geographic area where it receives 5 percent or more of its retail domestic deposits or may delineate a larger assessment area that includes these geographic areas, as provided in paragraph (b)(2) of this section.

(d) *Limitations on delineation of assessment areas.* A bank's assessment areas must not:

(1) Reflect illegal discrimination; or

(2) Arbitrarily exclude low- or moderate-income census tracts, taking into account the bank's size and financial condition.

(e) *Military banks.* Notwithstanding the requirements of this section, a military bank's assessment area will consist of the entire United States of America and its territories. A military bank will only be evaluated under § 25.13(c).

(f) *Banks evaluated under strategic plans.* A bank evaluated under a strategic plan will delineate its assessment area(s) in accordance with the requirements of § 25.18(g)(2).

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

Subpart D—Performance Evaluations

§ 25.10 Performance standards and ratings, in general.

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

(1) *General performance standards*—(i) The OCC assesses the CRA performance of a bank other than banks described in paragraphs (a)(2), (a)(3), and (a)(4) of this section based on the bank's application of the general performance standards and determination of its presumptive ratings under § 25.13.

(ii) The OCC determines the assigned ratings for a bank evaluated under § 25.13 as provided in § 25.19.

(iii) The OCC determines the state or multistate metropolitan statistical area ratings for a bank evaluated under § 25.13 as provided in § 25.20.

(2) *Small bank and intermediate bank performance standards*—(i) The OCC applies the small bank and intermediate bank performance standards, as provided in § 25.14, in evaluating the performance of a small bank or intermediate bank, unless the bank is evaluated under an approved strategic plan as described under paragraph (a)(4) of this section or elects to opt in to the general performance standards under paragraph (b) of this section.

(ii) The OCC assigns a small bank evaluated under the small bank and intermediate bank performance standards in § 25.14 lending test and bank ratings as provided for in Appendix A of this part.

(iii) The OCC assigns an intermediate bank evaluated under the small bank and intermediate bank performance standards in § 25.14 lending test, community development test, and bank ratings as provided in Appendix A of this part.

(3) *Wholesale and limited purpose bank performance standards*—(i) The OCC applies the wholesale and limited purpose bank performance standards, as provided in § 25.15, in evaluating the performance of a wholesale or limited purpose bank, unless the bank is evaluated under an approved strategic plan as described under paragraph (a)(4) of this section or elects to opt in to the general performance standards under paragraph (b) of this section.

(ii) The OCC assigns a wholesale or limited purpose bank evaluated under the wholesale and limited purpose bank performance standards in § 25.15 community development test and bank ratings as provided for in Appendix A of this part.

(4) *Strategic plan.* The OCC evaluates the performance of a bank under a strategic plan if the bank submits, and the OCC approves, a strategic plan as provided in § 25.18.

(b) *General performance standards opt in.* A small, intermediate, wholesale, or limited purpose bank may elect to opt in to be evaluated under the general performance standards described in paragraph (a)(1) of this section. A small, intermediate, wholesale, or limited purpose bank that elects to be evaluated under the general performance standards must collect, maintain, and report the data required for other banks under §§ 25.21, 25.25, and 25.26. Once a small, intermediate, wholesale, or limited purpose bank elects to opt in, it must complete at least one evaluation period under the general performance standards and may elect no more than once to opt out of the general performance standards. A small, intermediate, wholesale, or limited purpose bank that opts out from the general performance standards will revert to being evaluated according to the corresponding performance standards described in paragraphs (a)(2) and (a)(3) of this section, unless the bank is evaluated under an approved strategic plan as described under (a)(4) of this section.

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

§ 25.11 CRA evaluation measure.

(a) *CRA evaluation measure.* A bank evaluated as described in § 25.13 will determine its bank and assessment area CRA evaluation measures annually as part of its CRA performance evaluation.

(b) *Determination of the bank's CRA evaluation measure.* A bank's CRA evaluation measure is the *sum of:*

(1) The bank's annual qualifying activities values calculated under § 25.08(a) *divided by* the average quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter for the same period used to calculate the annual qualifying activities value; and

(2) The number of the bank's branches located in or that serve low- or moderate-income census tracts, distressed areas, underserved areas, and Indian country or other tribal and native lands *divided by* its total number of branches as of the close of business on the last day of the same period used to calculate the annual qualifying activities value *multiplied by* .02.

(3) If the value calculated in paragraph (b)(2) of this section exceeds .01, then the bank's CRA evaluation measure is the *sum of* the value calculated in paragraph (b)(1) of this section and .01.

(c) *Determination of the assessment area CRA evaluation measure.* A bank's assessment area CRA evaluation measure is determined in each assessment area and is the *sum of:*

(1) The bank's annual assessment area qualifying activities value calculated under § 25.08(c); *divided by* the average quarterly value of the bank's assessment area retail domestic deposits as of the

close of business on the last day of each quarter for the same period used to calculate the annual assessment area qualifying activities value; and

(2) The number of the bank's branches located in or that serve low- or moderate-income census tracts, distressed areas, underserved areas, and Indian country or other tribal and native lands in the assessment area *divided by* its total number of branches in the assessment area as of the close of business on the last day of the same period used to calculate the annual assessment area qualifying activities value *multiplied by* .02.

(3) If the value calculated in paragraph (c)(2) of this section exceeds .01, then the bank's assessment area CRA evaluation measure is the *sum of* the value calculated in paragraph (c)(1) of this section and .01.

(d) *Average annual CRA evaluation measures.* For each evaluation period, a bank will calculate the average of its:

(1) Annual CRA evaluation measures for each year in the evaluation period; and

(2) Annual assessment area CRA evaluation measures for each year in the evaluation period, separately for each assessment area.

§ 25.12 Retail lending distribution tests.

(a) *General.* In each assessment area, for a bank evaluated as described in § 25.13 the OCC will apply a:

(1) Geographic distribution test for its home mortgage product line, small loan to a business product line, or small loan to a farm product line if those product lines are major retail lending product lines with 20 or more originations per year in the assessment area during the evaluation period; and

(2) Borrower distribution test for each major retail lending product line with 20 or more originations per year in the assessment area during the evaluation period.

(b) *Geographic distribution test*—(1) *Home mortgage product line.* The OCC determines whether a bank passes the geographic distribution test for the home mortgage product line by comparing the bank's home mortgage loans originated in low- and moderate-income tracts in the assessment area as a percentage of the bank's home mortgage loans originated in the assessment area to either the associated geographic demographic comparator or the associated geographic peer comparator.

(i) *Geographic demographic comparator.* The geographic demographic comparator is the percentage of owner-occupied housing units in the assessment area that are in low- and moderate-income census tracts.

(ii) *Geographic peer comparator.* The geographic peer comparator is all peer home mortgage loans originated in low- and moderate-income areas in the assessment area as a percentage of all peer home mortgage loans in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(2) *Small loan to a business product line.* The OCC determines whether a bank passes the geographic distribution test for the small loan to a business product line by comparing the bank's small loans to businesses originated in low- or moderate-income census tracts in the assessment area as a percentage of the bank's small loans to businesses originated in the assessment area to either the associated geographic demographic comparator or the associated geographic peer comparator.

(i) *Geographic demographic comparator.* The geographic demographic comparator is the percentage of businesses in the assessment area that are in low- and moderate-income census tracts.

(ii) *Geographic peer comparator.* The geographic peer comparator is all peer small loans to businesses originated in low- and moderate-income census tracts in the assessment area as a percentage of all peer small loans to businesses originated in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(3) *Small loan to a farm product line.* The OCC determines whether a bank passes the geographic distribution test for the small loan to a farm product line by comparing the bank's small loans to farms originated in low- or moderate-income census tracts in the assessment area as a percentage of the bank's small loans to farms originated in the assessment area to the associated geographic demographic comparator or the associated geographic peer comparator.

(i) *Geographic demographic comparator.* The geographic demographic comparator is the percentage of farms in the assessment area that are in low- and moderate-income census tracts.

(ii) *Geographic peer comparator.* The geographic peer comparator is all peer small loans to farms originated in low- and moderate-income census tracts in the assessment area as a percentage of all peer small loans to farms originated in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(c) *Borrower distribution test*—(1) *Home mortgage lending product line.* The OCC determines whether a bank passes the borrower distribution test for a home mortgage lending product line by comparing the bank's home mortgage loans originated to low- and moderate-income families in the assessment area as a percentage of the bank's home mortgage loans originated in the assessment area to either the associated borrower demographic comparator or the associated borrower peer comparator.

(i) *Borrower demographic comparator.* The borrower demographic comparator is the percentage of low- and moderate-income families in the assessment area.

(ii) *Borrower peer comparator.* The borrower peer comparator is all peer home mortgage loans originated to low- or moderate-income families in the assessment area as a percentage of all peer home mortgage loans originated in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(2) *Automobile lending product line, other revolving credit plan product line, or other consumer loan product line.* The OCC determines whether a bank passes the borrower distribution test for the automobile lending product line, other revolving credit plan product line, or other consumer loan product line by comparing the bank's product line loans to low- and moderate-income households in the assessment area as a percentage of the bank's product line loans originated in the assessment area to either the associated demographic borrower comparator or the associated peer comparator.

(i) *Borrower demographic comparator.* The borrower demographic comparator is the percentage of low- and moderate-income households in the assessment area.

(ii) *Borrower peer comparator.* The borrower peer comparator is all peer product line loans originated to low- or moderate-income households as a percentage of all peer product line loans originated in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(3) *Small loan to a business product line.* The OCC determines whether a bank passes the borrower distribution test for the small loan to a business product line by comparing the bank's small loans to businesses originated to CRA-eligible businesses in the assessment area as a percentage of the bank's small loans to businesses originated in the assessment area to either the associated demographic

borrower comparator or the associated peer comparator.

(i) *Borrower demographic comparator.* The borrower demographic comparator is the percentage of CRA-eligible businesses in the assessment area.

(ii) *Borrower peer comparator.* The borrower peer comparator is all peer small loans to businesses to CRA-eligible businesses originated in the assessment area as a percentage of all small loans to businesses originated in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(4) *Small loan to a farm product line.* The OCC determines whether a bank passes the borrower distribution test for the small loan to a farm product line by comparing the bank's small loans to farms originated to CRA-eligible farms in the assessment area as a percentage of the bank's small loans to farms originated in the assessment area to either the associated demographic borrower comparator or the associated peer comparator.

(i) *Borrower demographic comparator.* The borrower demographic comparator is the percentage of CRA-eligible farms in the assessment area.

(ii) *Borrower peer comparator.* The borrower peer comparator is all peer small loans to farms to CRA-eligible farms originated in the assessment area as a percentage of all peer small loans to farms, where peers are all banks that are evaluated under the general performance standards in § 25.13.

§ 25.13 General performance standards and presumptive rating.

(a) *General.* The bank's presumptive rating and its assessment area presumptive rating(s) for banks assessed under this section are determined by evaluating whether a bank has met all the performance standards associated with a given rating category. A bank will use the performance standards in effect on the first day of its evaluation period for the duration of its evaluation period, unless the bank elects to use performance standards published later during the evaluation period. If the bank elects to use a later-published performance standard, that performance standard will apply during the entire evaluation period.

(b) *Performance standards adjustments.* The OCC will periodically adjust the performance standards.

(1) *Factors considered.* When adjusting the performance standards, the OCC will consider factors such as the level of qualifying activities conducted by all banks, market conditions, and unmet needs and opportunities.

(2) *Public notice and comment.* The OCC will provide for a public notice and comment period on any proposed adjustments to the performance standards prior to finalizing the adjustments.

(c) *Bank performance standards*—(1) *Outstanding.* The outstanding performance standards are:

(i) *CRA evaluation measure.* The bank's average annual CRA evaluation measure during the evaluation period is outstanding;

(ii) *Assessment area ratings*—(A) Except as provided in paragraph (c)(1)(ii)(B) of this section, the bank received an assigned rating of outstanding in—

(1) 80 percent of its assessment areas; and

(2) Assessment areas from which it receives 80 percent of its retail domestic deposits that it receives from its assessment areas; and

(B) For a bank with five or fewer assessment areas, the bank received an assigned rating of outstanding in

(1) 50 percent of its assessment areas; and

(2) Assessment areas from which it receives 80 percent of its retail domestic deposits that it receives from its assessment areas.

(iii) *Community development minimum.* The total quantified dollar value of community development loans and community development investments conducted during the evaluation period, including any applicable multipliers from § 25.08(b), *divided by* the average quarterly value of the bank's total retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period is outstanding.

(2) *Satisfactory.* The satisfactory performance standards are:

(i) *CRA evaluation measure.* The bank's average annual CRA evaluation measure during the evaluation period is satisfactory.

(ii) *Assessment area ratings*—(A) Except as provided in paragraph (c)(2)(ii)(B) of this section, the bank received an assigned rating of at least satisfactory in

(1) 80 percent of its assessment areas; and

(2) Assessment areas from which the bank receives at least 80 percent of its retail domestic deposits that it receives from its assessment areas; and

(B) For a bank with five or fewer assessment areas the bank received an assigned rating of at least satisfactory in

(1) 50 percent of its assessment areas; and

(2) Assessment areas from which the bank receives 80 percent of its retail domestic deposits that it receives from its assessment areas.

(iii) *Community development minimum.* The total quantified dollar value of community development loans and community development investments conducted during the evaluation period, including any applicable multipliers from § 25.08(b), divided by the average quarterly value of the bank's total retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period is satisfactory.

(3) *Needs to improve.* The needs to improve performance standard is an average annual CRA evaluation measure during the evaluation period that needs to improve.

(4) *Substantial noncompliance.* The substantial noncompliance standard is an average annual CRA evaluation measure during the evaluation period that is substantially noncompliant.

(d) *Assessment area performance standards*—(1) *Outstanding.* The assessment area outstanding performance standards are:

(i) *Retail lending distribution tests.* The bank must pass both the geographic and borrower distribution tests for the major retail lending product lines evaluated in § 25.12;

(ii) *CRA evaluation measure.* The bank's average annual assessment area CRA evaluation measures during the evaluation period is outstanding; and

(iii) *Community development minimum.* The quantified dollar value of community development loans and community development investments conduct in the assessment area during the evaluation period, including any applicable multipliers from § 25.08(b), *divided by* the average quarterly value of the bank's retail domestic deposits received from the assessment area as of the close of business on the last day of each quarter of the evaluation period is outstanding.

(2) *Satisfactory.* The assessment area satisfactory performance standards are:

(i) *Retail lending distribution tests.* The bank must pass both the geographic and borrower distribution tests for the major retail lending product lines evaluated in § 25.12;

(ii) *CRA evaluation measure.* The bank's average assessment area CRA evaluation measure during the evaluation period is satisfactory; and

(iii) *Community development minimum.* The quantified dollar value of community development loans and community development investments conducted in the assessment area during the evaluation period, including any applicable multipliers from § 25.08(b), *divided by* the average quarterly value of the bank's retail domestic deposits received from the assessment area as of the close of business on the last day of each quarter of the evaluation period is satisfactory.

(3) *Needs to improve.* The assessment area needs to improve performance standard is an average assessment area CRA evaluation measure during the evaluation period that needs to improve.

(4) *Substantial noncompliance.* The assessment area substantial noncompliance performance standard is an average assessment area CRA evaluation measure during the evaluation period that is substantially noncompliant.

§ 25.14 Small and intermediate bank performance standards.

(a) *Performance criteria*—(1) *Small banks.* The OCC evaluates the record of a small bank of helping to meet the credit needs of its assessment area(s) pursuant to the criteria in paragraph (b) of this section.

(2) *Intermediate banks.* The OCC evaluates the record of an intermediate bank of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

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

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

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

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

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

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

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

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

(2) The number and amount of community development investments;

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

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

(d) *Small bank and intermediate bank performance ratings.* The OCC rates the performance of a small bank or intermediate bank evaluated under this section as provided in appendix A of this part.

§ 25.15 Wholesale and limited purpose bank performance standards.

(a) *Scope.* The OCC assesses a wholesale or limited purpose bank's record of helping to meet the credit needs of its assessment area(s) through its community development lending, community development investments, or community development services.

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

(c) *Performance criteria.* The OCC evaluates the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

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

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

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

(d) *Benefits to assessment area(s)*—(1) *Benefits inside assessment area(s).* The OCC considers all community development investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(2) *Benefits outside assessment area(s).* The OCC considers the community development investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s).

(e) *Community development performance rating.* The OCC rates a bank's community development performance as provided in appendix A of this part.

§ 25.16 Consideration of performance context.

(a) *General.* Performance context is used to assess how the factors in paragraph (b) of this section affect a bank's capacity and opportunity to meet the performance standards described in §§ 25.13, 25.14, 25.15 or 25.18. Based on that assessment, the OCC may adjust:

(1) The assessment area and bank presumptive ratings in § 25.13; or

(2) The small, intermediate, wholesale, and limited purpose bank ratings, as described in appendix A.

(b) *Performance context factors.* In assessing performance context, the OCC considers and documents the effect of the following factors when determining the assigned rating:

(1) The bank's explanation of how its capacity to meet the performance standards described in §§ 25.13, 25.14, 25.15 or 25.18 was affected by:

(i) The bank's product offerings and business strategy;

(ii) The bank's unique constraints, such as its financial condition, safety and soundness limitations, or other factors;

(iii) The innovativeness, complexity, and flexibility of the bank's qualifying activities;

(iv) The bank's development of business infrastructure and staffing to support the purpose of this part; and

(v) The responsiveness of the bank's qualifying activities to the needs of the community;

(2) The bank's explanation of how its opportunity to engage in qualifying activities was affected by:

(i) The demand for qualifying activities, including, for example, credit needs and market opportunities identified in a Federal Home Loan Bank Targeted Community Lending Plan as provided for in 12 CFR 1290.6(a)(5) or a U.S. Department of Housing & Urban Development Consolidated Plan as provided for in 24 CFR part 91, as applicable;

(ii) The demand for retail loans in low- or moderate-income census tracts; and

(iii) Demographic factors (*e.g.,* housing costs, unemployment rates variation);

(3) The bank's competitive environment, as demonstrated by peer performance.

(4) Any written comments about assessment area needs and opportunities submitted to the bank or the OCC; and

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

(c) *Form.* Banks, other than small and intermediate banks, must submit the information in paragraph (b) of this section on the performance context form available on *www.occ.gov, including for each assessment area.*

§ 25.17 Discriminatory and other illegal credit practices.

(a) *Evidence of discriminatory or other illegal credit practices.* A bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices. In assessing a bank's CRA performance, the OCC's evaluation will consider evidence of discriminatory or other illegal credit practices including but not limited to:

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

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

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

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

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

(6) Violations of the Military Lending Act; and

(7) Violations of the Servicemembers Civil Relief Act.

(b) *Effect of evidence of discriminatory or other illegal credit practices.* In determining the effect of evidence of practices described in paragraph (a) of this section on the bank's assigned rating, the OCC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank has in place to prevent the practices; any corrective action that the bank has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

§ 25.18 Strategic plan.

(a) *General.* The OCC assesses a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the OCC as provided for in this section;

(2) The OCC has approved the plan;

(3) The plan is in effect; and

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

(b) *Plan submission*—(1) *Required submission.* A bank must submit a strategic plan that meets the requirements of this section if the bank would otherwise be evaluated under § 25.13 and does not maintain retail domestic deposits on-balance sheet; or

(2) *Optional submission.* A bank not covered under paragraph (b)(1) of this section may submit a strategic plan to the OCC for approval.

(c) *Data reporting.* The OCC's approval of a plan does not affect the bank's data collection, recordkeeping, and reporting obligations, if any, in §§ 25.21, 25.22, 25.25, and 25.26, unless otherwise determined in writing by the OCC. The OCC may require additional bank-specific data collection, recordkeeping, and reporting under a strategic plan, as appropriate.

(d) *Plans in general*—(1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the OCC evaluates the bank's performance.

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

(e) *Public participation in plan development.* Before submitting a plan to the OCC for approval, a bank must:

(1) Solicit public comment on the plan for at least 30 days by submitting the plan for publication on the OCC's website and by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(2) During the public comment period, make copies of the plan available for review by the public and provide copies of the plan upon request for a reasonable fee to cover copying, printing, or mailing, if applicable.

(f) *Submission of plan.* The bank must submit its complete plan to the OCC at least six months prior to the proposed effective date of the plan. The bank must also submit with its plan a description of any written public comments received, including how the plan was revised in light of the comments received. If the OCC determines the plan is not complete, the OCC will notify the bank specifying the information needed, designating a reasonable period of time for the bank to provide the information, and informing the bank that failure to provide the information requested will result in no further consideration being given to the plan.

(g) *Plan content*—(1) *Performance standards*—(i) A plan must specify measurable goals for helping to meet the credit needs of the bank's community and in each of its assessment areas, particularly the needs of low- and moderate-income census tracts and low- and moderate-income individuals and families, through qualifying activities.

(ii) A plan must address the types and volume of qualifying activities the bank will conduct. A plan may focus on one or more types of qualifying activities considering the bank's capacity and constraints, product offerings, and business strategy.

(2) *Assessment area delineation.* A plan must include a delineation of the bank's assessment areas(s) that meets the requirements of § 25.09(a) through (d). In addition, the plan may include assessment area delineations that reflect its target geographic market as defined by the bank in its strategic plan. For a de novo bank, the assessment area delineations should include the projected location of its deposit-taking facilities, retail domestic deposit base, and lending activities.

(3) *Confidential information.* A bank may submit additional information to the OCC on a confidential basis, to the extent permitted by law, but the goals stated in the plan must be sufficiently specific to enable the public and the OCC to judge the merits of the plan.

(4) *Satisfactory and outstanding performance standards.* A plan must specify measurable goals that constitute satisfactory performance. A plan may specify measurable goals that constitute outstanding performance. If a bank submits, and the OCC approves, both satisfactory and outstanding performance goals, the OCC considers the bank eligible for an outstanding performance rating.

(h) *Plan approval*—(1) *Timing.* The OCC will act upon a plan within 90 days after the OCC receives the complete plan and other material required under paragraph (g) of this section. If the OCC does not act within this time period, the plan will be deemed approved unless the OCC extends the review period for good cause for no more than 30 days.

(2) *Public participation.* In evaluating the plan's goals, the OCC considers any written public comment on the plan and any response by the bank to any written public comment on the plan.

(3) *Criteria for evaluating a plan.* The OCC evaluates a plan's goals by considering the extent and breadth of the qualifying activities including:

(i) Community development loans, community development investments, and community development services; and

(ii) The use of innovative, flexible, or complex qualifying activities.

(i) *Plan amendment.* During the term of a plan, a bank may request the OCC to approve an amendment to the plan on grounds that there has been a material change in circumstances. The OCC reserves the right to require a bank that requests an amendment to a plan to comply with the public participation process described in paragraph (e) of this section.

§ 25.19 Assigned ratings.

(a) *General performance standards*—(1) *Bank's assigned rating.* The OCC determines the assigned rating for a bank evaluated under § 25.13 based on its presumptive rating under § 25.13, adjusted for performance context under § 25.16, and consideration of discriminatory or other illegal credit practices under § 25.17.

(2) *Assessment area assigned rating.* The OCC determines the assessment area assigned ratings for a bank evaluated under § 25.13 based on its assessment area presumptive rating under § 25.13, adjusted for performance context under § 25.16 and consideration of discriminatory or other illegal credit practices under § 25.17.

(b) *Strategic plans assigned rating.* A bank operating under a strategic plan will receive, as applicable, an assigned rating, assessment area assigned ratings, and state-level and multistate metropolitan statistical area assigned ratings of satisfactory or outstanding if it has met the measurable goals in the plan that correspond to those ratings after considering performance context under § 25.16 and discriminatory or other illegal credit practices under § 25.17.

§ 25.20 State/multistate metropolitan statistical area assigned rating.

For a bank evaluated under § 25.13 with interstate branches, the OCC will assign a rating for each state where the bank has a facility-based assessment area and each multistate metropolitan statistical area where the bank has a main office, branch, or non-branch deposit-taking facility in two or more states in the multistate metropolitan statistical area. The state or multistate metropolitan statistical area assigned rating for that state or multistate metropolitan statistical area is based on the ratings assigned to its assessment areas within that state or multistate metropolitan statistical area.

Subpart E [Redesignated as Subpart F]

■ 3. Redesignate subpart E as subpart F and redesignate §§ 25.61 through 25.65 as §§ 25.31 through 25.35, respectively.

■ 4. Add new subpart E to read as follows:

Subpart E—Data Collection, Recordkeeping, and Reporting

Sec.

§ 25.21 Data collection for banks evaluated under the general performance standards in § 25.13 or a strategic plan under § 25.18.

(a) *General.* A bank evaluated under the general performance standards in § 25.13 and a bank evaluated under a strategic plan under § 25.18, unless otherwise determined in writing by the OCC, must collect and maintain the information required by this section until the completion of the relevant CRA evaluation.

(b) *Performance standards data.* A bank must collect and maintain, along with supporting documentation, its:

(1) Retail lending distribution test ratios calculated under § 25.12 for the borrower distribution and geographic distribution tests for each major retail lending product line evaluated in the assessment area;

(2) CRA evaluation measure and each assessment-area CRA evaluation measure calculated under § 25.11;

(3) Community development minimum and each assessment-area level community development minimum calculated under § 25.13; and

(4) Presumptive ratings under § 25.13.

(c) *Qualifying activities and retail domestic deposit data required to be collected and maintained.* A bank subject to this section must collect and maintain the following data and supporting documentation for all qualifying activities and certain non-qualifying activities conducted by the bank:

(1) *Qualifying loan data.* Except as provided in paragraph (c)(8) of this section, for each qualifying loan:

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

(ii) An indicator of whether the loan is a retail loan or a community development loan;

(iii) Date of:

(A) Origination for loans originated by the bank, if applicable;

(B) Purchase for loans not originated by the bank, if applicable; and

(C) Sale if the loan is a retail loan and sold by the bank within 365 days of origination;

(iv) An indicator of whether the loan was originated or purchased by the bank;

(v) The loan amount at origination or purchase;

(vi) The outstanding dollar amount of the loan, as of the close of business on the last day of the month, for each month that the loan is on-balance sheet;

(vii) The loan location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract;

(viii) Portion of the community development loan that is partially qualifying, if applicable;

(ix) An indicator of whether a multiplier applies;

(x) The income or gross annual revenue of the borrower; and

(xi) The criteria in § 25.04 that the loan satisfies or that it is on the illustrative list referenced in § 25.05 and whether it serves a particular assessment area, if applicable.

(2) *Other loan data.* A bank must collect and maintain the following data and supporting documentation for originations of non-qualifying home mortgage loans, small loans to businesses, small loans to farms, and consumer loans by the bank:

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

(ii) The date of origination;

(iii) The loan amount at origination;

(iv) The loan location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract; and

(v) The income or gross annual revenue of the borrower.

(3) *Number of home mortgage.* For the home mortgage product line, for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to low- and moderate-income borrowers.

(4) *Number of small loans to businesses.* For the small loan to a business product line, for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to CRA-eligible businesses.

(5) *Number of small loans to farms.* For the small loan to a farm product line for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to CRA-eligible farms.

(6) *Number of consumer loans.* For each other consumer loan product line as defined in § 25.03, for each county or county equivalent:

(i) The number of loans originated; and

(ii) The number of loans originated to low- and moderate-income borrowers.

(7) *Community development investment data.* Except as provided in paragraph (c)(8) of this section, for each community development investment:

(i) A unique number, alpha-numeric symbol, or another mechanism to identify the community development investment;

(ii) Date of community development investment by the bank;

(ii) The outstanding dollar value of the community development investment, as of the close of business on the last day of the month, for each month that the investment is on-balance sheet, if applicable;

(iii) The quantified dollar value of the monetary donation, if applicable;

(iv) The quantified dollar value of the in-kind donation, if applicable;

(v) The community development investment location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable;

(vi) Portion of the community development investment that is partially qualifying, if applicable;

(vii) An indicator of whether a multiplier applies; and

(viii) The criteria in § 25.04 that the community development investment satisfies or that it is on the illustrative list referenced in § 25.05 and whether it serves a particular assessment area, if applicable.

(8) *Community development services data.* For each community development service:

(i) A unique number or alpha-numeric symbol identifying the community development service;

(ii) The quantified dollar value of the community development service;

(iii) A description of the community development service;

(iv) The date the community development service was performed;

(v) The community development service location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable;

(vi) Portion of the community development service that is partially qualifying, if applicable;

(vii) An indicator of whether a multiplier applies; and

(viii) The qualifying activity criteria in § 25.04 that the community development service satisfies or that it is on the illustrative list referenced in § 25.05.

(9) *Grandfathered qualifying activities.* For each activity that qualifies under § 25.04(a)(1)(3):

(i) A unique number or alpha-numeric symbol identifying activity;

(ii) The outstanding dollar value of the activity, as of the close of business on the last day of the month, for each month that the activity is on-balance sheet,

(iii) A description of the activity, including whether it is a retail loan, community development loan, or community development investment;

(iv) The activity location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable;

(v) Portion of the activity that is partially qualifying, if applicable;

(vi) An indicator of whether a multiplier applies; and

(vii) A statement certifying that the activity would have received positive consideration in a CRA performance evaluation on the date prior to October 1, 2020.

(10) *Retail domestic deposit data.* The value of each retail domestic deposit account and the physical address and associated Federal Information Processing Standards code for the metropolitan statistical area, state, and county or county equivalent of each depositor as of the close of business on the last day of each quarter during the examination period.

(d) *Assessment areas.* A bank must collect and maintain a list of its assessment area(s) showing within the assessment area(s) each:

(1) County or county equivalent;

(2) Metropolitan division;

(3) Nonmetropolitan area;

(4) Metropolitan statistical area; or

(5) State.

(e) *Deposit-taking facilities.* For each deposit-taking facility, a bank must collect and maintain

(1) An indicator of whether it was a branch or a non-branch deposit-taking facility; and

(2) The physical address and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract.

§ 25.22 Retail domestic deposit data collection for small and intermediate banks evaluated under the small and intermediate bank performance standards in § 25.14.

A small or intermediate bank evaluated under the small and intermediate bank performance standards in § 25.14 must collect and maintain data on the value of each retail domestic deposit account and the physical address of each depositor as of the close of business on the last day of each quarter during the examination period until the completion of its next CRA evaluation.

§ 25.23 Data collection for wholesale and limited purpose banks evaluated under the wholesale and limited purpose bank performance standards in § 25.15.

(a) *General.* A wholesale or limited purpose bank evaluated under the wholesale and limited purpose bank performance standards in § 25.15 must collect and maintain the information required by this section until the completion of the relevant CRA evaluation.

(b) *Qualifying community development loan, community development investment, and community development service required to be collected and maintained.* A bank subject to this section must collect and maintain the following data and supporting documentation for all qualifying community development loans, community development investments, and community development services conducted by the bank:

(1) *Qualifying community development loan data.* Except as provided in paragraph (b)(4) of this section for each qualifying loan:

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

(ii) Date of:

(A) Origination for loans originated by the bank, if applicable; and

(B) Purchase for loans not originated by the bank, if applicable;

(iii) An indicator of whether the loan was originated or purchased by the bank;

(iv) The loan amount at origination or purchase;

(v) The loan location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract; and

(vi) The criteria in § 25.04 that the loan satisfies or that it is on the illustrative list referenced in § 25.05 and whether it serves a particular assessment area, if applicable.

(2) *Community development investment data.* Except as provided in paragraph (b)(4) of this section, for each community development investment:

(i) A unique number, alpha-numeric symbol, or another mechanism to identify the community development investment;

(ii) Date of community development investment by the bank;

(iii) The value of the community development investment;

(iv) The community development investment location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable; and

(v) The criteria in § 25.04 that the community development investment satisfies or that it is on the illustrative list referenced in § 25.05 and whether it serves a particular assessment area, if applicable.

(3) *Community development services data.* For each community development service:

(i) A unique number or alpha-numeric symbol identifying the community development service;

(ii) A description of the community development service;

(iii) The date the community development service was performed;

(iv) The community development service location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable; and

(v) The qualifying activity criteria in § 25.04 that the community development service satisfies or that it is on the illustrative list referenced in § 25.05.

(4) *Grandfathered qualifying activities.* For each activity that qualifies under § 25.04(d):

(i) A unique number or alpha-numeric symbol identifying the activity;

(ii) The origination value of the community development loan or the community development investment;

(iii) A description of the activity, including whether it is a community development loan or community development investment;

(iv) The activity location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable; and

(v) A statement certifying that the activity that would have received positive consideration in a CRA performance evaluation on the date prior to October 1, 2020.

(c) *Retail domestic deposit data.* The value of each retail domestic deposit account and the physical address and associated Federal Information Processing Standards code for the metropolitan statistical area, state, and county or county equivalent of each depositor as of the close of business on the last day of each quarter during the examination period.

(d) *Assessment areas.* A bank must collect and maintain a list of its assessment area(s) showing within the assessment area(s) each:

(1) County or county equivalent;

(2) Metropolitan division;

(3) Nonmetropolitan area;

(4) Metropolitan statistical area; or

(5) State.

(e) *Deposit-taking facilities.* For each deposit-taking facility, a bank must collect and maintain

(1) An indicator of whether it was a branch or a non-branch deposit-taking facility; and

(2) The physical address and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract.

§ 25.24 Activity location.

(a) For the purpose of this part:

(1) A consumer loan is located at the borrower's physical address on file with the bank at the time of origination;

(2) A home mortgage loan is located at the address of the property to which the loan relates; and

(3) A business or farm loan is located at the physical address of the main business facility or farm or the physical address where the loan proceeds will be applied, as indicated by the borrower; and

(b) For the purpose of this part, the location of a community development loan, a community development investment, or a community development service is:

(1) The address of a particular project to the extent a bank can document that the services or funding it provided was allocated to that particular project; or

(2) Determined by allocating the activity across all of a bank's assessment areas and other metropolitan statistical areas or non-metropolitan statistical areas served by the activity according to the share of the bank's deposits in those areas, treating the bank's deposits in the region served by the activity as if they were all of the bank's deposits, to the extent the bank cannot document that the services or funding it provided was allocated to a particular project.

§ 25.25 Recordkeeping.

Banks must keep the data collected under § 25.21, § 25.22, and § 25.23 in machine readable form (as prescribed by the OCC) until the completion of their next CRA evaluation.

§ 25.26 Reporting for banks evaluated under the general performance standards in § 25.13, the wholesale and limited purpose bank performance standards in § 25.15, or a strategic plan under § 25.18.

(a) *General.* Banks evaluated under the general performance standards in § 25.13, the wholesale and limited purpose bank performance standards in § 25.15, or a strategic plan under § 25.18, unless otherwise determined in writing by the OCC, must report the information required by this section.

(b) *Performance standards, qualifying activities, and retail domestic deposits data reporting*—(1) *Banks evaluated under the general performance standards or a strategic plan*—(i) A bank evaluated under the general performance standards or under a strategic plan must report to the OCC:

(A) On an annual basis, the information required by § 25.21(b)(2), as applicable; and

(B) At the end of the evaluation period, the information required by § 25.21(b)(1) and (b)(4), as applicable.

(ii) On an annual basis, a bank subject to this section must report to the OCC the following data for all qualifying activities conducted during the annual period:

(A) The quantified dollar value of qualifying retail loans;

(B) The quantified dollar value of community development loans;

(C) The quantified dollar value of community development investments; and

(D) The quantified dollar value of community development services.

(iii) A bank subject to this section must annually report to the OCC the information required by § 25.21(c)(3)–(6) for loans originated during the annual period.

(iv) A bank subject to this section must annually report its average quarterly retail domestic deposits as of the close of business on the last day of each quarter.

(2) *Banks evaluated under the wholesale and limited purpose bank performance standards.* On an annual basis, a bank evaluated under the wholesale and limited purpose bank performance standards must report following data for all qualifying activities conducted during the annual period:

(i) The value of community development loans; and

(ii) The value of community development investments.

(c) *Assessment area data.* For each assessment area, a bank subject to this section must annually report to the OCC the information required by § 25.21(e).

(d) *Performance context information.* A bank subject to this section must report performance context information on the form required by § 25.16(c) before the beginning of its CRA performance evaluation.

(e) *Form.* A bank subject to this section must use the CRA data reporting form available at *www.occ.gov* to meet the reporting requirements in this section.

§ 25.27 Public disclosures.

(a) *Individual CRA Disclosure Statement.* The OCC prepares annually a CRA Disclosure Statement for each bank evaluated under § 25.13 that contains the bank's:

(1) Quantified dollar value of qualifying retail loans;

(2) Quantified dollar value of community development loans;

(3) Quantified dollar value of community development investments; and

(4) Quantified dollar value of community development services.

(b) *Aggregate CRA Disclosure Statement.* The OCC prepares annually, for each county, an aggregate CRA Disclosure Statement of home mortgage, consumer, small loans to businesses, and small loans to farms lending by all banks subject to reporting under this part. This disclosure statement includes the following information, at the county level, from all banks evaluated under § 25.13, except that the OCC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or bank:

(1) The number of home mortgage loan originations;

(2) The number of home mortgage loan originations to low- or moderate-income individuals and families;

(3) The number of originations for each consumer loan product line;

(4) The number of originations to low- or moderate- income individuals and families for each consumer loan product line;

(5) The number of small loans to businesses;

(6) The number of small loans to businesses in low- and moderate-income census tracts;

(7) The number of small loans to businesses provided to CRA-eligible businesses;

(8) The number of small loans to farms;

(9) The number of small loans to farms in low- and moderate-income census tracts; and

(10) The number of small loans to farms provided to CRA-eligible farms;

(c) *Availability of CRA disclosure statements.* The OCC will annually make publicly available the aggregate and individual CRA Disclosure Statements, described in paragraphs (a) and (b) of this section.

(d) *Availability of ratings.* The OCC will make available the ratings of all OCC-regulated banks and a list of all banks that achieve an assigned rating of outstanding. A bank that achieves an outstanding assigned rating will receive a certificate or seal of achievement that may be displayed on its website and in its main office, branches, and non-branch deposit-taking facilities.

§ 25.28 Content and availability of public file.

(a) *Information available to the public.* A bank must 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 assessment area needs and opportunities, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;

(2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the OCC. The bank must place this copy in the public file within 30 business days after its receipt from the OCC;

(3) A list of the bank's branches, their street addresses, and census tracts;

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

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

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

(7) Any other information the bank chooses.

(b) *Additional information available to the public*—(1) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan must include in its public file a copy of that plan. A bank need not include information submitted to the OCC on a confidential basis in conjunction with the plan.

(2) *Banks with less than satisfactory ratings.* A bank that received a less than satisfactory rating during its most recent examination must 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 must update the description quarterly.

(c) *Availability of public information.* A bank must make available to the public the information required in this section.

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

§ 25.29 Availability of planned evaluation schedule.

The OCC will make available at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA evaluations in that quarter.

§ 25.30 Public notice by banks.

A bank must make available to the public the notice set forth in Appendix B of this part. Parenthetical text must be adjusted by each bank as appropriate.

Bracketed text must be included if applicable.

■ 5. Revise paragraph (a) of newly designated § 25.32 to read as follows:

§ 25.32 Definitions.

* * * * *

(a) *Bank* means, unless the context indicates otherwise, a national bank and a foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 28.11(i).

* * * * *

§ 25.33 [Amended]

■ 6. In newly designated § 25.33 amend paragraph (b)(2) by removing ''§ 25.64'' and adding ''§ 25.34'' in its place.

■ 7. Revise Appendix A to part 25 to read as follows:

Appendix A to Part 25—Small Bank, Intermediate Bank, Wholesale Bank, and Limited Purpose Bank Ratings

(a) *Ratings in general*—(1) In assigning a rating, the OCC evaluates a small bank's, intermediate bank's, wholesale bank's, or limited purpose bank's performance under the applicable performance criteria in § 25.14 and § 25.15, adjusting for performance context in § 25.16 and consideration of any evidence of discriminatory and illegal credit practices as described in § 25.17. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority depository institutions, women's depository institutions, and low-income credit unions.

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

(b) *Banks evaluated under the small bank and intermediate bank performance standards*—(1) *Lending test ratings*—(i) *Eligibility for a satisfactory lending test rating.* The OCC rates a small bank's or intermediate bank's lending performance ''satisfactory'' if, in general, the bank demonstrates:

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

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

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

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

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

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

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

(2) *Community development test ratings for intermediate banks*—(i) *Eligibility for a satisfactory community development test rating.* The OCC rates an intermediate bank's community development performance ''satisfactory'' if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, community development investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The OCC rates an intermediate bank's community development performance ''outstanding'' if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, community development investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

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

(3) *Bank rating*—(i) *Eligibility for a satisfactory rating.* No intermediate bank may receive an assigned 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 rating*—(A) An intermediate bank that receives an ''outstanding'' rating on one test and at least a ''satisfactory'' on the other test may receive rating of ''outstanding.''

(B) A small bank that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for an assigned rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the OCC considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making community development 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 intermediate bank may also receive a rating of ''needs to improve'' or ''substantial noncompliance'' assigned rating depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(c) *Banks evaluated under the wholesale and limited purpose bank performance standards.* The OCC assigns each wholesale or limited purpose bank's performance one of the four following ratings.

(1) *Outstanding.* The OCC rates a wholesale or limited purpose bank's performance ''outstanding'' if, in general, it demonstrates:

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

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

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

(2) *Satisfactory.* The OCC rates a wholesale or limited purpose bank's performance ''satisfactory'' if, in general, it demonstrates:

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

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

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

(3) *Needs to improve.* The OCC rates a wholesale or limited purpose bank's performance as ''needs to improve'' if, in general, it demonstrates:

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

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

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

(4) *Substantial noncompliance.* The OCC rates a wholesale or limited purpose bank's performance in ''substantial noncompliance'' if, in general, it demonstrates:

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

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

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

■ 8. Revise Appendix B to read as follows:

Appendix B to Part 25—Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency (OCC) evaluates our record of helping to meet the credit needs of this community, consistent with safe and sound operations. The OCC 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; and comments received from the public relating to assessment area needs and opportunities, as well as our responses to those comments. You may review this information today by reviewing the public file which is available at (web address and/or physical address at which the public file can be reviewed and copied).

You may also have access to the following additional information, which we will make available to you after you make a request to us: (1) A map showing the assessment area containing a select branch, which is the area in which the OCC evaluates our CRA performance for that particular community; (2) branch addresses and associated branch facilities and hours in any assessment area; (3) a list of services we provide at those locations; (4) our most recent rating in the assessment area; and (5) copies of all written comments received by us that specifically relate to the needs and opportunities of a given 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.

At least 30 days before the beginning of each quarter, the OCC publishes a nationwide list of the (entity type) that are scheduled for CRA examination in that quarter. This list is available from the Deputy Comptroller (address). You may send written comments regarding the needs and opportunities of any of the (entity type)'s assessment area(s) to (name, address, and email address of official at bank) and Deputy Comptroller (address and email address). Your comments, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. (We are an affiliate of (name of holding company), a (entity type) holding company. You may request from the (title of responsible official), Federal Reserve Bank of ____________ (address) an announcement of applications covered by the CRA filed by (entity type) holding companies.)

■ Effective October 1, 2020 to January 1, 2024, add Appendix C to part 25 to read as follows:

Appendix C to Part 25—Community Reinvestment Act Regulations (Alternative Compliance)

Note: The content of this appendix reproduces parts 25 and 195 implementing the Community Reinvestment Act as of the date prior to October 1, 2020.

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

Subpart A—General

§ 25.11 Authority, purposes, and scope.

(a) Authority and OMB control number—(1) Authority. The authority for subparts A, B, C, D, and E is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

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

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

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

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

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

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

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

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

§ 25.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. The term ''control'' has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means:

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

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

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

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

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

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

(g) *Community development* means:

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

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

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

(4) Activities that revitalize or stabilize—

(i) Low- or moderate-income geographies;

(ii) Designated disaster areas; or

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

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

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

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

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

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

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

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

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

(1) Has as its primary purpose community development;

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

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

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

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

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

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

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

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

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

(m) *Income level* includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(u) *Small bank*—(1) Definition. *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.305 billion. Intermediate small bank means a small bank with assets of at least $326 million as of December 31 of both of the prior two calendar years and less than $1.305 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the OCC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

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

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

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

Subpart B—Standards for Assessing Performance

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

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

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

(2) *Community development test for wholesale or limited purpose banks.* The OCC applies the community development test for a wholesale or limited purpose bank, as provided in § 25.25, except as provided in paragraph (a)(4) of this section.

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

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

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

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

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

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

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

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

(6) The bank's public file, as described in § 25.43, and any written comments about the bank's CRA performance submitted to the bank or the OCC; and

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

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

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

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a bank under this part, the OCC considers, as a factor, low-cost education loans originated by the bank to borrowers, particularly in its assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, ''low-cost education loans'' means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a state or local education loan program), originated by the bank for a student at an ''institution of higher education,'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

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

§ 25.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the OCC will evaluate the bank's consumer lending in one or more of the following categories: motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a bank's option, the OCC will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in § 25.42(c)(1), the data for each category that the bank elects to have the OCC evaluate.

(2) The OCC considers originations and purchases of loans. The OCC will also consider any other loan data the bank may choose to provide, including data on loans outstanding, commitments and letters of credit.

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

lending test except the community development lending criterion.

(b) *Performance criteria.* The OCC evaluates a bank's lending performance pursuant to the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

(c) *Affiliate lending.* (1) At a bank's option, the OCC will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to § 25.42.

(2) The OCC considers affiliate lending subject to the following constraints:

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

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

(3) The OCC does not consider affiliate lending in assessing a bank's performance under paragraph (b)(2)(i) of this section.

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

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

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

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

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

(e) *Lending performance rating.* The OCC rates a bank's lending performance as provided in appendix A of this part.

§ 25.23 Investment test.

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

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

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

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

(e) *Performance criteria.* The OCC evaluates the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

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

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

(f) *Investment performance rating.* The OCC rates a bank's investment performance as provided in appendix A of this part.

§ 25.24 Service test.

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

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

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

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

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

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

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

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

(e) *Performance criteria—community development services.* The OCC evaluates community development services pursuant to the following criteria:

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

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

(f) *Service performance rating.* The OCC rates a bank's service performance as provided in appendix A of this part.

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

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

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

(c) *Performance criteria.* The OCC evaluates the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

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

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

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

(d) *Indirect activities.* At a bank's option, the OCC will consider in its community development performance assessment:

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

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

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

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

(f) *Community development performance rating.* The OCC rates a bank's community development performance as provided in appendix A of this part.

§ 25.26 Small bank performance standards.

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

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

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

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

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

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

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

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

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

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

(2) The number and amount of qualified investments;

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

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

(d) *Small bank performance rating.* The OCC rates the performance of a bank evaluated under this section as provided in appendix A of this part.

§ 25.27 Strategic plan.

(a) *Alternative election.* The OCC will assess a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the OCC as provided for in this section;

(2) The OCC has approved the plan;

(3) The plan is in effect; and

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

(b) *Data reporting.* The OCC's approval of a plan does not affect the bank's obligation, if any, to report data as required by § 25.42.

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

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

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

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

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

(2) Once the bank has developed a plan, formally solicit public comment

on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

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

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

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

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

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

(3) *Satisfactory and outstanding goals.* A bank shall specify in its plan measurable goals that constitute ''satisfactory'' performance. A plan may specify measurable goals that constitute ''outstanding'' performance. If a bank submits, and the OCC approves, both ''satisfactory'' and ''outstanding'' performance goals, the OCC will consider the bank eligible for an ''outstanding'' performance rating.

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

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

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

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

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

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

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

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

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

§ 25.28 Assigned ratings.

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

(b) *Lending, investment, and service tests.* The OCC assigns a rating for a bank assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A bank that receives an ''outstanding'' rating on the lending test receives an assigned rating of at least ''satisfactory'';

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

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

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The OCC's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance. In connection with any type of lending activity described in § 25.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

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

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

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

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

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

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

§ 25.29 Effect of CRA performance on applications.

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

(1) The establishment of a domestic branch;

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

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

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

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

(c) *Interested parties.* The OCC takes into account any views expressed by interested parties that are submitted in accordance with the OCC's procedures set forth in part 5 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

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

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

Subpart C—Records, Reporting, and Disclosure Requirements

§ 25.41 Assessment area delineation.

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

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

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

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

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

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

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

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

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

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

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

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

§ 25.42 Data collection, reporting, and disclosure.

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

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

(2) The loan amount at origination;

(3) The loan location; and

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

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

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

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

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

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

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

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

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

outside any MSA) in accordance with the requirements of part 1003 of this title.

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

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

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

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

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

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

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

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

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

(h) *CRA Disclosure Statement.* The OCC prepares annually for each bank that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

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

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

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

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

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

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

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

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

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

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

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

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

(i) *Aggregate disclosure statements.* The OCC, in conjunction with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 195, 228, or 345 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the OCC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

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

§ 25.43 Content and availability of public file.

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

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the bank's

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

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

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

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

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

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

(7) Any other information the bank chooses.

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

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

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

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

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

(ii) The bank's CRA Disclosure Statement. The bank shall place the statement in the public file within three business days of its receipt from the OCC.

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

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

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

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

(4) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A bank need not include information submitted to the OCC on a confidential basis in conjunction with the plan.

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

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

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

(2) At each branch:

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

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

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

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

§ 25.44 Public notice by banks.

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

§ 25.45 Publication of planned examination schedule.

The OCC publishes at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations in that quarter.

Subpart D [Reserved]

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

§ 25.61 Purpose and scope.

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

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

(2) This subpart describes the requirements imposed under 12 U.S.C. 1835a, which requires the appropriate Federal banking agencies (the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation) to prescribe uniform rules that prohibit a bank from using any authority to engage in

interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other provision of law, primarily for the purpose of deposit production.

§ 25.62 Definitions.

For purposes of this subpart, the following definitions apply:

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

(1) A national bank; and

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

(b) *Covered interstate branch* means:

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

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

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

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

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

(d) *Home State* means:

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

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

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

(i) July 1, 1966; or

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

(4) With respect to a foreign bank:

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

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

(A) July 1, 1966; or

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

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

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

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

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

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

§ 25.63 Loan-to-deposit ratio screen.

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

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

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

§ 25.64 Credit needs determination.

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

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

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

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

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

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

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

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

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

§ 25.65 Sanctions.

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

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

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

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

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

Appendix A to Part 25—Ratings

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

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

(b) Banks evaluated under the lending, investment, and service tests—(1) Lending performance rating. The OCC assigns each bank's lending performance one of the five following ratings.

(i) *Outstanding.* The OCC rates a bank's lending performance ''outstanding'' if, in general, it demonstrates:

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

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

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

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

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

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

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

(ii) *High satisfactory.* The OCC rates a bank's lending performance ''high satisfactory'' if, in general, it demonstrates:

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

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

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

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

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

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

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

(iii) *Low satisfactory.* The OCC rates a bank's lending performance ''low satisfactory'' if, in general, it demonstrates:

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

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

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

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

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

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

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

(iv) *Needs to improve.* The OCC rates a bank's lending performance ''needs to improve'' if, in general, it demonstrates:

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

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

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

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

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

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

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

(v) Substantial noncompliance. The OCC rates a bank's lending performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

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

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

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

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

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

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

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

(2) *Investment performance rating.* The OCC assigns each bank's investment performance one of the five following ratings.

(i) *Outstanding.* The OCC rates a bank's investment performance ''outstanding'' if, in general, it demonstrates:

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

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

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

(ii) *High satisfactory.* The OCC rates a bank's investment performance ''high satisfactory'' if, in general, it demonstrates:

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

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

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

(iii) *Low satisfactory.* The OCC rates a bank's investment performance ''low satisfactory'' if, in general, it demonstrates:

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

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

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

(iv) *Needs to improve.* The OCC rates a bank's investment performance ''needs to improve'' if, in general, it demonstrates:

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

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

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

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

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

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

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

(3) *Service performance rating.* The OCC assigns each bank's service performance one of the five following ratings.

(i) *Outstanding.* The OCC rates a bank's service performance ''outstanding'' if, in general, the bank demonstrates:

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

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

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

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

(ii) *High satisfactory.* The OCC rates a bank's service performance ''high satisfactory'' if, in general, the bank demonstrates:

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

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

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

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

(iii) *Low satisfactory.* The OCC rates a bank's service performance ''low satisfactory'' if, in general, the bank demonstrates:

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

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

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

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

(iv) *Needs to improve.* The OCC rates a bank's service performance ''needs to improve'' if, in general, the bank demonstrates:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Banks evaluated under the small bank performance standards*—(1) *Lending test ratings.* (i) *Eligibility for a satisfactory lending test rating.* The OCC rates a small bank's lending performance ''satisfactory'' if, in general, the bank demonstrates:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) *Strategic plan assessment and rating*—(1) *Satisfactory goals.* The OCC approves as ''satisfactory'' measurable goals that adequately help to meet the credit needs of the bank's assessment area(s).

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

(3) *Rating.* The OCC assesses the performance of a bank operating under an approved plan to determine if the bank has met its plan goals:

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

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

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

Appendix B to Part 25—CRA Notice

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

Community Reinvestment Act Notice

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

Your involvement is encouraged.

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

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

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of ________________ (address) an announcement of applications covered by the CRA filed by bank holding companies.

(b) *Notice for branch offices.*

Community Reinvestment Act Notice

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

Your involvement is encouraged.

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

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

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

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of __________________ (address) an announcement of applications covered by the CRA filed by bank holding companies

PART 195—COMMUNITY REINVESTMENT

Subpart A—General

§ 195.11 Authority, purposes, and scope.

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

(b) *Purposes.* In enacting the CRA, the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the appropriate Federal banking agency assesses a savings association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the savings association; and

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

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

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

§ 195.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. The term ''control'' has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means:

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

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

(c) *Assessment area* means a geographic area delineated in accordance with § 195.41.

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

(e) [Reserved]

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

(g) *Community development* means:

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

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

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

(4) Activities that revitalize or stabilize—

(i) Low- or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved, nonmetropolitan middle-income geographies designated by the appropriate Federal banking agency based on—

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

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

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

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

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

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

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

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

(1) Has as its primary purpose community development;

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

(3) Has not been considered in the evaluation of the savings association's retail banking services under § 195.24(d).

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

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

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

(3) Other secured consumer loan, which is a secured consumer loan that

is not included in one of the other categories of consumer loans; and

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

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

(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 savings association* means a savings association that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose savings association is in effect, in accordance with § 195.25(b).

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

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

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

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

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

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

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

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

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

(u) *Small savings association*—(1) Definition. Small savings association means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1.305 billion. Intermediate small savings association means a small savings association with assets of at least $326 million as of December 31 of both of the prior two calendar years and less than $1.305 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the OCC based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

(v) *Small business loan* means a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Thrift Financial Report (TFR) or Consolidated Reports of Condition and Income (Call Report), as appropriate.

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

(x) *Wholesale savings association* means a savings association that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale savings association is in effect, in accordance with § 195.25(b).

Subpart B—Standards for Assessing Performance

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

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

(1) *Lending, investment, and service tests.* The appropriate Federal banking agency applies the lending, investment, and service tests, as provided in §§ 195.22 through 195.24, in evaluating the performance of a savings association, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose savings associations.* The appropriate Federal banking agency applies the community development test for a wholesale or limited purpose savings association, as provided in § 195.25, except as provided in paragraph (a)(4) of this section.

(3) *Small savings association performance standards.* The appropriate Federal banking agency applies the small savings association performance standards as provided in § 195.26 in evaluating the performance of a small savings association or a savings association that was a small savings association during the prior calendar year, unless the savings association elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The savings association may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other savings associations under § 195.42.

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

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

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

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

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

(4) Institutional capacity and constraints, including the size and financial condition of the savings association, the economic climate (national, regional, and local), safety

and soundness limitations, and any other factors that significantly affect the savings association's ability to provide lending, investments, or services in its assessment area(s);

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

(6) The savings association's public file, as described in § 195.43, and any written comments about the savings association's CRA performance submitted to the savings association or the appropriate Federal banking agency; and

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

(c) *Assigned ratings.* The appropriate Federal banking agency assigns to a savings association one of the following four ratings pursuant to § 195.28 and appendix A of this part: ''outstanding''; ''satisfactory''; ''needs to improve''; or ''substantial noncompliance,'' as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the appropriate Federal banking agency reflects the savings association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the savings association.

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

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a savings association under this part, the appropriate Federal banking agency considers, as a factor, low-cost education loans originated by the savings association to borrowers, particularly in its assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, ''low-cost education loans'' means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a state or local education loan program), originated by the savings association for a student at an ''institution of higher education,'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

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

§ 195.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a savings association's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a savings association's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a savings association's business, the appropriate Federal banking agency will evaluate the savings association's consumer lending in one or more of the following categories: Motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a savings association's option, the appropriate Federal banking agency will evaluate one or more categories of consumer lending, if the savings association has collected and maintained, as required in § 195.42(c)(1), the data for each category that the savings association elects to have the appropriate Federal banking agency evaluate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) *Affiliate lending.* (1) At a savings association's option, the appropriate Federal banking agency will consider loans by an affiliate of the savings association, if the savings association provides data on the affiliate's loans pursuant to § 195.42.

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

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

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

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

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

(1) Will be considered, at the savings association's option, if the savings association reports the data pertaining to these loans under § 195.42(b)(2); and

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

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

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

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

§ 195.23 Investment test.

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

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

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

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

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

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

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

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

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

§ 195.24 Service test.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 195.22(c) and (d).

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

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

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

§ 195.26 Small savings association performance standards.

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

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

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

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

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

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

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

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

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

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

(2) The number and amount of qualified investments;

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

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

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

§ 195.27 Strategic plan.

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

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

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

(3) The plan is in effect; and

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

(b) *Data reporting.* The appropriate Federal banking agency's approval of a plan does not affect the savings association's obligation, if any, to report data as required by § 195.42.

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

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

(3) *Treatment of affiliates.* Affiliated institutions may prepare a joint plan if

the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 195.28 Assigned ratings.

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

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

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

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

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

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The appropriate Federal banking agency's evaluation of a savings association's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the savings association or in any assessment area by any affiliate whose loans have been considered as part of the savings association's lending performance. In connection with any type of lending activity described in § 195.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

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

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

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

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

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

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

§ 195.29 Effect of CRA performance on applications.

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

(1) The establishment of a domestic branch or other facility that would be authorized to take deposits;

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

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

(4) A Federal thrift charter; and

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

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

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

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

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

Subpart C—Records, Reporting, and Disclosure Requirements

§ 195.41 Assessment area delineation.

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

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

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

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

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

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

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

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

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

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

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

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

§ 195.42 Data collection, reporting, and disclosure.

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

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

(2) The loan amount at origination;

(3) The loan location; and

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

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

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

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

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

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

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

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

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

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

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

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) *Aggregate disclosure statements.* The appropriate Federal banking agency, in conjunction with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation or the OCC, as appropriate, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 25, 228, or 345 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the appropriate Federal banking agency may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

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

§ 195.43 Content and availability of public file.

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

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

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

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

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

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

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

(7) Any other information the savings association chooses.

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

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

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

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

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

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

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

(3) *Small savings associations.* A small savings association or a savings association that was a small savings

association during the prior calendar year shall include in its public file:

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

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

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

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

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

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

(2) At each branch:

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

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

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

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

§ 195.44 Public notice by savings associations.

A savings association shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in appendix B of this part. Only a branch of a savings association having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a savings association that is an affiliate of a holding company shall include the last two sentences of the notices.

§ 195.45 Publication of planned examination schedule.

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

Appendix A to Part 195—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the appropriate Federal banking agency evaluates a savings association's performance under the applicable performance criteria in this part, in accordance with §§ 195.21 and 195.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as ''satisfactory,'' the appropriate Federal banking agency will approve those goals as ''outstanding.''

(3) *Rating.* The appropriate Federal banking agency assesses the performance of a savings association operating under an approved plan to determine if the savings association has met its plan goals:

(i) If the savings association substantially achieves its plan goals for a satisfactory rating, the appropriate Federal banking agency will rate the savings association's performance under the plan as ''satisfactory.''

(ii) If the savings association exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the appropriate Federal banking agency will rate the savings association's performance under the plan as ''outstanding.''

(iii) If the savings association fails to meet substantially its plan goals for a satisfactory rating, the appropriate Federal banking agency will rate the savings association as either ''needs to improve'' or ''substantial noncompliance,'' depending on the extent to which it falls short of its plan goals, unless the savings association elected in its plan to be rated otherwise, as provided in § 195.27(f)(4).

Appendix B to Part 195—CRA Notice

(a) *Notice for main offices and, if an interstate savings association, one branch office in each state.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the [Office of the Comptroller of the Currency (OCC) or Federal Deposit Insurance Corporation (FDIC)] evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or FDIC] also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the [OCC or FDIC]; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the [OCC or FDIC] publishes a nationwide list of the savings associations that are scheduled for CRA examination in that quarter. This list is available from the [OCC Deputy Comptroller (address) or FDIC appropriate regional director (address)]. You may send written comments about our performance in helping to meet community credit needs to (name and address of official at savings association) and the [OCC Deputy Comptroller (address) or FDIC appropriate regional director (address)]. Your letter, together with any response by us, will be considered by the [OCC or FDIC] in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the [OCC Deputy Comptroller or FDIC appropriate regional director]. You may also request from the [OCC Deputy Comptroller or FDIC appropriate regional director] an announcement of our applications covered by the CRA filed with the [OCC or FDIC]. We are an affiliate of (name of holding company), a savings and loan holding company. You may request from the (title of responsible official), Federal Reserve Bank of ________________ (address) an announcement of applications covered by the CRA filed by savings and loan holding companies.

(b) *Notice for branch offices.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the [Office of the Comptroller of the Currency (OCC) or Federal Deposit Insurance Corporation (FDIC)] evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or FDIC] also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the [OCC or FDIC] and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) A map showing the assessment area containing this branch, which is the area in which the [OCC or FDIC] evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire savings association is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the [OCC or FDIC] publishes a nationwide list of the savings associations that are scheduled for CRA examination in that quarter. This list is available from the [OCC Deputy Comptroller (address) or FDIC appropriate regional office (address)]. You may send written comments about our performance in helping to meet community credit needs to (name and address of official at savings association) and the [OCC or FDIC]. Your letter, together with any response by us, will be considered by the [OCC or FDIC] in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the [OCC Deputy Comptroller or FDIC appropriate regional director]. You may also request an announcement of our applications covered by the CRA filed with the [OCC Deputy Comptroller or FDIC appropriate regional director]. We are an affiliate of (name of holding company), a savings and loan holding company. You may request from the (title of responsible official), Federal Reserve Bank of ________________ (address) an announcement of applications covered by the CRA filed by savings and loan holding companies.

PART 195—[REMOVED]

■ 9. Remove part 195.

Joseph M. Otting,

Comptroller of the Currency.

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