



Yale SCHOOL OF MANAGEMENT
Program on Financial Stability

EliScholar – A Digital Platform for Scholarly Publishing at Yale

YPFS Resource Library

5-4-1995

Community Reinvestment Act - Federal Register Volume 60, Number 86

United States: National Archives and Records Administration: Office of the Federal Register

United States: Department of the Treasury: Office of Thrift Supervision

United States: Department of the Treasury: Office of the Comptroller of the Currency (OCC)

United States: Federal Deposit Insurance Corporation (FDIC)

Federal Reserve System: Board of Governors

<https://elischolar.library.yale.edu/ypfs-documents/4265>

This resource is brought to you for free and open access by the Yale Program on Financial Stability and [EliScholar](#), a digital platform for scholarly publishing provided by Yale University Library. For more information, please contact ypfs@yale.edu.

[Federal Register Volume 60, Number 86 (Thursday, May 4, 1995)]
[Rules and Regulations]
[Pages 22156-22223]
From the Federal Register Online via the Government Printing Office [www.gpo.gov]
[FR Doc No: 95-10503]

[[Page 22155]]

Part III

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 25

Federal Reserve System

12 CFR Part 228

Federal Deposit Insurance Corporation

12 CFR Part 345

Department of the Treasury

Office of Thrift Supervision

12 CFR Part 563e

Federal Reserve System

12 CFR Part 203

Community Reinvestment Act Regulations and Home Mortgage Disclosure;
Final Rules

◆◆Federal Register / Vol. 60, No. 86 / Thursday, May 4, 1995 / Rules
and Regulations ◆◆
[[Page 22156]]

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 95-07]
RIN 1557-AB32

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R-0822]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064-AB27

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket No. 95-72]

RIN 1550-AA69

FEDERAL RESERVE SYSTEM

12 CFR Part 203

Community Reinvestment Act Regulations

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

ACTION: Joint final rule.

SUMMARY: The OCC, Board, FDIC, and OTS, (collectively, the Federal financial supervisory agencies or agencies) are amending their regulations concerning the Community Reinvestment Act (CRA). The agencies published a joint notice of proposed rulemaking on this issue on December 21, 1993 (1993 proposal) and again on October 7, 1994 (1994 proposal). This final rule reflects comments received on both proposals and the agencies' further internal considerations.

The purpose of the CRA regulations is to establish the framework and criteria by which the agencies assess an institution's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations, and to provide that the agencies' assessment shall be taken into account in reviewing certain applications.

The final rule seeks to emphasize performance rather than process, to promote consistency in evaluations, and to eliminate unnecessary burden. As compared to the 1993 and 1994 proposals, the final rule reduces recordkeeping and reporting requirements and makes other modifications and clarifications.

EFFECTIVE DATES: This joint rule is effective July 1, 1995, except 12 CFR 25.3 through 25.7 and 25.51, 12 CFR 228.3 through 228.7 and 228.51, 12 CFR 345.3 through 345.7 and 345.51, and 12 CFR 563e.3 through 563e.7 and 563e.51 are removed effective July 1, 1997.

FOR FURTHER INFORMATION CONTACT:

OCC: Stephen M. Cross, Deputy Comptroller for Compliance, (202) 874-5216; or Matthew Roberts, Director, Community and Consumer Law Division, (202) 874-5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Glenn E. Loney, Associate Director, Division of Consumer and Community Affairs, (202) 452-3585; Robert deV. Frierson, Assistant General Counsel, Legal Division, (202) 452-3711; or Leonard N. Chanin, Managing Counsel, Division of Consumer and Community Affairs, (202) 452-3667, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Bobbie Jean Norris, Chief, Fair Lending Section, Division of Compliance and Consumer Affairs, (202) 942-3090; Robert W. Mooney, Fair Lending Specialist, Division of Compliance and Consumer Affairs, (202) 942-3092; or Ann Hume Loikow, Counsel, Regulation and Legislation Section, Legal Division, (202) 898-3796, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Timothy R. Burniston, Assistant Director for Compliance Policy, (202) 906-5629; Theresa A. Stark, Program Analyst, Compliance Policy, (202) 906-7054; or Lewis A. Segall, Senior Attorney, Regulations and Legislation Division, Chief Counsel's Office, (202) 906-6648, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Introduction

The Federal financial supervisory agencies jointly are amending their regulations implementing the CRA (12 U.S.C. 2901 et seq.). The amended regulations will, when fully effective, replace the existing regulations in their entirety.

The CRA is designed to encourage regulated financial institutions to help meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations. Despite the CRA's notable successes in improving access to credit, banks and savings and loan institutions, as well as community and consumer groups, maintain that its full potential has not been realized, in large part because regulatory compliance efforts have focused on process rather than performance.

In accordance with a request from the President, the Federal financial supervisory agencies have undertaken a comprehensive effort to reform their standards for evaluating compliance with CRA requirements. The final rule implements this reform effort by substituting a new system that evaluates institutions based on their actual performance in helping to meet their communities' credit needs.

Background

In 1977, the Congress enacted the CRA to encourage banks and thrifts to help meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound lending practices. In the CRA, the Congress found that:

- ``(1) regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business;
- (2) the convenience and needs of communities include the need for credit as well as deposit services; and
- (3) regulated financial institutions have continuing and affirmative obligation[s] to help meet the credit needs of the local communities in which they are chartered.''

(12 U.S.C. 2901(a))

The CRA has come to play an increasingly important role in improving access to credit in communities--both rural and urban--across the country. Under the impetus of the CRA, many banks and thrifts opened new branches, provided expanded services, and made substantial commitments to increase lending to all segments of society.

Despite these successes, the CRA examination system has been criticized. Financial institutions have indicated that policy guidance from the agencies on the CRA is unclear and that examination standards are applied inconsistently. Financial institutions [[Page 22157]] have also stated that the CRA examination process encourages them to generate excessive paperwork at the expense of providing loans, services, and investments to their communities.

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

Noting that the CRA examination process could be improved, President Clinton requested in July 1993 that the Federal financial supervisory agencies reform the CRA regulatory system. The President asked the agencies to consult with the banking and thrift industries, Congressional leaders, and leaders of community-based organizations across the country to develop new CRA regulations and examination procedures that ``replace paperwork and uncertainty with greater performance, clarity, and objectivity.''

Specifically, the President asked the agencies to refocus the CRA examination system on more objective, performance-based assessment standards that minimize compliance burden while stimulating improved performance. He also asked the agencies to develop a well-trained corps of examiners who would specialize in CRA examinations. The President requested that the agencies promote consistency and even-handedness, improve CRA performance evaluations, and institute more effective sanctions against institutions with consistently poor performance.

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

The 1993 Proposal

The agencies published proposed revisions to their CRA regulations

on December 21, 1993. The 1993 proposal (58 FR 67466) would have eliminated the twelve assessment factors in the present CRA regulations and substituted a more performance-based evaluation system. Under the 1993 proposal, the agencies would have evaluated institutions based on their actual lending, service, and investment performance rather than on how well they conducted their needs assessments, documented their community outreach, and implemented other procedural requirements of the existing regulations.

Generally, large retail institutions would have been evaluated based on some combination of lending, service, and investment tests. Institutions would have been required to report data on the basis of the geographic distribution of applications, denials, originations, and purchases of loans. Small banks and thrifts could have elected to be evaluated under a streamlined method that would not have required them to report this data. Every institution also could have elected to have its performance evaluated on the basis of a pre-approved strategic plan.

All banks and thrifts would have been assigned one of four statutorily mandated CRA ratings (12 U.S.C. 2906(b)(2)). However, five ratings would have been used for the lending, service, and investment tests, with the satisfactory category split into low satisfactory and high satisfactory.

Collectively, the agencies received over 6,700 comment letters on the 1993 proposal. As a general matter, the vast majority of commenters expressed support for the agencies' goal of developing more objective, performance-based assessment standards that minimize burden while stimulating improved performance. However, many expressed concern over aspects of the 1993 proposal that they viewed as allocating credit to particular kinds of borrowers. After considering the comments, the agencies published a second proposal on October 7, 1994, which responded to many of the suggestions in the comments on the 1993 proposal, including concerns about credit allocation, while preserving the 1993 proposal's goal of emphasizing performance over process.

The 1994 Proposal

The 1994 proposal (59 FR 51232) retained the principles and structure underlying the 1993 proposal but made significant changes to the details in order to respond to many of the specific concerns raised in the comment letters. As in the 1993 proposal, the 1994 proposal would have replaced the existing regulations' twelve assessment factors with a performance-based evaluation system. The 1994 proposal retained, but modified, the lending, investment, and service tests for large retail institutions; the streamlined evaluation for small institutions; an alternative evaluation for limited purpose and wholesale institutions; and the pre-approved strategic plan option available to all institutions.

The 1993 proposal had been criticized because of certain objective criteria in the proposal (including market share, a presumptively reasonable loan to deposit ratio, loan mix, investment to capital ratios, and the number of branches readily accessible to low- and moderate-income geographies) which were intended to respond to concerns about the need for more objective standards for evaluating compliance with CRA requirements. Many commenters viewed these criteria as calling for credit allocation, although the agencies did not intend this result. The 1994 proposal removed these criteria from the regulatory language and substituted a broader range of qualitative and quantitative criteria. A system for evaluating compliance with CRA should not eliminate examiner judgment, even if completely objective criteria consistently applied were achievable. Preservation of examiner judgment to take into account the unique characteristics and needs of an institution's community and the institution's own capacity and relevant constraints are essential for a workable rule.

At the same time, consistency in evaluations, reduction in the burden of compliance, and emphasis on performance are fully consistent with assuring a measure of examiner judgment. The 1994 proposal would have provided a balance between objective analysis and subjective judgment through a series of examiner decisions relying on detailed data measuring an institution's actual lending, service and investment performance. In order to minimize unnecessary subjectivity, the agencies provided guidance as to the standards that examiners would have applied in making the required judgments.

Compared to the 1993 proposal, the 1994 proposal would have reduced data reporting burdens by streamlining reporting requirements. The one significant new reporting requirement was the collection and reporting of information on the race and gender of small business and farm borrowers. The agencies proposed this provision to respond to concerns that the 1993 proposal did not give enough weight to the fair lending aspect of an institution's CRA performance.

In order to take into account community characteristics and needs, the 1994 proposal would have made explicit the context in which the tests and standards would have been applied to individual institutions. In a specific effort to reduce burden, the preamble indicated that the agencies, rather than institutions, would have collected and

[[Page 22158]] developed the information needed to provide this ``assessment context.''

The 1994 proposal also modified the rating process from the 1993 proposal. For large retail institutions, in calculating the assigned rating, the revised proposal would have given primacy to lending performance, but an institution's performance on the service and investment tests also would have been reflected in the assigned rating. The rating process for small institutions similarly would have given primacy to lending performance, and would have provided guidance on how the agencies would have considered service and investment performance. For all institutions, evidence of discriminatory or other illegal credit practices would have adversely affected the evaluation of an institution's performance. In addition, an appendix to the 1994 proposal included rating profiles to guide the assessments.

The 1994 proposal revised and clarified other important features of the 1993 proposal. It provided more detail as to how the proposed strategic plan option would operate in practice. Wholesale and limited purpose institutions were made subject to a community development test, which would have incorporated both community development lending and community development services in addition to qualified investments. Also, the agencies revised the definition of service area to include the local areas around an institution's deposit facilities in which it has significant lending activity and all other areas equally distant from such facilities.

Overview of Comments on the 1994 Proposal

Collectively, the agencies received over 7,200 comment letters on the 1994 proposal. The agencies received comment letters from individuals, representatives of bank and thrift institutions, consumer and community groups, members of Congress, state, local, and tribal governments, and others, as shown in the following table.

Table of Comments Received

Agency	Letters from banks, thrifts and their trade associations	Letters from consumer and community groups	Letters from government entities	Letters from others	Total
OCC.....	669	839	39	672	2,219
Board.....	607	832	12	482	1,933
FDIC.....	1,007	788	32	237	2,064
OTS.....	261	623	24	173	1,081

The agencies reviewed and considered all of these comments in writing the final rule. The section-by-section analysis of the final rule discusses these comments in greater detail. As a general matter, the vast majority of commenters expressed support for the agencies' goal of developing more objective, performance-based assessment standards that minimize burden while stimulating improved performance. Many commenters believed that, under the existing CRA regulations, the agencies focus too closely on documentation of CRA performance and too little on actual performance. Some commenters felt the present documentation requirements are overly burdensome. Many commenters also supported the agencies' goal of ensuring consistency and evenhandedness among the agencies in CRA evaluations, without including specific criteria that might be viewed as allocating credit to specific borrowers. Commenters supported enhanced CRA examiner training to increase consistency. Although most commenters generally supported the agencies' goals in amending their CRA regulations, many expressed concern over certain aspects of the 1994 proposal.

The Final Rule

Review of Comments on the 1994 Proposal and Responses

The final rule retains, to a significant extent, the principles and structure underlying the 1993 and 1994 proposals, but makes important changes to some details in order to respond to concerns raised in the comment letters and further agency consideration. The following discussion describes by topic the ways in which the agencies addressed commenters' concerns. The discussion also describes important technical modifications included in the final rule.

Enforcement Authority

The agencies have removed two provisions found in both the 1993 and 1994 proposals that engendered considerable comment. These provisions were the community reinvestment obligation, which stated that banks and thrifts have a specific affirmative obligation to help meet the credit needs of their communities, and the enforcement provision, which

provided for penalties against banks and thrifts with ``substantial noncompliance'' ratings using the agencies' general enforcement powers under 12 U.S.C. 1818. Substantial comment was received both in favor of, and in opposition to, these provisions. Based on further analysis of their statutory authority, the agencies have removed these provisions.

Consistent with the statute, the final rule provides that an institution's CRA rating reflects its record of helping to meet the credit needs of its entire community. The agencies will take into account an institution's record when evaluating various types of applications, such as applications for branches, office relocations, mergers, consolidations, and purchase and assumption transactions, and may deny or condition an application on the basis of the institution's record.

Scope

The scope of the final rule does not differ appreciably from the scope of the current CRA regulations or the 1993 and 1994 proposals. The agencies historically have excluded from CRA coverage certain special purpose institutions, such as banker's banks, that are not organized to grant credit to the public in the ordinary course of business. These institutions continue to be treated as special purpose banks in the final rule and are excluded from coverage. Several commenters were concerned that the definition of banker's bank in the 1994 proposal may not have conformed with that found in 12 U.S.C. 24 (Seventh), as modified by the Interstate Banking Efficiency Act of 1994 (IBEA). Therefore, the final rule references the definition of ``banker's bank'' found in 12 U.S.C. 24 (Seventh). The rule also specifies that institutions that provide only cash management controlled disbursement services are excluded from CRA coverage. In addition, the final rule provides for the CRA's applicability to foreign institutions consistent with the IBEA and prior agency interpretations.

Definitions

Many of the definitions in the 1994 proposal remain the same in the final rule or have been adjusted only for purposes of clarity, with no change in substance. The agencies did, however, change some definitions substantively.

Assessment area. The agencies replaced the term ``service area'' in the 1994 proposal with ``assessment area'' in the final rule for the reasons explained in the discussion of assessment area.

ATM and branch. The agencies changed the definitions of ATM and branch to eliminate the requirement that an ATM or a branch be at a fixed site. This change means that staffed mobile offices that are licensed as branches will be considered ``branches'' under the final rule and that mobile ATMs will be considered ``ATMs.'' This change may affect the delineation of an institution's assessment area(s) because the assessment area(s) must include the geographies in which the institution has its main office, branches and deposit-taking ATMs. Including mobile branches and ATMs in defining an assessment area ensures that an institution that uses these means in an area not otherwise served by the institution will be evaluated on its success in helping to meet the credit needs of the area. Including mobile branches in the definition of ``branch'' will also affect evaluation of an institution's service to its community because the ``service test'' evaluates the distribution of an institution's branches and the institution's history of opening and closing branches. In the revised Part 345, the FDIC uses the term ``remote service facility'' instead of ``ATM'' to conform with the terminology used in its regulations.

Community development. The 1994 proposal did not provide a separate definition of ``community development,'' although the term was used in defining community development loans and services and qualified investments. Several commenters requested further guidance on the scope of activities that would qualify. Some commenters were concerned that, without further specification, the regulation might permit an overly broad range of activities to be considered favorably as supporting community development. Others were concerned that the definition might be too narrow.

The final rule separately defines community development to mean: (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 13 CFR 121.802(a)(2) or have gross annual revenues of \$1 million or less; or (4) activities that revitalize or stabilize low- or moderate-income geographies.

The definition of community development restricts qualifying activities to those that promote community welfare, while recognizing that community welfare can be promoted in diverse ways. For example, a number of commenters, representing both the industry and community and consumer groups, stated that the requirement in the 1994 proposal that community development loans and services and qualified investments meet

``community economic development needs'' inappropriately limited community development to efforts that meet ``economic'' needs. The final rule does not contain this limitation, and community development includes community- or tribal-based child care, educational, health, or social services targeted to low- or moderate-income persons or services that revitalize or stabilize low- or moderate-income geographies.

In response to comments, the definition clarifies the small businesses and farms that the agencies intend to cover. The section of the definition that discusses activities that promote economic development by financing small businesses and farms refers to 13 CFR 121.802(a)(2), the size limitations for the Small Business Administration's Small Business Investment Company and Development Company programs, as well as the \$1 million gross annual revenues threshold used for lending test analysis.

Several commenters stated that community development should require benefit to low- and moderate-income areas. However, narrowing the focus to only these areas would ignore some of the beneficial purposes of community development lending for low- and moderate-income individuals. Under the rule, community development includes activities outside of low- and moderate-income areas if the activities provide affordable housing for, or community services targeted to, low- or moderate-income individuals or if they promote economic development by financing small businesses and farms. Activities that create, retain, or improve jobs for low- or moderate-income persons to stabilize or revitalize low- or moderate-income areas also qualify as community development, even if the activities are not located in low- or moderate-income areas.

The final rule also requires that, in order to be community development loans or services or qualified investments, activities must have community development as their primary purpose. Activities not designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or promoting economic development by financing small businesses and farms are not eligible. The fact that an activity provides indirect or short-term benefits to low- or moderate-income persons does not make the activity community development. Thus, a loan for upper-income housing in a distressed area would not qualify simply on the basis of the indirect benefit to low- or moderate-income persons from construction jobs or the increase in the local tax base that supports enhanced services to low- and moderate-income area residents.

The final rule removes the requirement in the 1994 proposal that community development loans and services and qualified investments primarily benefit low- or moderate-income persons or small businesses or farms. This requirement is unnecessary because the definitions of community development loan and service and qualified investment in the final rule require that community development be the primary purpose of the activities.

Community development loan. The agencies have amended the definition of ``community development loan'' as described in the discussion of ``community development'' and in several other ways to respond to commenters' concerns.

First, many commenters objected to the requirement in the 1994 proposal that community development loans meet needs ``not being met by the private market.'' Some commenters pointed out that financial institutions are part of the private market so, if financial institutions make the loans, the needs addressed by the loans will, as a matter of course, be met by the private market. To respond to these comments, the agencies removed this [[Page 22160]] qualifier from the definition of a community development loan.

Second, some commenters expressed confusion about the extent to which the definition of ``community development loan'' in the 1994 proposal would have differed for wholesale and limited purpose institutions. The agencies amended the definition of ``community development loan'' in the final rule to clarify the two ways in which a ``community development loan'' differs for wholesale and limited purpose institutions. First, wholesale and limited purpose institutions may consider loans as community development loans wherever they are located, if the institutions have otherwise adequately addressed the credit needs in their assessment area(s). This different treatment accounts for the fact that wholesale and limited purpose institutions typically draw their resources from, and serve areas well beyond, their immediate communities. Second, a wholesale or limited purpose institution may consider loans reported as home mortgage, small business, small farm or consumer loans to be community development loans. Institutions subject to the lending test may not consider loans reported in those categories to be community development loans, unless the loans are multifamily dwelling loans. This different treatment recognizes that the rule does not separately assess wholesale and limited purpose institutions on these reported loans.

Some commenters also urged that the agencies permit wholesale and limited purpose institutions to include as a community development loan any loan that primarily benefits low- or moderate-income individuals regardless of the loan's effect on community development. The lending test evaluates an institution's performance in making home mortgage,

small business, small farm, and consumer loans based on the geographic distribution of loans to borrowers of different incomes, not on the basis of the total number and dollar amount of loans to low- and moderate-income borrowers. Because the community development test does not consider borrower distribution, but only loan amount and volume, crediting any loan that benefits low- and moderate-income individuals could significantly inflate performance under this test. Therefore, the final rule does not incorporate the suggested change.

Other commenters urged that institutions that are not wholesale or limited purpose institutions have the option of treating a home mortgage, small business, or small farm loan as a community development loan if it would otherwise qualify. The agencies have not done so. For retail institutions, the community development loan category permits consideration of loans that do not meet the definitions of home mortgage, small business or small farm loans but deserve favorable consideration in a CRA assessment. Loans that do meet the definitions of home mortgage, small business and small farm loans are more appropriately evaluated based on the criteria provided for these loans in the lending test.

Some commenters requested that retail institutions receive favorable consideration for community development loans outside their assessment areas. Under the final rule, an institution that is not a wholesale or limited purpose institution may receive favorable consideration for a community development loan that benefits a broader statewide or regional area that includes the institution's assessment area(s). This approach maintains a balance between the broader purposes of community development lending and the focus of CRA on meeting the credit needs of an institution's local community. As previously noted, because of their different operational focus, wholesale and limited purpose institutions receive consideration for community development loans made outside this broader area if they have adequately addressed credit needs within the area.¹

\1) Examples of community development loans include, but are not limited to, loans to: borrowers for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons; not-for-profit organizations serving primarily low- and moderate-income housing or other community development needs; borrowers in support of community facilities in low- and moderate-income areas or that are targeted to low- and moderate-income individuals; and financial intermediaries including, but not limited to, Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), minority- and women-owned financial institutions, and low-income or community development credit unions that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development. Other examples include loans to: local, state, and tribal governments for community development activities; and loans to finance environmental clean-up or redevelopment of an industrial site as part of an effort to revitalize the low- or moderate-income community in which the property is located.

Community development service. The definition of "community development service" has been moved to the definition section of the rule for clarity. The definition has been conformed to the definitions of "community development loan" and "qualified investment" by removing the reference to "needs not being met by the private market" for the reasons described in the discussion of "community development loan." In addition, community development services are required to be related to the provision of financial services. For example, service on the board of directors of an organization that promotes credit availability or affordable housing meets this requirement. Providing technical assistance in the financial services field to community-based groups, local, or tribal government agencies, or intermediaries that help to meet the credit needs of low- and moderate-income individuals or small businesses and farms is also related to the provision of financial services. By contrast, general participation by bank or thrift employees in community activities that do not take advantage of the employee's technical or financial expertise would not qualify. Although an admirable civic contribution, such employee participation is not sufficiently related to the provision of financial services to meet the purposes of CRA. As mentioned in the preamble to the 1994 proposal, electronic benefits transfer and point-of-sale terminal systems that are designed to improve access, such as by decreasing costs, for low- or moderate-income individuals would receive favorable consideration.²

\2) Examples of community development services include, among other things: providing technical expertise for not-for-profit, tribal or government organizations serving low- and moderate-income housing needs or economic revitalization and development; lending executives to organizations facilitating affordable housing construction and rehabilitation or development of affordable housing; providing credit counseling, home buyers counseling, home maintenance counseling, and/or financial planning to promote community development and affordable housing; school savings programs; and other financial services the primary purpose of which is community development, such as low-cost or free government check cashing.

Consumer loan. The definition of "consumer loan" remains

substantially the same as in the 1994 proposal. As in the 1994 proposal, a consumer loan must be extended to one or more individuals for household, family, or other personal expenditures. However, as proposed in 1994, the definition would have mirrored the definition of consumer loan in the Consolidated Report of Condition and Income (Call Report) or Thrift Financial Report (TFR) in an effort to reduce potential regulatory burden. The Call Report and TFR definitions exclude loans secured by real estate and loans used to purchase or carry securities. Many industry commenters objected to these exclusions. Commenters were particularly concerned that home equity loans that do not fall within the [[Page 22161]] definition of home improvement loans reportable under HMDA would not have been considered consumer loans under the proposed rule. The definition of consumer loan in the final rule no longer uses the definition in the Call Report or TFR. As a result, home equity loans that are not reportable under HMDA are consumer loans if they otherwise meet the definition. However, the agencies have clarified in the final rule that consumer loans do not include home mortgage, small business, or small farm loans. These loans are considered separately under the lending test so treating them also as consumer loans would result in double-counting.

The final rule contains definitions for five categories of consumer loans: motor vehicle loans, credit card loans, home equity loans, other secured consumer loans, and other unsecured consumer loans. These definitions reflect the fact that the final rule permits an institution to elect evaluation of its consumer lending on a product-by-product basis.

Home mortgage loan. In the 1994 proposal's definition of ``home mortgage loan,'' the agencies referred to the HMDA and its implementing regulations. Some commenters pointed out that the Board has refined the definition of home mortgage loan in its HMDA regulations (12 CFR Part 203). These commenters indicated it would be preferable and, perhaps, less confusing if the agencies referred only to the Board's HMDA regulations, rather than to both the HMDA and the regulations. The agencies have amended the definition of ``home mortgage loan'' in the final rule accordingly. Under the final rule, a home mortgage loan means a ``home improvement loan'' or a ``home purchase loan'' as these terms are defined in 12 CFR Part 203. This definition includes multifamily dwelling loans and refinancings of home improvement and home purchase loans.

Income level. The income level definitions under the 1994 proposal would have included adjustments to reflect high-cost areas and family size. A number of commenters suggested that, although these adjustments would make the income definitions more accurate, the value of the increased accuracy would be outweighed by the complication and burden associated with the use of adjusted figures. Other commenters pointed out that HMDA disclosure statements, which are used, in part, to evaluate CRA performance, do not employ the adjustments. Some commenters strongly supported the use of adjusted area median income, especially in high-cost communities. However, the flexibility of the performance standards allows examiners to account in their evaluations under the tests for conditions in high-cost communities, such as a shortage of credit for moderate-income persons or areas. In addition, the flexibility in the requirement that community development loans, community development services, and qualified investments have as their ``primary'' purpose community development allows examiners to account for conditions in high-cost areas. Therefore, the definitions of income level in the final rule are based upon area median income without adjustments. In addition, the definition of ``area median income'' for rural areas has been simplified and uses only the statewide non-metropolitan median rather than the higher of county median or the statewide figure.

Limited purpose institution and wholesale institution. A number of industry commenters suggested that ``nonbank banks'' permitted under the Competitive Equality Banking Act (12 U.S.C. 1843(f)) (CEBA banks) should automatically be considered limited purpose institutions. These institutions operate under a variety of different business plans and legal constraints and include retail and wholesale banks, credit card banks, and industrial loan companies. CEBA banks may legally engage in different activities, depending on which activities a particular bank engaged in as of March 1, 1987. A uniform treatment of these institutions is therefore not practicable. The final rule provides the necessary flexibility to assess the CRA performance of these institutions and does not require any institution to engage in proscribed activities. Some of these institutions could be designated as wholesale or limited purpose institutions on a case-by-case basis. Further, the final rule permits the agencies to take into account any legal constraints placed on an institution in assessing performance. As in the case of thrifts, adjustments can be made in the ratings profiles to reflect the legal constraints imposed on the activities of CEBA banks.

Other commenters requested more guidance on incidental lending activities that wholesale and limited purpose institutions could engage in without losing their special designation. Wholesale institutions may engage in some retail lending without losing their designation if this activity is incidental and done on an accommodation basis. Similarly, a limited purpose institution continues to meet the narrow product line requirement if it provides other types of loans on an infrequent basis.

Qualified investment. The definition of ``qualified investment'' has been moved to the definition section for clarity and changed to reflect the new definition of ``community development'' and to respond to comments. The agencies have removed the requirement that a qualified investment must address community development needs ``not being met by the private market.'' Instead, in evaluating performance, the agencies will give greater weight to qualified investments that are not routinely provided by private investors.

The 1994 proposal clearly permitted consideration of investments in organizations that make qualified investments, and the final rule is unmodified in this respect. Some commenters asked that qualified investments be required to benefit low- or moderate-income areas or required to benefit either low- or moderate-income people or areas. The agencies rejected these suggestions for the reasons noted in the discussion of ``community development.''

The final rule clarifies specific aspects of qualified investments proposed in the 1994 proposal that raised issues in the comments. For example, the explicit reference to investments in credit unions has been removed to clarify that no special treatment for these institutions was intended under the investment test. Deposits and membership shares in any financial institution that otherwise meet the criteria discussed earlier for treatment as a qualified investment qualify under the investment test. In addition, although some comments suggested otherwise, Federal Home Loan Bank stock does not have a sufficient connection to community development to be considered a qualified investment.

The use of the term ``standard'' mortgage backed securities in the

preamble to the 1994 proposal was ambiguous and should be clarified to mean "untargeted" mortgage backed securities. Untargeted mortgage backed securities and untargeted municipal bonds are not qualified investments because their primary purpose is not community development. Investments in municipal bonds designed primarily to finance community development generally are qualified investments and need not be housing-related. Housing-related municipal bonds must primarily address affordable housing (including multifamily rental housing) needs in order to qualify.

The term "grants" in the final rule includes in-kind contributions of property to community development organizations. Grants do not automatically have less weight than investments, but the weight accorded a grant is determined under the performance criteria in the investment test.\3\

\3\Examples of qualified investments include, but are not limited to, investments, grants, deposits or shares: in or to financial intermediaries (including, but not limited to CDFIs, CDCs, minority- and women-owned financial institutions, and low-income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation; in support of organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing; in support of organizations promoting economic development by financing small businesses, including Small Business Investment Companies (SBICs) and specialized SBICs; to support or develop facilities that promote community development in low- and moderate-income areas for low- and moderate-income individuals, such as day care facilities; in projects eligible for low-income housing tax credits; in state and municipal obligations that specifically support affordable housing or other community development; to not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as home-ownership counseling, home maintenance counseling, credit counseling, and other financial services education; and in or to organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development.

Small institution. Under the 1994 proposal, institutions would have been considered small institutions if they had total assets of less than \$250 million and were either independent institutions or affiliates of holding companies with less than \$250 million in total assets. This definition of "small institution" received numerous comments. Industry commenters generally believed that the asset level for holding companies should be raised or eliminated entirely, although some indicated that the \$250 million asset level for small institutions would be satisfactory. Some commenters representing institutions with assets below \$250 million affiliated with a larger holding company indicated that their institutions typically operated independently from the holding company in complying with CRA obligations. They stated that it would be unfair for them to be evaluated under the assessment tests for a larger institution merely because of their ownership structure. On the other hand, community and consumer groups often commented that small institutions should not be treated differently, or that only institutions with fewer than \$50 million in assets should be considered small institutions for purposes of the CRA rule.

The final rule modifies the definition of "small institution" in light of these comments. In the final rule, for any independent institution to be considered a small institution, it must have total assets of less than \$250 million. Moreover, an institution with total assets of less than \$250 million that is owned by a holding company would be considered a small institution if the total bank and thrift assets of its holding company are less than \$1 billion. The agencies were persuaded that some smaller holding companies may be unable to provide support to their subsidiary banks and thrifts for CRA compliance. Larger holding companies have the ability to provide support to their subsidiary banks and thrifts, so small institutions owned by these holding companies will not be unfairly burdened by evaluation under the lending, investment, and service tests used in the assessments of larger institutions. The choice of the \$1 billion level reflects the weight of the comments that suggested raising the asset level and the agencies' judgment regarding the size at which a holding company should be expected to support the compliance activities of its bank and thrift subsidiaries. The agencies estimate that this change will add only a limited number of institutions, with average assets of about \$100 million, to those eligible under the small bank performance standards.

Many commenters also asked the agencies to clarify the date on which the determination will be made whether an institution is a small institution. The agencies have amended the definition of "small institution" to clarify that an institution will be considered a small institution throughout any calendar year if, as of December 31 of either of the prior two calendar years, the total assets of the institution (and, if applicable, its holding company) fell below the asset limits set out earlier for a small institution. This definition ensures some stability in whether an institution is classified as a small institution and minimizes the chance that an institution's status will change repeatedly from year to year. The definition also ensures that institutions that exceed the asset limits have adequate time to prepare to meet the requirements applicable to larger institutions.

Small business loan and small farm loan. The agencies made no substantive changes to the definitions of "small business loan" and "small farm loan." The final rule cross-references the Call Reports and TFR definitions rather than restating the substance of the definitions as the 1994 proposal would have done. The definitions are based on the size of the loans. Some commenters urged that the definitions be based on the asset size of the business or the farm, as was originally proposed in 1993. The agencies have concluded that, although defining small business and small farm loans by the size of the loan may not be as precise as definitions based on business or farm asset size, following the approach used in the Call Report and TFR will appreciably reduce the burden of compliance for institutions and their borrowers. Also, the Call Report and TFR definitions minimize the need for institutions to collect additional information. The danger of inaccuracy is limited, because loan size roughly correlates with the size of a business or farm borrower. Furthermore, the agencies have retained the proposed requirement that institutions indicate whether a small business or small farm loan is to a business or farm with gross annual revenues of \$1 million or less. This requirement will provide additional information to identify loans to small entities.

Several commenters requested that the agencies clarify whether the definitions of small business and small farm loans include loans made to nonprofit organizations as described in the Internal Revenue Code at 26 U.S.C. 501(c)(3). Loans made to nonprofit organizations are included to the same extent they are included under the Call Report and TFR definitions of small business and small farm loans. Loans to nonprofits that are reported as small business or small farm loans cannot also be reported as community development loans, except by wholesale and limited purpose institutions.

Performance Tests, Standards and Ratings in General

Several changes have been made to the section of the 1994 proposal on assessment tests, standards, and ratings. As an initial matter, the terms "performance tests," "performance standards," and "performance criteria" have been substituted for the terms "assessment tests," "assessment standards," and "assessment criteria" to reflect more accurately the final rule's focus on performance rather than process. The agencies have also changed the term "assessment context" to "performance context" because the latter term better describes the role of this information in the CRA evaluation process.

Performance context. An institution's performance under the tests and standards in the rule is judged in the context of information about the institution, its community, its competitors, and its peers. Examiners will consider the following information, as appropriate, in order to assist in understanding the context in which the institution's performance should be evaluated: (1) The economic and demographic characteristics of the assessment area(s); (2) lending, investment, and service opportunities in the assessment area(s); (3) the institution's product offerings and business strategy; (4) the institution's capacity and constraints; (5) the prior performance of the institution and, in appropriate circumstances, the performance of similarly situated institutions; and (6) other relevant information. The final rule clarifies that a proposed strategic plan will also be evaluated in the same context. However, all of the factors described in the performance context would not necessarily apply to each strategic plan. In this regard, the performance of similarly situated lenders would not generally be appropriate for evaluating future goals under a strategic plan.

Under the 1994 proposal, the assessment context would have included examiner-developed information on the credit needs of an institution's service area. Many commenters interpreted the proposal to mean that the agencies would prepare a detailed needs assessment for each institution's service area(s). Several bank and thrift commenters criticized such a role for the agencies, reasoning that institutions know their communities far better than a regulatory agency, and that agency-prepared assessments would lead to credit allocation. Some community organization commenters, while more supportive of the concept of agency prepared needs assessments, were concerned that the proposal might imply that institutions did not need to make an effort to know their communities' credit needs, but could instead look to the agencies for that determination.

The agencies did not intend to suggest that an agency-developed needs assessment would prescribe the credit needs an institution must address. Instead, the examiner-developed information on credit needs was intended to help inform the examiner's judgment about the institution's record of performance. Institutions are in the better position to know their communities, and it is neither appropriate nor feasible for the agencies to prepare a detailed assessment of the credit needs of an institution's community. Thus, under the final rule the agencies will analyze the information an institution maintains on the credit needs of its community along with relevant information available from other sources. At the same time, the final rule does not establish a requirement that each institution prepare a "needs assessment" to be evaluated by the examiner as urged in some comments provided by financial institutions and community organizations.

Under the final rule, the agencies will neither prepare a formal assessment of community credit needs nor evaluate an institution on its efforts to ascertain community credit needs. Instead, the agencies will request any information that the institution has developed on lending, investment, and service opportunities in its assessment area(s). The agencies will not expect more information than what the institution normally would develop to prepare a business plan or to identify potential markets and customers, including low- and moderate-income persons and geographies in its assessment area(s). This information from the institution will be considered along with information from community, government, civic and other sources to enable the examiner to gain a working knowledge of the institution's community. In response to comments, the final rule also clarifies that information about lending, investment, and service opportunities in an institution's assessment area will, where appropriate, be obtained from tribal governments, as well as from other sources.

Statutory limits on investment authority. Several thrift commenters had concerns about the application of the investment test to thrift institutions because of their limited investment authority. Rather than providing a blanket exemption from the investment test, the final rule modifies the "capacity and constraints" section of the performance context to clarify that examiners should consider an institution's investment authority in evaluating performance under the investment test. A thrift that has few or no qualified investments may still be considered to be performing adequately under the investment test if, for example, the institution is particularly effective in responding to the community's credit needs through community development lending activities.

Safety and soundness. The CRA requires the agencies to assess an institution's record of helping to meet the credit needs of its entire community, consistent with the safe and sound operation of the institution. A number of industry commenters were concerned that the 1994 proposal would not have stressed the importance of the safety and soundness of an institution's operation to the same extent as the CRA statute or the current regulations. These commenters responded primarily to the omission of a statement in the 1993 proposal that the CRA does not require any institution to make loans or investments that are expected to result in losses or are otherwise inconsistent with safe and sound operations. The agencies did not intend by this omission to encourage unprofitable or otherwise unsafe and unsound practices. The agencies firmly believe that institutions can and should expect lending and investments encouraged by the CRA to be profitable. The final rule explicitly reflects this belief and addresses the importance of safety and soundness considerations in several sections and in the ratings appendix. The agencies assess an institution's record of helping to meet community credit needs with careful attention to the constraints imposed by safety and soundness. As in other areas of bank

and thrift operations, unsafe and unsound practices are viewed unfavorably. The ratings appendix specifically states: ``The bank's overall performance, however, must be consistent with safe and sound banking practices. * * *''

Flexible underwriting approaches. The final rule states that the agencies permit and encourage an institution's use of flexible underwriting approaches to facilitate lending to low- and moderate-income individuals and areas, but only if consistent with safe and sound operations. This is consistent with, and clarifies, language in the 1994 proposal. Some commenters urged that the rule expressly identify particular types of areas or borrowers covered by this provision. Mentioning particular types of borrowers or areas in the regulatory text is unnecessary and inconsistent with the principle of evaluating each institution and its community based on their characteristics, capacity, and needs. However, certain borrowers or areas, such as Native Americans residing in Indian country, may face difficulties obtaining credit that could warrant special consideration. The efforts of lenders that utilize innovative or flexible methods, in a safe and sound manner, to address these or other unusual underwriting issues are recognized under the lending test.

The Lending Test

The lending test in the final rule is substantially similar to the 1994 proposal. However, there are some significant changes in response to the comments.

Consideration of originations and purchases. The 1994 proposal would [[Page 22164]] have evaluated home mortgage lending based on HMDA data, which is based on loan originations and purchases. However, the proposal would have required institutions to collect, report, and be evaluated on loans outstanding for other types of loans. The agencies took this approach in an effort to reduce burden on the industry, because institutions must already report loans outstanding on Call Reports and TFRs.

The vast majority of commenters who addressed this issue (almost exclusively industry commenters) stated that use of originations would provide a substantially more accurate picture of actual lending activity, because current activity would not be obscured by past activity and the data would reflect seasonal variations and sale of loans in the secondary market. Moreover, using originations rewards, rather than penalizes, institutions for selling loans on the secondary market, which frees up capital for additional lending and increases credit availability. The commenters did not support the premise that use of originations would be more burdensome than using loans outstanding. Because institutions would have to collect and report additional information on each loan for CRA purposes, using loans outstanding would not significantly decrease burden. The bulk, if not all, of the burden reduction would be achieved by using the Call Report and TFR definitions. The final rule therefore uses originations and purchases, instead of loans outstanding, for all types of loans.

Lines of credit are considered originated at the time the line is approved or increased; and an increase is considered a new origination. Generally, the full amount of the credit line (or in the case of an increase in an existing line, the amount of the increase) is the amount that is considered originated. Although some lines of credit may be for both home improvement and other purposes, only the amount that is considered to be for home improvement purposes is reported as a home improvement loan under HMDA. Lines of credit should be considered in assessing an institution's lending activity in all applicable loan types. Therefore, where a portion of a line of credit is reported under HMDA and another portion meets the definition either of a ``small business loan'' or a ``consumer loan,'' the full amount of the line of credit should be reported as a small business loan or collected as a consumer loan, as appropriate, and the agencies will also consider as a home mortgage loan the portion of the credit line that is reported under HMDA.

The final rule contains an option for lenders also to provide data on loans outstanding, which may, in certain circumstances, enhance an examiner's understanding of an institution's performance. Institutions may also provide for examiner consideration information on letters of credit and commitments, as well as any other loan information. The language of the lending test (and the definition of ``community development loan'') has been adjusted as appropriate to reflect these changes.

Consumer loan evaluation. Under the 1994 proposal, consumer lending would have been evaluated under the lending test only if an institution elected to have it evaluated and provided the necessary loan data. Thus, the 1994 proposal would have permitted an institution that is primarily a consumer lender not to be evaluated on a substantial portion of its business if it so chose. Under these circumstances, meaningful evaluation of certain institutions might have been very difficult. The final rule, therefore, changes the treatment of consumer lending. Under the rule, if a substantial majority of an institution's business is consumer lending, this lending is evaluated in the lending test. The rule does not impose any reporting requirements for consumer lending, however. If an examiner determines that a substantial portion of an institution's business is consumer lending, and the institution has not elected to provide consumer loan data, the examiner will evaluate consumer lending by analyzing an appropriate sample of the institution's consumer loan portfolio. In addition, this aspect of the final rule does not affect the evaluation of a limited purpose bank, because the bank will be evaluated under the community development test, not the lending test.

The 1994 proposal would have required that institutions provide information on all consumer loans if they choose to provide information on any consumer loans. The agencies included this requirement because they were concerned that, otherwise, an institution might provide information only on those consumer products that would reflect well on the institution's CRA performance and would choose not to provide information on those products that would reflect poorly.

Many industry commenters stated that the prospect of reporting all their consumer loan information was so burdensome that they would not report any information. On the other hand, consumer and community groups commented that, if consumer lending is to be considered in CRA at all, consumer loan reporting should be mandatory. After considering these comments, the agencies have decided to permit institutions to provide information on one or more categories (motor vehicle, credit card, home equity, other secured, and other unsecured) of consumer loans.

Although an institution may have some opportunity to mask poor performance or otherwise inappropriately influence its CRA evaluation through selective provision of data, this opportunity will be limited by the provision in the final rule requiring an institution to maintain data on all loans in the category or categories in which it seeks to be

evaluated. For example, if an institution provides information on its credit card lending, it would have to provide information on all its credit card lending, although it need not provide information on its motor vehicle lending. Furthermore, under the final rule, if an institution is a substantial consumer lender, the agencies will evaluate its consumer lending in appropriate categories regardless of whether the institution reports data for those categories.

Relative weight of different lending categories. The 1994 proposal explicitly stated that home mortgage, small business, and small farm lending (and consumer lending if it was considered) would have been weighted to reflect the relative importance of the categories to the institution's overall business. The proposal also stated that community development lending would have been weighted to reflect the characteristics and needs of an institution's assessment area(s), the capacity and constraints of the institution, and the opportunities available for this lending. Several commenters expressed concern about the lack of certainty in these provisions; some also believed that community development lending would have received excessive weight. However, a fixed formula for the relative weight of different categories would require a determination that some categories of lending are uniformly more important than others, when the appropriate weight depends on the specific institution and its community. The agencies have removed the discussion of the relative weight assigned to different lending categories because examiners will determine the appropriate weight based on the performance context.

Lending activity criterion. The lending test in the 1994 proposal, unlike the current CRA regulations, did not specifically consider the volume of lending activity--the number and amount of home mortgage, small business, small farm, and consumer loans located in the institution's [[Page 22165]] assessment area(s). Experience under the current regulations has demonstrated that this criterion can be useful in assessing performance. Therefore, based on further internal agency considerations, the final rule contains a lending activity performance criterion. This criterion encourages an institution that does not itself engage in the categories of lending evaluated under the lending test to seek designation as a wholesale or limited purpose institution so that the institution's CRA performance can be evaluated under criteria appropriate to the institution. The criterion also creates a disincentive for institutions to try to influence inappropriately the evaluation of their CRA performance by conducting activities viewed favorably under CRA in the institution and other activities in an affiliate. An institution's performance on the lending activity criterion will be assessed taking into account the information described in the section of the preamble discussing the performance context, including the institution's business strategy regarding the lending conducted by the institution itself and the lending conducted by affiliates.

Market share analysis. Many commenters, particularly community and consumer groups, suggested that the market share evaluation of the 1993 proposal be reinstated or that the agencies substitute an alternative objective ratio to serve as the linchpin for an institution's lending test rating. Other commenters, particularly those representing the industry, opposed using any market share analysis. In the agencies' opinion, the 1994 proposal struck the appropriate balance between objective performance measures and subjective judgments. A single, standardized set of performance evaluation tools is not appropriate because of the variety of institutions and the differences among the communities that they serve. The public evaluation prepared by the agencies will explain the data and analytic tools used to evaluate the institution.

The geographic distribution of an institution's loans remains a component of the lending test. One element of the geographic distribution analysis, both in the 1994 proposal and in the final rule, is the amount of lending to low-, moderate-, middle- and upper-income geographies. As part of the performance context, examiners would consider, among other considerations described earlier in this preamble, the performance of other similarly-situated lenders. In this regard, examiners would use market share and other analyses to assist in evaluating the geographic distribution of an institution's lending where such analyses would provide accurate insight. However, the final rule does not require examiners to use any single type of analysis, and would not link a particular market share ratio, or any ratio, with a particular lending test rating.

Proportion of lending within assessment areas. Under the final rule, as under the 1994 proposal, another component of the geographic distribution criterion is the proportion of total loans made in an institution's assessment area(s). Some commenters believed that this criterion is inappropriate; they noted that safety and soundness considerations require an institution to lend to a geographically dispersed area. This criterion is a consideration under the existing CRA rules and has proved over the years to be one useful indicator of the degree to which an institution is focused on serving its local community. Moreover, the agencies believe the criterion encourages an institution to draw its assessment area broadly enough to allow the dispersion of its lending and distribution of its loans among geographies of different income levels. Therefore, the agencies retained the provision unchanged in the final rule.

Dispersion. The third component of the geographic distribution criterion of the lending test is the dispersion of the institution's lending activity. The 1994 proposal would have assessed the degree of dispersion "throughout" an institution's assessment area(s). For clarification, the word "throughout" has been changed to "in" in the final rule. The agencies will still examine the entire assessment area; however, an institution is not expected to lend evenly throughout or to every geography in its assessment area. Rather, an institution's lending pattern should not exhibit conspicuous gaps that are not adequately explained by the performance context.

Borrower distribution. The lending test also considers the distribution of an institution's loans among borrowers of different income levels and businesses of different sizes. Favorable consideration is given for loans to low- and moderate-income persons and small businesses and farm loans outside of the institution's assessment area, provided that the institution has adequately served borrowers within its assessment area. The importance of this criterion, particularly in relation to the geographic distribution criterion, will depend on the performance context. For example, borrower distribution may be more important in rural areas or in assessment areas without identifiable geographies of different income categories; geographic distribution may be more important in urban areas and assessment areas with the full range of geographies of different income categories.

Some commenters recommended that the lending test evaluate an institution's record of lending to different racial and ethnic groups and to women. The final rule does not incorporate this suggestion. The appropriate inquiry regarding service to particular racial or ethnic

groups and men and women is whether the institution is operating in a non-discriminatory manner. Therefore, in arriving at an institution's assigned rating, the agencies consider whether there is evidence of discrimination in violation of the Fair Housing Act or Equal Credit Opportunity Act, or evidence of other illegal credit practices.

Innovative or flexible lending practices. The final rule, like the 1994 proposal, assesses an institution's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies. An innovative practice is one that serves low- and moderate-income creditworthy borrowers in new ways or serves groups of creditworthy borrowers not previously served by the institution. Both innovative practices and flexible practices are favorably considered. Although a practice ceases to be innovative if its use is widespread, it may nonetheless receive consideration if it is a flexible practice. An institution need not provide lending data connected with a practice in order to receive consideration. For example, an examiner could consider an institution's secured credit card program as a flexible lending practice even though the institution has not provided its credit card loan data for evaluation under the other criteria of the lending test.

Compliance with private commitments. Some commenters suggested that, in the lending test, the agencies should consider the extent to which an institution has fulfilled lending agreements that the institution has made with third parties. The final rule does not incorporate this suggestion. The CRA requires the agencies to assess an institution's record of helping to meet the credit needs of its community, not to enforce privately negotiated agreements. Therefore, an institution's record of fulfilling these types of agreements is not an appropriate CRA performance criterion.

Affiliate lending. The 1994 proposal would have permitted consideration of affiliate lending at an institution's option or if the agency determined that [[Page 22166]] the affiliate's activity is integral to the institution's business. Many industry commenters opposed consideration of affiliate lending except at the institution's option on the ground that consideration without the institution's consent may be equivalent to extending CRA coverage to affiliates that may not be subject to the statute. Some community and consumer groups supported consideration of affiliate activity and urged that the regulatory language be strengthened to require the agencies to take affiliate lending into account under certain circumstances. In the final rule, affiliate lending is considered only at the election of the institution, except with regard to the lending activity criterion, where, as described earlier, it will provide context for the assessment in order to discourage an institution from inappropriately influencing an evaluation of its CRA performance by conducting activities that would be viewed unfavorably in an affiliate. The agencies also received comments that the phrase "integral to the institution's business" in the proposal was unclear. The final rule does not use this phrase.

The other limitations on consideration of affiliate lending contained in the 1994 proposal have been retained in the final rule. However, the limitation against double-counting of loans has been modified to clarify that an institution can count as a purchase a loan originated by an affiliate, or count as an origination a loan sold to an affiliate, provided the same loans are not sold several times to inflate their value for CRA purposes.

The agencies have added language to the final rule to clarify that affiliate lending is not considered in evaluating the proportion of total lending made within an institution's assessment area(s). The agencies also wish to clarify that if an institution elects to have the lending activities of its affiliates considered in the evaluation of the institution's lending, the geographies served by the affiliate's lending activities do not affect the institution's delineation of assessment area(s).

Furthermore, the final rule would not change the existing supervisory authority of the agencies over institutions and their affiliates. Therefore, although lending by affiliates may be treated as lending by an institution, this treatment for CRA purposes will not permit a regulatory agency to examine any institution or its affiliate if it does not otherwise have such authority.

Direct and indirect lending. Many consumer and community groups expressed concern that the 1994 proposal did not adequately emphasize direct lending by the institution as compared to indirect lending carried out through consortia and third parties. Other commenters, particularly from the industry, urged a return to the provisions of the 1993 proposal that would have treated direct and indirect lending as interchangeable. The final rule clarifies that loans originated or purchased by third parties and consortia in which an institution participates or invests may only be considered if they qualify as community development loans and may only be considered under the community development lending criterion. Indirect loans will not affect an institution's performance under the other four lending test criteria. Under the final rule, direct lending performance is an essential element of an institution's CRA performance.

Some commenters requested clarification whether an institution is required to participate directly in making or funding each loan that is made through a consortium or third party in order for the loan to be considered under the community development lending criterion of the lending test. An institution need not directly participate in the making or funding of consortia- and third party-loans for the loans to be considered (subject to the constraints set out in the rule) under the community development lending criterion, provided the loans meet the definition of community development loan. Loans originated directly on the books of the institution or purchased by the institution are considered to have been made directly by the institution, even if the institution originated or purchased the loans as a result of its participation in a loan consortium.

Investment Test

The 1994 proposal would have focused on the dollar amount of an institution's qualified investments, the innovativeness and complexity of the qualified investments and their responsiveness to the credit and economic development needs of the community. The 1994 proposal also would have clarified that the investment test considers all qualified investments benefitting a broader statewide or regional area that included an institution's assessment area. Most of the comments on the investment test concerned the definition of qualified investment and have been discussed earlier in the preamble.

Limited investment authority. One group of commenters representing institutions with statutory constraints on their authority to make this type of investment maintained that reliance on an investment test in assigning a CRA rating could unfairly stigmatize their CRA performance. As previously discussed, the final rule has modified the performance context for CRA evaluations to account for financial institutions with

limited investment authority. These modifications would permit an institution with limited authority to make investments to receive a low satisfactory rating under the investment test, although it has made few or no qualified investments, if the institution has a strong lending record, thereby preventing potential anomalies in the CRA performance ratings.

Disposition of branch premises. To implement the statutory requirement in 12 U.S.C. 2907(a), the final rule specifies that a donation, sale on favorable terms or rent-free occupancy of a branch (in whole or in part) in a predominantly minority neighborhood to any minority- or women-owned depository institution is a qualifying investment. Similar disposition of branch premises to a financial institution with a primary mission of promoting community development is also a qualified investment.

Service Test

Compared to the 1993 proposal, the service test in the 1994 proposal would have reduced the significance in the CRA performance evaluation of an institution's full service, "brick and mortar" branch structure by elevating the consideration given to alternative systems for delivering retail banking services (e.g., ATMs, mobile branches, loan production offices, or banking-by-telephone or banking-by-computer). In this regard, the provision of retail banking services would have been evaluated on the basis of an institution's: (1) Distribution of branches and ATMs among low-, moderate-, middle-, and upper-income areas; (2) record of opening and closing branches and ATMs; (3) range of services to low-, moderate-, middle-, and upper-income areas; and (4) efforts to make alternative delivery systems responsive to the needs of low- and moderate-income areas and individuals. In addition, the extent to which an institution provided innovative and responsive community development services would also have been considered under the service test. The final rule retains the essential structure and elements of the test as proposed but makes some modifications.

Relative weight of branches and alternative delivery systems. The overwhelming majority of community and consumer group commenters stated [[Page 22167]] that the 1994 proposal placed too little emphasis on the location of an institution's full service branches in evaluating performance under the service test. Many of those commenters also were concerned that the proposed service test would have erroneously equated ATMs with full service branches. On the other hand, several industry commenters commended the proposal's recognition that full service branches should not be the determining factor under the service test as consistent with the trend in the industry toward the use of alternative service delivery systems.

The final rule responds to these issues by adjusting the balance of the service performance evaluation in favor of full-service branches while still considering alternative systems. In this regard, references to ATMs in the criteria for evaluating the distribution of an institution's branches have been removed, and conforming changes have been made in the ratings appendix. These changes signify a recognition that convenient access to full-service branches within a community is an important factor in determining the availability of credit and non-credit services. The focus of the service test, however, remains on an institution's current distribution of branches, and the test does not require an institution to expand its branch network or operate unprofitable branches.

The final rule emphasizes that alternative systems for delivering retail banking services, such as ATMs, are to be considered only to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals. Furthermore, network ATMs owned by other institutions do not receive the same consideration in an institution's evaluation as ATMs owned by or operated exclusively for that institution.

An institution's branches and other service delivery systems need not be accessible to every part of an institution's assessment area. However, the service delivery systems should not exhibit conspicuous gaps in accessibility, particularly to low- or moderate-income areas or individuals, unless the gaps are adequately explained by the performance context.

Other issues. The final rule conforms the community development services component of the service test to that of the investment test by giving consideration to community development services that benefit a broader statewide or regional area encompassing an institution's assessment area.

Some of the specific suggestions in the comments were not implemented in the final rule. For example, the rule does not require institutions to provide basic banking services or low-cost checking accounts, because the CRA permits institutions substantial leeway to determine the specific policies and programs that help meet credit needs in their communities. In addition, the final rule does not evaluate the effectiveness of service performance on the basis of deposit growth. This measurement is not clearly related to helping to meet the credit needs of the community and could necessitate burdensome coding of deposit accounts on a geographic basis. Finally, debit cards are not a retail credit delivery system, and therefore the agencies have not included debit cards in the list of examples of alternative delivery systems for retail services.

Community Development Test

The performance of wholesale and limited purpose institutions would have been evaluated in the 1994 proposal separately under the community development test. This test would have focused on the record of these institutions in helping to meet credit needs through community development lending, qualified investments, and community development services. The 1994 proposal also would have required wholesale or limited purpose institutions to serve a designated local area and would have placed limits on consideration of activities outside this designated area. The final rule maintains the community development test with some changes.

Request for designation as a wholesale or limited purpose institution. In response to comments on the 1994 proposal, the final rule provides more detail on the process by which an institution is designated wholesale or limited purpose. An institution that seeks designation as wholesale or limited purpose must file a request in writing at least three months prior to the proposed effective date of the designation. If the designation is approved, it remains in effect until the institution requests revocation of the designation or until one year after the agency notifies the institution that the agency has revoked the designation on its own initiative. Thus, once an institution has received a designation, the institution need not reapply before each CRA examination.

Benefit to assessment area. Many commenters, including both

industry and some community group commenters, maintained that the limitations placed on considering out-of-assessment area activities were too restrictive and did not account for the broader business strategies and operations of wholesale and limited purpose institutions, which often serve communities on a nationwide basis.

The final rule removes the specific limitation that community development activities outside an institution's assessment area be considered only up to the amount of activities within the institution's assessment area. Under the final rule, the agencies consider all activities that benefit the institution's assessment area(s) or a broader statewide or regional area that includes the assessment area(s). In addition, other activities receive full consideration as long as the institution has adequately addressed the needs of its assessment area.

Technical changes and clarifications. The final rule clarifies that investments in third party community development organizations may be treated either as qualified investments or as community development loans (with the institution receiving credit for a pro rata share of the loans made by the third party, at the institution's option). In addition, the agencies note that a wholesale or limited purpose institution need not engage in all three categories of activities considered under the community development test but can perform well under the test by engaging in one or more of these categories. Technical changes have also been made to conform with the modifications, previously discussed, to the definition of community development loans, the definitions of wholesale and limited purpose institutions, and the focus of lending performance assessments on originations and purchases rather than loans outstanding.

Small Institution Performance Standards

The small institution performance standards have been retained in the final rule essentially as proposed in 1994, except for the change in the eligibility threshold described earlier. As a technical matter, the final rule has been changed to clarify that an institution that was a small institution as of the end of the prior calendar year is examined as a small institution.

Many commenters, predominantly representing community organizations but also including some larger institutions, stated that the streamlined approach would amount to a de facto exemption from CRA for small institutions. Other commenters, predominantly representing the industry, supported the proposal for streamlined examinations and an exemption from new data collection and [Page 22168] reporting. Many commenters representing the industry stated that data collection may place a greater relative burden on smaller institutions than larger institutions due to limitations in staff and financial resources. After considering the comments, the agencies have decided not to change materially the smaller institution performance standards. Examinations of small banks and thrifts will be streamlined and will not require the periodic reporting of new data. Examinations will be meaningful and will not be implemented as de facto exemptions.

Performance criteria. The 1994 proposal provided that to determine whether a small institution's CRA record is satisfactory, the agencies would consider the institution'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. This provision of the 1994 proposal responded to concerns following the 1993 proposal that institutions that package and sell their loans would be disadvantaged when compared to portfolio lenders by a strict loan-to-deposit ratio test. This provision of the 1994 proposal has been retained in the final rule. Evaluations will also take into account the institution's size, financial condition, and the credit needs of its assessment area.

The final rule also requires consideration of the proportion of the institution's total lending made to borrowers in its assessment area. The agencies will take into account local lending and investment opportunities in assessing this criterion.

In addition, the agencies will evaluate the distribution of loans and lending-related activities among individuals of different income levels and businesses and farms of different sizes. Where appropriate, the agencies will also evaluate the geographic distribution of loans in the institution's assessment area, including low- and moderate-income geographies. Contrary to the concerns expressed by some commenters, however, a small institution is not expected to lend evenly throughout its service area; rather, loan distribution will be evaluated within the context of an institution's capacity to lend, local economic conditions, and lending opportunities in the assessment area.

The agencies also will evaluate whether an institution has taken appropriate action, as warranted, in response to written complaints about the institution's performance in helping to meet the credit needs of its assessment area(s). Some commenters suggested that complaints resolved satisfactorily for the complainant not be considered in the evaluation. The agencies will consider those complaints, but their satisfactory resolution will be a favorable element in an evaluation. Other commenters expressed concern that the agencies might not adequately consider bona fide complaints from community members. However, the agencies intend to consider all CRA complaints in the course of an examination. Therefore, this criterion is retained in the final rule as proposed.

Elements of outstanding performance. Some commenters requested a clarification of the circumstances under which a small institution could earn an "outstanding" rating. Others urged that some flexibility be provided to consider a range of activities that enhance credit availability and promote community development. Under the final rule, in addition to determining whether an institution has exceeded some or all of the standards for a satisfactory rating, the agencies will consider a small institution's investment and service performance based on the broad range of investment and service activities discussed in the rule for other institutions.

Strategic Plan

The provisions of the strategic plan in the 1994 proposal have been adopted largely as proposed, with some changes.

The 1994 proposal provided that, as an alternative to being rated under the lending, service, and investment tests, or the small institution performance standards, a bank or thrift could submit to its supervisory agency for approval a strategic plan developed with community input detailing how the institution proposed to meet its CRA obligation. The 1994 proposal made clear that an institution would not be assessed under a plan unless the plan had been approved by its supervisory agency. To facilitate examinations of institutions with approved plans, the final rule clarifies that an institution is only

evaluated under a plan if the plan is in effect and if the institution has operated under an approved plan (although not necessarily the particular plan currently in effect) for at least one year. Affiliates may prepare joint plans. The final rule permits activities to be allocated among affiliated institutions at the institutions' option, provided that the same activities are not considered for more than one institution. This change was made in response to comments requesting greater flexibility and increased opportunities for affiliated institutions sharing the same assessment area(s) to work together to help meet the credit needs of their communities and, in particular, in low- and moderate-income areas.

Public participation. The final rule retains the public participation provisions in the 1994 proposal. The final rule requires an institution informally to seek suggestions from the public while developing a plan. Once the institution has developed a plan, it must publish notice of the plan and solicit written public comment for at least 30 days. In order to avoid unduly lengthening the plan approval process, the final rule does not extend the minimum comment period. After the comment period, the institution shall submit the plan to its regulator, along with any written comments received. If the plan was revised in light of the comments received, the institution shall also submit the plan in the form released for public comment. The agencies have added in the final rule a requirement that an institution submit with its plan a description of its informal efforts to seek suggestions from members of the public. As under the 1994 proposal, the final rule states that a plan will be approved if the agency fails to act on it within 60 days after submission, unless the agency extends the review period for good cause.

Because of the importance of constructive community involvement in the plan process, the agencies have not changed in the final rule the amount of public participation required. Requiring an institution to seek informal suggestions in formulating a plan, and then to solicit formal comment before submitting a plan to the agency, encourages consultation between an institution and its community, including local government, community leaders, the public and tribal governments. There is no need for a further comment period after the institution submits its proposed plan to the agency because such a comment period could undermine the direct communication and consultation between an institution and its community that is most beneficial to the process.

Several comments appeared to misunderstand why the strategic plan provides for comment from the public. The strategic plan option provides institutions an opportunity to tailor their CRA objectives to the needs of their community and their capacity and expertise. Several industry comments were concerned that under the strategic plan option, community organizations would play an inappropriate role in an institution's operations. However, the purpose of the consultation is for the institution to develop the fullest possible information about the needs of its community and how these needs might be met. The institution nevertheless makes all decisions regarding how it plans to help meet those needs. In reviewing the public participation, the agencies will not consider whether community organizations unanimously support the plan, but whether the institution made an appropriate investigation to determine the needs of its community, and whether the goals of the plan serve those needs.

As a technical clarification, the final rule provides that an institution may impose a reasonable charge for copying or mailing a plan but may not charge for reviewing the plan.

Assessment of performance under the plan. Under the final rule, as under the 1994 proposal, the agencies will generally rate an institution's performance under an approved plan solely in relation to goals set out in the plan. An institution has the option, however, to elect in its plan to be subject to the standard tests should it fail to meet substantially its "satisfactory" goals under the plan. The final rule makes this election clear. An institution operating under an approved plan would, during the period of the plan, not be subject to assessment under the standard tests, unless the institution so chose. In considering whether an institution has substantially met plan goals, an agency will give consideration to circumstances beyond the institution's control, such as economic conditions, that have affected its ability to perform.

Confidential information. A number of industry commenters indicated that the possibility of public disclosure of confidential information presented a major disincentive to their use of the strategic plan alternative. In response to similar comments on the 1993 proposal, the 1994 proposal would have permitted institutions to submit additional information to the relevant agency on a confidential basis. The final rule includes this provision, which adequately addresses confidentiality concerns.

Data collection and reporting responsibilities. Despite industry comments to the contrary, the final rule provides that approval of a plan does not affect an institution's data collection responsibilities. These data are useful to the agencies in assessing overall lending in communities, and would also be of value to the public. Since the institution's plan will be in its public file, the public will have the appropriate context in which to evaluate the lending data.

Assigned Ratings

In the final rule, as under the 1994 proposal, an institution will be assigned one of the four assigned ratings required by the statute: "outstanding," "satisfactory," "needs to improve," or "substantial noncompliance." (12 U.S.C. 2906(b)(2)) For institutions that are evaluated under the community development test for wholesale or limited purpose institutions, the small institution performance standards, or an approved strategic plan, the rating on these tests will be the institution's assigned rating with adjustment for any evidence of discrimination. Retail institutions that are evaluated under the lending, investment and service tests will be assigned a rating based upon the assigned rating principles and the matrix that implements these principles, also with adjustment for any evidence of discrimination.

Ratings principles and matrix. A number of comments discussed the principles and methodology by which an assigned rating would be given to retail institutions evaluated under the lending, investment and service tests. The 1994 proposal set forth five principles that governed the assignment of this rating. The methodology for calculating the assigned rating was described in Appendix A. The proposal would have required that an institution's rating on the lending test count for at least 50 percent of its assigned rating. Furthermore, an institution would have been required to achieve a "satisfactory" rating on the lending test in order to receive an assigned rating of "satisfactory." In addition, the 1994 proposal would have allowed investment and service performance to raise a institution's assigned rating if it had earned at least a "satisfactory" rating on the

lending test. Poor performance on either the investment or service test also could have negatively affected an institution's assigned rating. The proposal would have required the agencies to adjust ratings for all institutions, regardless of which test the agencies used to evaluate their performance, to take into consideration evidence of discriminatory or other illegal credit practices. Finally, an institution that otherwise would have received a "needs to improve" rating would have been rated as "substantial noncompliance" if it received no better than a "needs to improve" rating on each of its two previous examinations.

Commenters generally supported the 1994 proposal's emphasis on lending performance, but a number were concerned about several apparently anomalous ratings that would have resulted from applying the rating principles and the matrix in the appendix. Several commenters, particularly community groups, were concerned that an institution could receive an assigned rating of "satisfactory" even if it received a rating of "substantial noncompliance" on both the investment and service tests, if its rating on the lending test was at least a "high satisfactory." In addition, an institution with a rating of "substantial noncompliance" on either the service or investment test could get an "outstanding" composite rating if its rating on the lending and the third test was "outstanding." These commenters suggested revising the rating principles and matrix to avoid these anomalous results.

After considering the comments, the agencies have revised the final rule to eliminate these anomalies. The agencies eliminated the principle that an "outstanding" rating on the lending test and either the service or investment test would mean an "outstanding" assigned rating even if the rating on the third test was "substantial noncompliance." The agencies also eliminated the principle that an institution's rating on the lending test would count for at least 50 percent of its assigned rating. This change does not alter the agencies' emphasis on the primacy of lending when evaluating CRA performance, because no institution may receive an assigned rating of "satisfactory" unless it receives a rating of at least "low satisfactory" on the lending test.

In light of the comments, the matrix that sets forth the methodology for aggregating an institution's scores on the lending, service and investment tests to arrive at an assigned rating has also been revised. The number of points to be given for each rating on the lending, service and investment tests remains unchanged as shown in the following table.

[[Page 22170]]

Component test ratings	Lending	Service	Investment
Outstanding.....	12	6	6
High Satisfactory.....	9	4	4
Low Satisfactory.....	6	3	3
Needs to Improve.....	3	1	1
Substantial Noncompliance.....	0	0	0

The number of points needed to achieve each of the four composite assigned ratings has been modified slightly, as shown in the following table, to remove the anomalies discussed earlier.

Points	Composite assigned rating
20 or over.....	Outstanding.
11 through 19.....	Satisfactory.
5 through 10.....	Needs to Improve.
0 through 4.....	Substantial Noncompliance.

To ensure that an institution does not receive an assigned rating of "satisfactory" unless it receives a rating of at least "low satisfactory" on the lending test, an institution's assigned rating will be calculated using three times the lending test score if the institution's point total exceeds three times the lending test score.

The agencies have removed the matrix from Appendix A. This change will allow the agencies some flexibility in adjusting the matrix to prevent any other unintended anomalies that may be found during the examination process. If the agencies change the matrix in the future, the new matrix will be published for information, but not necessarily for comment, in the Federal Register.

Automatic downgrade of third "needs to improve" rating. The agencies have also removed the requirement that an institution's CRA rating be downgraded automatically from "needs to improve" to "substantial noncompliance" if it received no better than a "needs to improve" rating on each of its two previous examinations. Even though the automatic downgrading has been eliminated in the final rule, the agencies will consider an institution's past performance in its overall evaluation. If the poor performance continues, an institution could be rated "substantial noncompliance" if prior ratings were "needs to improve" and the institution has not made efforts to improve its performance.

Weight of service test. Some consumer groups urged that an institution be required to get at least a "low satisfactory" on the service test in order to get an assigned rating of "satisfactory" or better. The agencies considered this suggestion, but decided that because the CRA's focus is on helping to meet a community's credit needs, it would be inappropriate to impose this requirement. However, the changes to the ratings principles and matrix increase the weight of both the service and investment tests.

High satisfactory and low satisfactory ratings. Some commenters found confusing the use of a "high" and "low" satisfactory rating on the lending, service and investment tests and only a "satisfactory" on the assigned rating. Because a wide range of performance may be rated as satisfactory, the agencies decided to keep the five ratings on the underlying tests, even though the assigned ratings are limited to the four statutory ratings. This will permit the agencies, banks and thrifts, and their customers to recognize the stronger performances on the lending, investment, and service tests of those institutions that are doing a very good, but not quite outstanding, job of helping to meet the credit needs of their communities.

Effect of CRA Performance on Applications

The CRA requires the agencies to consider an institution's CRA performance record when considering an application by the institution

to establish a deposit facility. The statute defines applications for a deposit facility as including applications for a Federal financial institution charter or FDIC deposit insurance, applications to establish or relocate a branch or home office, and applications for mergers, consolidations, or the purchase of assets or assumption of liabilities of a regulated financial institution. The 1994 proposal provided that in considering an institution's application for a deposit facility, the agencies would consider the institution's CRA performance and take into account any views expressed by interested parties submitted in accordance with the applicable agency's rules and procedures. The proposal also stated that an institution's record of CRA performance could provide a basis for approving, denying, or conditioning approval of an application.

A number of comments from financial institutions asked the agencies to create a "safe harbor" from CRA protests for banks with good CRA ratings that apply to establish a deposit facility. Some commenters suggested that a "safe harbor" would provide an incentive to achieve an outstanding rating. Community and consumer groups, on the other hand, opposed any sort of safe harbor from CRA protests.

The agencies have consistently recognized that materials relating to CRA performance received during the applications process can and do provide relevant and valuable information. The agencies also continue to believe, as provided in the Interagency Policy Statement Regarding the Community Reinvestment Act, that information from an examination is a particularly important consideration in the applications process because it represents the on-site evaluation of an institution's CRA performance by its primary Federal regulator. The final rule implements without change the balance given in the 1994 proposal between CRA performance ratings and material information presented through public comment in the applications process.

The agencies noted in the preamble to the 1993 proposal that the frequency with which the agencies will examine an institution will depend in part on its record of performance. A similar discussion was inadvertently omitted from the 1994 proposal. Examination frequency will be based, in part, on an institution's record of performance. This policy combines an efficient use of agency resources with an incentive for good performance.

Assessment Area Delineation

As a result of numerous comments received on this issue, the final rule makes several changes to the definition of service area in the 1994 proposal.

Assessment area. The CRA requires the agencies to assess an institution's record of helping to meet the credit needs of its local community. The assessment area as defined in the final rule represents the community within which the agencies assess an institution's record of CRA performance.

As noted earlier in the preamble, in the final rule, the term "assessment area" replaces the term "service area," which was used in the 1993 and 1994 proposals. The agencies believe the term "assessment area" more accurately [[Page 22171]] describes the geographic area within which the specific performance criteria in the rule will be assessed. Based on the continuing criticisms of the "delineated community" in the current regulation and the "service area" in both the 1993 and 1994 proposals, the agencies have decided to place a different emphasis on the institution's specific delineation and the methods used by the institution to establish that delineation. The agencies do not expect that, simply because a census tract or block numbering area is within an institution's assessment area, the institution must lend to that census tract or block numbering area. The capacity and constraints of the institution, its business decisions about how it can best help to meet the needs of its assessment area, including those of low- and moderate-income neighborhoods, and other aspects of the performance context, would be relevant to explain why the institution is not serving portions of the assessment area(s).

The rule also clarifies that an institution's delineation of its assessment area(s) is not separately evaluated as an aspect of CRA performance, although the delineation will be reviewed for compliance with the assessment area requirements of the rule. If, for example, an institution delineated the entire county in which it is located as its assessment area but could have delineated its assessment area as only a portion of the county, it will not be penalized for lending only in that portion of the county, so long as that portion does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies.

Assessment area boundaries. The 1994 proposal would have prohibited a financial institution, other than a wholesale or limited purpose institution, from delineating a service area that extends substantially across boundaries of a metropolitan statistical area (MSA) or state boundaries, unless the service area was located in a multistate MSA. Further, the proposal would have prohibited an institution's service area from reflecting illegal discrimination or arbitrarily excluding low- and moderate-income geographies (taking into account the institution's size and financial condition).

The final rule states that an institution shall not delineate an assessment area extending substantially across the boundaries of a consolidated metropolitan statistical area (CMSA). An institution shall delineate separate assessment areas for the areas inside and outside the CMSA and for different CMSAs. The 1994 proposal expressed these limitations in terms of MSAs rather than CMSAs. The change in the final rule has been made to address a technical shortcoming in the 1994 proposal, but does not change its substance. The final rule retains the provision from both the 1993 and 1994 proposals that an assessment area not extend substantially across state boundaries unless the assessment area is located in a multistate MSA. The final rule applies these limitations to wholesale and limited purpose institutions as well as other institutions because of changes made to the community development test.

To simplify the process of delineating an assessment area, the final rule encourages institutions to establish assessment area boundaries that coincide with the boundaries of one or more MSAs or one or more contiguous political subdivisions, such as counties, cities, or towns. An institution is permitted, but is not required, to adjust the boundaries of its assessment area(s) so as to include only the portion of a political subdivision it reasonably can be expected to serve. This provision gives institutions some flexibility in their delineations, particularly in the case of an area that would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers. As with the 1994 proposal, however, such adjustments may not arbitrarily exclude low- and moderate-income geographies from the institution's assessment area(s). For purposes of assessment area delineation, an institution should use the MSA and CMSA boundaries in effect on January 1 of the calendar year in which the institution is

making the delineation.

Equidistance principle. The 1994 proposal would have adopted the effective lending territory principle from the current regulations in slightly modified form. The 1994 proposal would have explicitly linked an institution's CRA obligations to the areas around its branches and deposit-taking ATMs, rather than its other non-deposit taking offices. The service area delineated by the institution would have had to include all geographies around its branches in which the institution originated or had outstanding during the previous year a significant number and amount of home mortgage, small business and small farm, and consumer loans and any other geographies equidistant from its branches and deposit-taking ATMs.

The final rule eliminates the equidistance principle as a required part of the delineation of an assessment area. This change provides institutions greater flexibility in their delineations. Several commenters suggested that, in certain circumstances, the equidistance requirement could be inappropriate, because institutions do not routinely serve areas that are uniformly equidistant from their deposit-taking offices. The final rule retains the requirement that an assessment area not arbitrarily exclude low- or moderate-income geographies.

Wholesale and limited purpose institutions. The final rule requires that the assessment area(s) for a wholesale or limited purpose institution must generally consist of one or more MSAs or one or more contiguous political subdivisions in which the institution has its main office, branches, and deposit-taking ATMs. This requirement is substantively consistent with the 1994 proposed delineation of service area for wholesale and limited purpose institutions, but the final rule differs from the 1994 proposal in two ways. First, the final rule specifies that the assessment area must generally consist of one or more MSAs or contiguous political subdivisions; the 1994 proposal would have required the institution to delineate "an area or areas around its offices." Second, the assessment area has been modified to conform to changes made to the scope of the community development test. The community development test permits consideration of community development activities that are outside of an institution's assessment area, but that are in a broader statewide or regional area that includes the institution's assessment area. As a result, an institution need not delineate a statewide or regional, rather than local, assessment area in order to receive consideration for these activities.

Use of assessment area. In response to comments indicating concern that examiners might modify the area delineated by the institution, the final rule explicitly provides that the agencies will use the assessment area delineated by the institution, unless they determine that the assessment area does not comply with the requirements for assessment areas set forth in the final rule. If the assessment area fails to comply with the rule's requirements, the examiner will designate an area that does comply and will use that area in evaluating the institution's performance.

Technical changes and clarifications. The final rule includes other technical changes to provide clarification. For example, some commenters interpreted the use of the phrase "significant number and amount of loans" in the 1994 proposal to have a different meaning than the phrase "substantial portion of its loans" in the current [[Page 22172]] regulations. The agencies did not intend a different meaning and have used the wording from the current regulations in the final rule. In addition, changes in the final rule reflect the rule's shift in focus from loans outstanding to originations and the different circumstances under which the lending test considers consumer loans.

Data Collection and Reporting

In the final rule, the agencies continued their efforts to streamline data collection and reporting requirements in response to comments concerning potential burden. The final rule simplifies data requirements and eliminates Appendix C.

Application of data collection provisions to small institutions and wholesale and limited purpose institutions. The 1994 proposal would not have applied small business and farm loan and community development loan data requirements to small institutions. Some commenters criticized the exemption from data collection and reporting requirements for small institutions because only a subset of data would actually be collected, restricting the regulators' ability accurately to assess the overall performance of institutions in helping to meet credit needs. These commenters stated that the benefits of collecting the data across the industry outweighed the associated burden. However, the burden on small institutions would be significant and the benefit less than the commenters assert. Therefore, the final rule does not subject a small institution to additional data collection and reporting requirements. The volume of originations of loans other than home mortgage loans in a small institution will generally be small enough that an examiner can view a substantial sampling of loans without advance collection and reporting of information by the institution. In addition, although small institutions are large in number, they have a relatively small percentage of the total assets of the industry.

An institution that was a small institution during the prior calendar year but is no longer a small institution would be subject to data collection and maintenance requirements but not data reporting requirements. The data reporting requirements do not apply because the institution would not have collected the data to report. The institution would be subject to data reporting requirements in the year following the first year for which it was required to collect data, provided the institution does not qualify as a small institution at the time the data must be reported.

The 1994 proposal would have required large wholesale and limited purpose institutions to collect and report data. Some commenters urged that wholesale and limited purpose institutions be exempt from data collection and reporting. The final rule does not include an exemption. The data are necessary for the agencies to determine whether the institutions initially qualify and continue to remain qualified for treatment as wholesale or limited purpose institutions. The data also will be helpful in understanding the context in which the performance of other institutions should be evaluated.

Collection and reporting of originations and purchases rather than loans outstanding. For the reasons stated in the discussion of the lending test earlier in the preamble, the final rule requires reporting of and evaluation based on originations and purchases for all categories of loans. Institutions still have the option to provide data on loans outstanding, which examiners would consider to round out the picture of lending performance.

Community development loan reporting. The community development loan reporting provisions in the final rule have been modified to reflect the decision to rely on originations and purchases. Institutions, except small institutions and institutions that were

small institutions during the prior calendar year, are required to report to their primary regulator annually on March 1 the aggregate number and aggregate amount of community development loans originated and purchased during the prior calendar year. The agencies will include this information in the CRA Disclosure Statements that they prepare for each institution, and which an institution shall place in its public file within three days of receipt.

Some commenters requested reporting and disclosure of more detailed information on community development loans, including a breakdown by location and purpose of the loan. The agencies did not adopt these suggestions because the additional burden would outweigh the potential usefulness of more specific data. In assessing an institution's performance under the lending or community development test, examiners will review actual community development loan files to determine the complexity and innovativeness of the loans and their responsiveness to credit and community development needs. Examiners will discuss the community development loans reviewed in the public portion of the institution's CRA performance evaluation. The discussion will include the nature and location (if relevant) of the activities supported by the loans reviewed.

Consumer loan collection and maintenance. In the final rule, as in the 1994 proposal, data collection and maintenance are optional for consumer loans, and there are no reporting requirements. As described in the discussion of the lending test earlier in the preamble, an institution may provide data on one or more categories of consumer loans, such as motor vehicle loans, and not on others. However, if an institution provides data for any loan in a category, it is required to provide data for all loans in the category. For each loan category for which an institution elects to provide data, the data must include for each loan in the category originated or purchased since the last CRA examination: (1) the amount at origination or purchase, (2) the loan location, and (3) the gross annual income of the borrower that the institution considered in making the credit decision. If the institution does not consider income in making an underwriting decision, it need not collect income information. Further, if the institution routinely collects, but does not verify, a borrower's income when making a credit decision, it need not verify the income for purposes of data maintenance. The location of the loan must be maintained by census tract or block numbering area.

Reporting of loan information outside assessment areas and outside MSAs. Some commenters asked that institutions not be required to report small business and small farm loans located outside their assessment areas or outside MSAs. The agencies have not made this change in the final rule. The data on lending in rural areas provide important information on how well institutions are serving rural communities where they have branches. The data are also necessary for the lending test assessment criterion that evaluates the degree to which an institution's lending is inside its assessment area. Finally, the lending data provide information that assists examiners in understanding the context in which the performance of other institutions should be evaluated. The commenters that opposed reporting of small business and small farm loans outside their assessment areas or outside MSAs also generally opposed the proposed change to require institutions that are not small institutions and are subject to HMDA to report the location of applications and originations of home mortgage loans outside the MSAs in which the [[Page 22173]] institutions have offices. The agencies have adopted the proposed change despite these objections for the same reasons that the agencies did not change the final rule for collecting of small business and small farm loans outside MSAs or assessment areas. Conforming amendments to Regulation C (HMDA) have been adopted by the Board.

Race and gender information on small business borrower not required. The 1994 proposal would have required each institution, other than a small institution, to collect and report data on the race and gender of small business and small farm borrowers. This provision, which was the most frequently addressed issue in the comments, was proposed in order to support the fair lending component of the CRA assessment. The agencies have removed this proposed requirement from the final rule.

Many commenters, including virtually every community or consumer group that addressed the issue, supported the provision. These commenters believed that the information was critical to determine whether discrimination was occurring in small business and small farm lending. The commenters noted the value of HMDA data on race and gender in monitoring home mortgage lending. Nearly every industry comment opposed the collection as proposed. These commenters stated that the requirement was burdensome and the data, as proposed to be collected and reported, would be of limited utility. They asserted that reporting institutions would be at a competitive disadvantage because small institutions and non-financial institution lenders not only would not be required to collect and report the information but actually would be prohibited from doing so (because of the Board's Regulation B, implementing the Equal Credit Opportunity Act). Some commenters also questioned the relevance of the race and gender data to CRA. A few industry commenters endorsed collection of race and gender data, provided it was done through Regulation B. A larger number opposed collection, but believed that, if the agencies concluded the data were necessary, collection should be required under Regulation B.

The agencies have removed the proposed requirement from the final rule. Although the agencies believe that fair lending performance is directly relevant to CRA performance, they recognize the anomaly of requiring some institutions to collect and report information that other lenders are prohibited from collecting. Therefore, they believe that it is more appropriate to address the issue of race and gender data in fair lending regulations that apply equally to all lenders.

Small business data collection, maintenance, and reporting generally. In response to industry comments regarding the burden associated with the small business and small farm loan data requirements, the final rule streamlines the data collection, maintenance and reporting. The agencies have replaced loan-by-loan reporting using loan registers with aggregate reporting by census tract.

The 1994 proposal would have required lenders to indicate whether small business borrowers had gross annual revenues \$1 million or less. Some commenters suggested that the requirement be eliminated because they believed it was burdensome and unnecessary. The final rule retains the requirement. The burden of collecting this information is minimal, because \$1 million is already used in the Board's Regulation B as a threshold for certain requirements related to adverse action notifications and record retention. Therefore, many institutions already have a reason to track business and farm loans based on this revenue figure.

The information on the revenue size of business and farm borrowers is useful because, in combination with loan amount information, it will

enable the agencies to make accurate judgments about the size of businesses and farms receiving reported loans. Some commenters questioned whether an institution should report the revenue of the entity to which the loan is actually extended or of its parent corporation if the entity is a subsidiary. An institution should report the revenues that the institution considered in making its credit decision.

Some commenters asked that the agencies require collection and reporting of data on applications and denials. The agencies did not adopt this suggestion. The small business lending process is generally far less formal than the consumer or home mortgage lending process. Sometimes institutions do not require written applications for small business loans; when they do, applications often come after potential problems have been addressed in informal discussions. Because the agencies do not believe information on applications and denials would be particularly helpful, the final rule does not require collection or reporting of information on small business and small farm applications and denials. Instead, institutions are required to report all small business and small farm loans that they originate or purchase.

Under the final rule, each covered institution is required to collect and maintain in a standardized, machine readable format the following information on each small business loan originated or purchased since the prior CRA examination: (1) amount at origination; (2) location; and (3) an indicator whether the loan was to a business with \$1 million or less in gross annual revenues. The location of the loan must be maintained by census tract or block numbering area.

Each covered institution is required to report in machine-readable form annually on March 1 the following information, aggregated for each census tract/block numbering area in which the institution made at least one small business or small farm loan during the prior calendar year: (1) number and amount of loans with original amounts of \$100,000 or less; (2) number and amount of loans with original amounts of more than \$100,000 but less than or equal to \$250,000; (3) number and amount of loans with original amounts of more than \$250,000; and (4) number and amount of loans to businesses and farms with gross annual revenues of \$1 million or less (using the revenues the institution considered in making its credit decision).

Need for data collection and reporting. Some commenters continued to question the validity and propriety of any data collection and reporting for larger institutions. As discussed earlier, the agencies have significantly reduced the data collection and reporting from that originally proposed, and where feasible the rule relies on existing data collections. However, the rule continues to provide for some additional data collection and reporting by larger institutions. In a performance-based CRA process, these requirements are necessary to permit the agencies to carry out their statutory obligation to examine and assess institutions' CRA records and to prepare the public sections of CRA performance evaluations. The emphasis on actual performance responds to the nearly universal criticism that current CRA examinations rely too heavily on documentation of an institution's policies, procedures and community contacts rather than lending. While the agencies recognize that the collection of data regarding lending activity will impose burden on many institutions, the final rule has been tailored to rely primarily on data readily available to or already collected by institutions in order to minimize the collection burden. In addition, the burden of collecting actual loan performance data will be offset somewhat by the elimination of requirements under the current CRA [[Page 22174]] evaluation scheme that institutions document policies, procedures, and CRA contacts. Finally, the agencies will prescribe a standardized format for data maintenance and reporting and make available software to facilitate data maintenance and reporting.

Disclosure of small business and small farm loan data. Under the 1994 proposal, every large institution would have been required to include in its public file the following information on small business loans: (1) the number and amount of loans in low-, moderate-, middle- and upper-income census tracts; (2) a list of each census tract with at least one loan; (3) the number and amount of loans inside the institution's service areas and outside the institution's service areas; (4) the number and amount of loans to businesses with gross annual revenues of \$1 million or less; (5) the number and amount of loans to minority-owned businesses; and (6) the number and amount of loans to women-owned businesses. The proposal did not provide that the agencies would make any aggregate data available to the public.

The vast majority of consumer and community group commenters maintained that the public disclosure provisions of the 1994 proposal were not sufficient. They asked that small business loan data be made available to the public in a HMDA-like format for individual institutions and in aggregated form. They asked that, at a minimum, data be available to the public on an aggregate and institution-by-institution basis by individual census tract, including for each census tract the number and volume of loans. Otherwise, the public would not be able to judge how an institution is performing in one low-income neighborhood as compared to another and, without incurring unreasonable cost, would not be able to compare the performance of one institution with the performance of another. The commenters also expressed concern about the agencies' using certain data to evaluate institutions but not making the data available to the public. Industry commenters generally opposed detailed data collection and reporting requirements as burdensome.

Census tract-by-census tract information provides the most detailed information to the public. However, some commenters were concerned that disclosure at this level for each institution might invade the privacy of small business and small farm borrowers, could reveal protected business information, might erroneously signal an expectation that an institution lend in each census tract in its assessment area(s), and might lead to misinterpretation of the data.

Based on these considerations, under the final rule, the agencies, rather than the institutions, will prepare disclosure statements in order to reduce burden on the industry. The agencies will prepare annually individual CRA Disclosure Statements for each reporting institution and aggregate disclosure statements for each MSA and the non-MSA portion of each state. The agencies will make both the individual and the aggregate disclosure statements available to the public at central depositories.

The aggregate disclosure statements will indicate, for each geography, the number and amount of small business and small farm loans originated or purchased by all reporting institutions, except that the agencies 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.

The disclosure statements for the individual institutions will be prepared on a state-by-state basis and will contain for each county (and each assessment area smaller than a county) with a population of 500,000 or fewer in which the institution reported a small business or

small farm loan: (1) The number and amount of small business and small farm loans located in low-, moderate-, middle-, and upper-income census tracts or block numbering areas; (2) a list of each census tract or block numbering area in the county or assessment area grouped according to whether the geography is low-, moderate-, middle-, or upper income; (3) a list of each census tract or block numbering area in which the institution reported a small business or small farm loan; and (4) the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less. For each county (and each assessment area smaller than a county) with a population greater than 500,000, the number and amount of small business and small farm loans will be provided for geographies grouped according to whether the median income of 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, or 120 percent or more.

The disclosure statements will also contain information on the number and amount of loans inside each and outside any assessment area of the institution and the institution's community development loan information. The disclosure statements will include affiliate lending if the institution reported the affiliate lending for consideration in its assessment.

An institution itself no longer has to prepare information on small business and small farm lending or community development lending to place in its public file. Instead, each institution is required to put its CRA Disclosure Statement in its public file within three days of receipt of the statement from its regulator.

List of geographies in assessment area and map of each assessment area. The 1994 proposal also would have required each institution to report (and include in its public file) a list of the geographies the institution considers to be within its assessment area and a map of each assessment area showing its geographies. Several industry comments suggested that this requirement was overly burdensome and that either a map or a list of the geographies in the assessment area(s) be reported but not both. Under the final rule, institutions would only report the list of geographies in each assessment area, and small institutions or institutions that were small during the prior calendar year would not have to report at all. In addition, the agencies have changed the reporting date to March 1 to provide a uniform date for reporting of information required under the final rule.

All institutions would still have to include a map of each assessment area in the public file because the agencies believe a list of census tract numbers is likely not to be useful to many members of the public. To reduce burden, the final rule clarifies that the map itself need not show the geographies. The geographies may be identified on the map; alternatively, if the institution provides a separate list of the geographies contained in the area, the map may need to show only the boundaries of the area.

Public File

Other aspects of the public file requirements have also been amended to provide more clarity and to respond to the criticism that the requirements in the 1994 proposal were burdensome.

List of branches, ATMs, and services. The 1994 proposal would have required the public file to include a list of the [[Page 22175]] institution's branches and ATMs, their street addresses, and geographies; a list of branches and ATMs opened or closed by the institution during the current and each of the prior two calendar years, their street addresses, and geographies; and a list of services offered at the institution's branches and ATMs. Many industry commenters stated that these requirements were extremely burdensome, particularly the list of services offered at the branches. Much of this information is central to the institution's performance under the service test, and the public should have access to it. The final rule therefore retains the requirement that the public file include a list of services offered at the branches as well as the requirement that the file include a list of the branches, their street addresses, and geographies and a list of branches opened and closed during the current and prior two calendar years.

However, the final rule does not require institutions to list ATMs by street address or geography. Nor does the final rule require that institutions provide a list of ATMs that have been opened or closed in the current or prior two years. This change reduces burden on an institution in trying to keep the public file current because ATMs may be opened and closed more frequently than branches. This change is also consistent with other changes that clarify that the agencies do not consider ATMs as equivalent to branches in providing services to the community.

Small business, small farm, consumer, and community development loan data. The 1994 proposal would have required institutions that were not small institutions (and small institutions that elected to be evaluated under the lending, investment, and service tests) to include data collected or reported to the agencies for each of the prior two calendar years in their public file. The 1994 proposal would not have required public disclosure of data if it might reasonably be expected to disclose the identity of the borrower because of the small number of loans made in particular geographies or to particular groups of borrowers.

Institutions will no longer have to compile information on small business, small farm, and community development loans for inclusion in their public files. As described earlier, the information regarding these loans that continues to be relevant under the final rule will be contained in the institution's CRA Disclosure Statement prepared by the agencies.

Institutions that elect to have any portion of their consumer lending portfolios considered under the lending test will be required to provide in the public file information on the number and amount of consumer loans to

low-, moderate-, middle- and upper-income borrowers and census tracts, as well as information on the number and amount of consumer loans located both inside and outside of the institution's assessment area.

The final rule also removes the exception to providing data in the public file that might reasonably be expected to disclose the identity of the borrower. Because of changes to data disclosure in the final rule, the agencies believe that a privacy exception is not necessary for the individual CRA Disclosure Statements. As described earlier, the agencies will take privacy concerns into account in preparing aggregate disclosure statements.

Inclusion of comments received. The 1994 proposal would have

required an institution to include in the public file all signed, written comments that it received from the public for the past two years. A few industry commenters did not perceive a need to keep correspondence related to complaints that have been satisfactorily resolved. The agencies have not made a change in response to these comments because, as discussed earlier, satisfactorily resolved comments are relevant to assessment of the institution's performance. The final rule removes the requirement that written comments be signed in order to be included in the public file, because all written comments should be considered even if the commenter wishes to remain anonymous. Of course, the response appropriate to a comment may well vary depending on whether the commenter has provided his or her name.

Loan-to-deposit ratio for small institutions. The 1994 proposal would have required small institutions to include in the public file their loan-to-deposit ratios computed at the end of the most recent calendar year. Many small institutions requested that the public file requirement for loan-to-deposit ratio information be expanded to include loan-to-deposit ratios for each quarter, or alternatively, that an annual average loan-to-deposit ratio be placed in the file in order to better convey seasonal fluctuations in lending to the public. In accordance with the comments, the final rule requires a small institution to place annually in the public file the loan-to-deposit ratio at the end of each quarter of the prior calendar year.

Public file location and number of copies. The 1994 proposal would have required that institutions maintain a complete copy of the public file at the home office. At least one branch office in each assessment area would have been required to have the HMDA Disclosure Statement and any materials from the public file relating to that assessment area available to the public. In addition, if a request for the public file was made at a branch office that did not maintain the file, the institution would have been required to make a complete copy of the file for that assessment area available for review at the branch within five days at no cost. An institution could have imposed reasonable copying and mailing charges if a member of the public requested copies of information in the file.

Industry commenters maintained that the requirement to keep multiple copies of the public file was extremely burdensome, particularly given the large amount of information in the file. These commenters suggested that only one public file should be required.

Under the final rule, an institution need maintain only one copy of its public file in each state in which it has its main office or a branch. The final rule provides that each institution shall make available to the public for inspection upon request and at no cost the information in the file at the main office and, if the institution is an interstate institution, at one branch office in each state. At each branch, an institution shall provide its public evaluation and a list of services provided at the branch. The institution shall also make all information in the public file relating to the assessment area in which the branch is located available for review at the branch within five calendar days of a request to review the file. These changes reduce the burden associated with the maintenance of public files at a branch in each assessment area while making it easier for the public to access the file at any branch. They also reflect the statutory provisions of the IBEA requiring separate written evaluations for each state in which an interstate institution operates.

Additional clarifications. Some commenters requested the agencies to specify a date on which the public file information should be updated. The final rule provides that the public file be updated as of April 1 of each year unless the rule specifies another time for a particular element, such as the CRA Disclosure Statement. The final rule also clarifies that contents of the public file can be supplemented with any other information the institution deems appropriate. The final rule further clarifies that lending data contained in the public file relate to lending not only by the institution, but [[Page 22176]] also its affiliates, if the lending by affiliates is considered in the assessment of the institution.

Transition

The 1994 proposal would have established a transition period from July 1, 1995, to July 1, 1996. Institutions subject to data collection and reporting requirements would have been required to begin collecting home mortgage, small business, and consumer loan data on July 1, 1995. Assessments under the proposed standards would have begun July 1, 1996. However, small institutions would have had the opportunity to be examined, at their option, under the small institution assessment method anytime after July 1, 1995. Anytime on or after July 1, 1995, an institution could have elected to submit for approval a strategic plan, and examinations under approved strategic plans would have begun July 1, 1996.

Many industry commenters requested that the transition period be lengthened to provide institutions with more time to develop procedures for satisfying the data collection requirements. Also, some of these commenters recommended against implementing the data collection requirements on July 1, because they believed that data collected for a half year would not be useful. Moreover, some industry commenters asked that data collection begin on January 1, to fall in line with other materials that are maintained on a calendar-year basis.

In light of these comments and the fact that the implementation dates set forth in the 1994 proposal reflected anticipated publication of the final rule in January 1995, the data collection requirements set forth in the final rule will become effective January 1, 1996. The reporting requirements will become effective January 1, 1997. Evaluations under the lending, investment, service, and community development tests will begin July 1, 1997, in order to allow the agencies to use the newly reported data. However, evaluations under the small bank performance standards, which do not utilize new data, will begin January 1, 1996. In addition, beginning January 1, 1996, any institution may submit a strategic plan for approval or elect to be examined under the revised performance tests, if the institution provides the necessary data.

An institution that elects evaluation under the lending, investment, and service tests before July 1, 1997, must provide, in machine readable form, data on small business and small farm loans and community development loans for the twelve month period preceding the examination. The institution must also provide, in machine readable form, the location of home mortgage loans located outside MSAs in which the institution has an office (or outside any MSA) for that period. If the institution elects evaluation of any category of consumer loans, the institution must also provide consumer loan data, in machine readable form, for that category for that period. An institution that seeks evaluation under the community development test must apply for designation as a wholesale or limited purpose bank three months prior to its examination and must provide data on community development loans

for the twelve months prior to the examination. All institutions evaluated under the revised tests and standards or under an approved strategic plan before July 1, 1997, must delineate their assessment areas in accordance with the provisions of the final rule.

CRA Notice

The 1994 proposal would have made minor changes to the notice requirements set forth in the 1993 proposal. The term "head office" was changed to "main office" for clarity. Within the notice, the statement of what is included in the CRA performance file would have been expanded to describe more accurately the contents of the file. The final rule makes additional changes to reflect changes in the public file provisions.

Multiple Assessment Areas

The 1994 proposal did not address how institutions with multiple assessment areas would be examined or how performance in different assessment areas would affect the overall rating. The agencies received comments expressing a broad range of opinions regarding the examination treatment and assessment of institutions with multiple assessment areas. Several community group commenters stated that "sampling" among assessment areas was unacceptable, while an industry organization suggested an elaborate sampling procedure. Other commenters proposed that certain assessment area characteristics, such as the percentage of the institution's deposits or assets in the assessment area, should determine the weight that performance in that assessment area should have on the overall rating of the institution. Other commenters were concerned that such proposals could mean that rural assessment areas would not be given appropriate consideration in the examination process.

The agencies continue to believe that the examination treatment of multiple assessment areas is best left for examination procedures, rather than stated in regulatory text. Whether an institution has one assessment area or several, the examiner must have an adequate factual basis on which to assess an institution's record of performance, and the overall rating must be fair and appropriate. These objectives do not necessarily require that an agency examine an institution's performance in every assessment area in the same way or that the rule state how performance in different assessment areas is aggregated. Just as a single mathematical calculation cannot determine performance in an assessment area, so the appropriate treatment of multiple assessment areas cannot be reduced to a formula.

The agencies note that the IBEA amended the provisions of the CRA regarding written evaluations, and the examination procedures will be consistent with those requirements.

Written Evaluations

Although the 1994 proposal did not directly address the content of the written performance evaluations required by the CRA statute, some commenters did. These commenters focused on whether the agencies would disclose an institution's ratings on the lending, investment, and service tests to the institution and to the public.

The agencies jointly will issue guidelines for the contents and disclosure of written evaluations prepared under the final rule, and these guidelines will implement the IBEA amendments regarding written evaluations. To address the issue raised in the comments, the agencies envision that these guidelines will provide that an institution's ratings on the different tests in the rule be disclosed both to the institution and, as part of the public section of the written evaluation, to the public. A guiding principle of the CRA reform effort has been to clarify for all concerned the basis for an institution's rating, and the disclosure of ratings will provide essential information regarding the assessment of an institution's performance. Contrary to the claim raised in some comments, neither the use of five ratings, nor the disclosure of those ratings to the public, conflicts with the statutory mandate that the agencies use four ratings in assessing the overall performance of an institution.

Appeals

Many commenters requested that the agencies establish an interagency appeals process. The final rule does not adopt this suggestion. Each agency has a process under which an institution [[Page 22177]] can appeal its CRA rating. The agencies have recently reviewed and modified, as necessary, their appeals processes pursuant to the Community Development and Regulatory Improvement Act of 1994. In light of the recent review, the agencies do not believe that it is necessary to adopt an interagency appeals process in the final rule.

Additional Interagency Initiatives

In addition to this rulemaking, the agencies will work together to improve training for examiners, to increase interagency efforts to apply standards consistently and reliably, and to minimize unnecessary compliance burden. These efforts will focus on producing a CRA assessment process that imposes fewer burdens on institutions yet yields better results for the local communities in which they are chartered to do business.

The agencies have also agreed to conduct a full review of the final rule in the year 2002, five years after the rule is fully implemented. This review will be conducted to determine whether the rule has been effective in achieving the goals of the final rule, including emphasizing performance rather than process, promoting consistency in evaluations, and eliminating unnecessary burden. Any regulatory changes that are determined to be necessary to improve the rule's effectiveness will be made at that time.

Paperwork Reduction Act

OCC: The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1557-0160.

The estimated annual burden per respondent varies, depending on individual circumstances, from 2 hours for a small bank required to perform only recordkeeping, to 280 hours for a large bank required to perform all elements in part 25, with an estimated average burden of 18.5 hours.

The collections of information in this final rule are in 12 CFR 25.25, 25.27, 25.29, 25.41, 25.42, and 25.43.

Comments concerning the accuracy of this burden estimate and

suggestions for reducing this burden should be directed to Legislative and Regulatory Activities Division, Attention: 1557-0160, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, and to the Office of Management and Budget, Paperwork Reduction Project (1557-0160), Washington, DC 20503.

Board: In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35; 5 CFR 1320.13), the proposed information collection was reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of the comments received during the public comment period.

The collections of information in this rule are in 12 CFR 228.25, 228.27, 228.41, 228.42, and 228.43. This information is required to evidence the efforts of State member banks in helping to meet the credit needs of their entire communities, including low- and moderate-income areas. This information will be used to assess State member bank performance in satisfying the credit needs of their communities and in evaluating certain applications.

The estimated annual burden per respondent/recordkeeper varies from 2 to 280 hours, depending on individual circumstances, with an estimated average of 17 hours. There will be an estimated 969 recordkeepers, averaging 16 hours. Among those will be an estimated 274 respondents, responsible for an additional average of 4 hours of reporting burden. These estimates include a prediction that five percent of respondents/recordkeepers will keep or submit optional data.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0247), Washington, DC 20503.

FDIC: The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 3064-0092.

The estimated annual burden per respondent varies, depending on individual circumstances, from 2 hours for a small bank required to perform only recordkeeping, to 280 hours for a large bank required to perform all elements in part 345, with an estimated average burden of 12 hours.

The collections of information in this final rule are in 12 CFR 345.25, 345.27, 345.29, 345.41, 345.42, and 345.43.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project (3604-0092), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F-453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1550-0012.

The estimated annual burden per respondent varies, depending on individual circumstances, from 2 hours for a small savings association required to perform only recordkeeping, to 214 hours for a large savings association required to perform all elements in part 563e, with an estimated average burden of 16 hours.

The collections of information in this final rule are in 12 CFR 563e.25, 563e.27, 563e.29, 563e.41, 563e.42, and 563e.43.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project (1550-0012), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Regulatory Flexibility Act

The agencies concluded that the 1994 proposal, if adopted as a final rule, would not have a significant economic impact on a substantial number of small banks and thrifts and invited comment on this determination. In response to comments received, the agencies have conducted an analysis under The Regulatory Flexibility Act (5 U.S.C. 601-612, the "Act").

The Act requires an agency to take certain considerations into account when a rule will have a significant economic impact on a substantial number of small entities. Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604)--(1) a succinct statement of the need for and the objectives of the rule, and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments--are discussed earlier in the preamble. The third requirement is for a description of the alternatives the agency considered to the rule being adopted that were designed to minimize the effect on small entities subject to the rule and why, if applicable, they were rejected. [[Page 22178]]

The agencies have carefully considered the effects of the final rule on small entities and the alternatives available to mitigate its potential burdens. The final rule provides separate, less burdensome treatment for small institutions, which are defined as institutions with total assets of \$250 million or less that are either independent or are affiliates of a holding company with banking and thrift assets of less than \$1 billion. The rule contains a specific small institution performance evaluation that relies on simplified criteria, to account for the operational differences between large and small institutions. Small institutions are also not subject to the data collection and reporting provisions in the rule for large institutions.

The agencies believe that the rule has minimized the burden on small institutions, while still enabling the agencies to fulfill their statutory mandate to examine the CRA record of these institutions. Although exempting small institutions from evaluation under the CRA would eliminate any possible burden imposed by the final rule, the CRA does not provide an exemption for small institutions.

Some small institutions would continue to be subject to the same potential burdens imposed on large institutions if they were affiliates in a holding company with banking and thrift assets of more than \$1 billion. The agencies have rejected the alternative of eliminating the holding company limitation altogether in order to prevent holding companies from manipulating the asset size of their institutions to qualify for the small institution treatment.

However, by raising the holding company asset limit from \$250 million in the 1994 proposal to \$1 billion in the final rule, the agencies have sought to mitigate any unfairness and unnecessary burden resulting from the holding company limitation. The agencies selected a higher asset level for the holding company limitation in recognition that smaller holding companies may be unable to provide the necessary

support for the CRA activities of their small institution subsidiaries. The agencies anticipate that larger holding companies under the final rule would be capable of supporting the CRA activities of their subsidiary small institutions.

Executive Order 12866

OCC and OTS: The OCC and OTS have determined that this document is a significant regulatory action because of the legal and policy issues it raises. Because of the significance of the rule, the OCC and OTS will review its effectiveness in achieving the goals of the CRA prior to and in preparation for the full CRA regulatory review in the year 2002, discussed earlier.

Unfunded Mandates Reform Act of 1995

OCC and OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, provides that before promulgating certain rulemakings, covered agencies must prepare a written statement containing a cost/benefit analysis. Under section 205, before promulgating any rule for which a written statement is required under section 202, covered agencies must identify and consider a reasonable number of regulatory alternatives, and from those alternatives, select the least costly, most cost-effective, or least burdensome one that achieves the objective of the rulemaking.

In promulgating this rulemaking, the Federal financial supervisory agencies considered a wide range of alternatives described in notices of proposed rulemaking published in 1993 and 1994. In addition to the comments that the agencies received in response to the notices of proposed rulemaking, the agencies conducted a series of seven public hearings across the country in 1993, at which hundreds of witnesses commented and others provided written statements. Although the OCC and OTS have determined that they are not required to prepare a written statement under section 202 or to make a finding under section 205, they conclude that, on balance, this final rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule, consistent with statutory requirements.

List of Subjects

12 CFR Part 25

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

12 CFR Part 228

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

12 CFR Part 345

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

12 CFR Part 563e

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

Authority and Issuance

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons outlined in the joint preamble, the Office of the Comptroller of the Currency amends 12 CFR chapter I as set forth below:

PART 25--COMMUNITY REINVESTMENT ACT 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, 1814, 1816, 1828(c), and 2901 through 2907.

2. Part 25 is amended by adding Subparts A through D and Appendices A and B to read as follows:

Subpart A--General

Sec.

25.11 Authority, purposes, and scope.

25.12 Definitions.

Subpart B--Standards for Assessing Performance

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

25.22 Lending test.

25.23 Investment test.

25.24 Service test.

25.25 Community development test for wholesale or limited purpose banks.

25.26 Small bank performance standards.

25.27 Strategic plan.

25.28 Assigned ratings.

25.29 Effect of CRA performance on applications.

Subpart C--Records, Reporting, and Disclosure Requirements

25.41 Assessment area delineation.

25.42 Data collection, reporting, and disclosure.

25.43 Content and availability of public file.

25.44 Public notice by banks.

25.45 Publication of planned examination schedule.

Subpart D--Transition Rules

25.51 Transition rules.

Appendix A to Part 25--Ratings

Appendix B to Part 25--CRA Notice

Subpart A--General

Sec. 25.11 Authority, purposes, and scope.

(a) Authority and OMB control number--(1) Authority. The authority for this part is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), and 2901 through 2907.

(2) OMB control number. The information collection requirements contained in this part were approved by the Office of Management and Budget [[Page 22179]] 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.

Sec. 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

(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 Sec. 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 Sec. 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) CMSA means a consolidated metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(h) 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 13 CFR 121.802(a)(2) or have gross annual revenues of \$1 million or less; or

(4) Activities that revitalize or stabilize low- or moderate-income geographies.

(i) 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 it is a multifamily dwelling loan (as described in Appendix A to Part 203 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).

(j) 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 Sec. 25.24(d).

(k) 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 Sec. 226.2 of this title;

(3) Home equity loan, which is a consumer loan secured by a residence of the borrower;

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

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

(1) Geography means a census tract or a block numbering area delineated by the United States Bureau of the Census in the most recent decennial census.

(m) Home mortgage loan means a ``home improvement loan'' or a ``home purchase loan'' as defined in Sec. 203.2 of this title.

(n) 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 [[Page 22180]] percent or more, in the case of a geography.

(o) 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 Sec. 25.25(b).

(p) 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.

(q) 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.

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

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

(t) Small bank means a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than \$250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than \$1 billion.

(u) 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.

(v) 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.

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

Subpart B--Standards for Assessing Performance

Sec. 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 Secs. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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.

Sec. 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, home equity, 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 Sec. 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 [[Page 22181]] 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 Sec. 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 Sec. 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.

Sec. 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.

Sec. 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 [[Page 22182]] 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.

Sec. 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 Sec. 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.

Sec. 25.26 Small bank performance standards.

(a) Performance criteria. The OCC evaluates the record of a small bank, or a bank that was a small bank during the prior calendar year, of helping to meet the credit needs of its assessment area(s) 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).

(b) Small bank performance rating. The OCC rates the performance of a bank evaluated under this section as provided in Appendix A of this part.

Sec. 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 Sec. 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 [[Page 22183]] 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 (d) 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 (c) 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.

Sec. 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. Evidence of discriminatory or other illegal credit practices adversely affects the OCC's evaluation of a bank's performance. In determining the effect on the bank's assigned rating, the OCC considers the nature and extent of the evidence, the policies and procedures that the bank has in place to prevent discriminatory or other illegal credit practices, any corrective action that the bank has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information.

Sec. 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

[[Page 22184]] meaning given to that term in 12 U.S.C. 1813.

Subpart C--Records, Reporting, and Disclosure Requirements

Sec. 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 (using the MSA 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 (using the MSA 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 a CMSA 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 a CMSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the CMSA.

(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.

Sec. 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 203 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 203 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, home equity, 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 [[Page 22185]] mortgage loans reported under part 203 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, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, prepares annually, for each MSA (including an MSA that crosses a state boundary) and the non-MSA portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 228, 345, or 563e 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.

Sec. 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 [Page 22186] 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 203 of this title shall include in its public file a copy of the HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council pertaining to the bank for each of the prior two calendar years. In addition, a bank that elected to have the OCC consider the mortgage lending of an affiliate for any of these years shall include in its public file the affiliate's HMDA Disclosure Statement for those years. The bank shall place the statement(s) in the public file within three business days after its receipt.

(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.

Sec. 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.

Sec. 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--Transition Rules

Sec. 25.51 Transition rules.

(a) Effective date. Sections of this part become applicable over a period of time in accordance with the schedule set forth in paragraph (c) of this section.

(b) Data collection and reporting; strategic plan; performance tests and standards. (1) Data collection and reporting. (i) On January 1, 1996, the data collection requirements set forth in Sec. 25.42 (except Sec. 25.42 (b) and (g)) become applicable.

(ii) On January 1, 1997, the data reporting requirements set forth in Sec. 25.42 (b) and (g) become applicable.

(2) Small banks. Beginning January 1, 1996, the OCC evaluates banks that qualify for the small bank performance standards described in Sec. 25.26 under that section.

(3) Strategic plan. Beginning January 1, 1996, a bank that elects to be evaluated under an approved strategic plan pursuant to Sec. 25.27 may submit its strategic plan to the OCC for approval.

(4) Other performance tests. (i) Beginning January 1, 1996, a bank may elect to be evaluated under the pertinent revised performance tests described in Secs. 25.22, 25.23, 25.24, and 25.25, if the bank provides the necessary data to permit evaluation.

(ii) Beginning July 1, 1997, the OCC evaluates all banks under the pertinent revised performance tests.

(c) Schedule. (1) On July 1, 1995, Secs. 25.11, 25.12, 25.29, and 25.51 become applicable, and Secs. 25.1, 25.2, 25.8 and 25.101 expire.

(2) On January 1, 1996, Sec. 25.41 and the pertinent provisions of Subpart B of this part will apply to banks that elect to be evaluated under Secs. 25.22 through 25.25, banks that submit for approval strategic plans under Sec. 25.27, and banks that qualify for the small bank performance standards described in Sec. 25.26.

(3) On January 1, 1996, Secs. 25.42 (except Sec. 25.42 (b) and (g)) and 25.45 become applicable.

(4) On January 1, 1997, Secs. 25.41 and 25.42 (b) and (g) become applicable.

(5) On July 1, 1997, Secs. 25.21 through 25.28, 25.43, and 25.44 become applicable, and Secs. 25.3 through 25.7, and 25.51 expire.

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 Sec. 25.21, and Sec. 25.28, which provides for 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.

[[Page 22187]]

(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 [[Page 22188]] 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 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 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. The OCC rates the performance of each bank evaluated under the small bank performance standards as follows:

(1) Eligibility for a satisfactory rating. The OCC rates a bank's performance "satisfactory" if, in general, the bank demonstrates:

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

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

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

(iv) A record of taking appropriate action, as 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

(v) A reasonable geographic distribution of loans given the bank's assessment area(s).

(2) Eligibility for an outstanding rating. A bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding." In assessing whether a 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 [[Page 22189]] enhance credit availability in its assessment area(s).

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

(e) Strategic plan assessment and rating--(1) Satisfactory goals. The 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 Sec. 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.

Secs. 25.1, 25.2, 25.8, and 25.101, and the undesignated center heading preceding Sec. 25.101 [Removed]

3. Sections 25.1, 25.2, 25.8 and 25.101 and the undesignated center heading preceding Sec. 25.101 are removed effective July 1, 1995.

Secs. 25.3, 25.4, 25.5, 25.6, 25.7, and Subpart D [Removed]

4. Sections 25.3, 25.4, 25.5, 25.6, and 25.7 and subpart D, consisting of Sec. 25.51, are removed effective July 1, 1997.

Dated: April 19, 1995.
Eugene A. Ludwig,
Comptroller of the Currency,
Federal Reserve System

12 CFR CHAPTER II

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

PART 228--COMMUNITY REINVESTMENT (REGULATION BB)

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

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

2. Part 228 is amended by adding Subparts A through D and Appendices A and B to read as follows:

Subpart A--General

Sec.
228.11 Authority, purposes, and scope.
228.12 Definitions.

Subpart B--Standards for Assessing Performance

228.21 Performance tests, standards, and ratings, in general.
228.22 Lending test.
228.23 Investment test.
228.24 Service test.
228.25 Community development test for wholesale or limited purpose banks.
228.26 Small bank performance standards.
228.27 Strategic plan.
228.28 Assigned ratings.
228.29 Effect of CRA performance on applications.

Subpart C--Records, Reporting, and Disclosure Requirements

228.41 Assessment area delineation.
228.42 Data collection, reporting, and disclosure.
228.43 Content and availability of public file. [[Page 22190]]
228.44 Public notice by banks.
228.45 Publication of planned examination schedule.

Subpart D--Transition Rules

228.51 Transition rules.

Appendix A to Part 228--Ratings

Appendix B to Part 228--CRA Notice
Subpart A--General

Sec. 228.11 Authority, purposes, and scope.

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

- (1) To conduct examinations of State-chartered banks that are members of the Federal Reserve System (12 U.S.C. 325);
- (2) To conduct examinations of bank holding companies and their subsidiaries (12 U.S.C. 1844); and
- (3) To consider applications for:
 - (i) Domestic branches by State member banks (12 U.S.C. 321);
 - (ii) Mergers in which the resulting bank would be a State member bank (12 U.S.C. 1828(c));
 - (iii) Formations of, acquisitions of banks by, and mergers of, bank holding companies (12 U.S.C. 1842); and
 - (iv) The acquisition of savings associations by bank holding companies (12 U.S.C. 1843).

(b) Purposes. In enacting the CRA, the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

- (1) Establishing the framework and criteria by which the Board assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank; and
- (2) Providing that the Board takes that record into account in considering certain applications.

(c) Scope--(1) General. This part applies to all banks except as provided in paragraph (c)(3) of this section.

(2) Foreign bank acquisitions. This part also applies to an uninsured State branch (other than a limited branch) of a foreign bank that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)). The terms "State branch" and "foreign bank" have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101 et seq.); the term "uninsured State branch" means a State branch the deposits of which are not insured by the Federal Deposit Insurance Corporation; the term "limited branch" means a State branch that accepts only deposits that are permissible for a corporation organized

under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.).

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

Sec. 228.12 Definitions.

For purposes of this part, the following definitions apply:

(a) Affiliate means any company that controls, is controlled by, or is under common control with another company. The term "control" has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) Area median income means:

(1) The median family income for the MSA, if a person or geography is located in an MSA; or

(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 Sec. 228.41.

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

(e) Bank means a State member bank as that term is defined in section 3(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(d)(2)), except as provided in Sec. 228.11(c)(3), and includes an uninsured State branch (other than a limited branch) of a foreign bank described in Sec. 228.11(c)(2).

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

(g) CMSA means a consolidated metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(h) 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 13 CFR 121.802(a)(2) or have gross annual revenues of \$1 million or less; or

(4) Activities that revitalize or stabilize low- or moderate-income geographies.

(i) 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 it is a multifamily dwelling loan (as described in Appendix A to Part 203 of this chapter); and

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

(j) 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 Sec. 228.24(d).

(k) 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 Sec. 226.2 of this chapter; [[Page 22191]]

(3) Home equity loan, which is a consumer loan secured by a residence of the borrower;

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

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

(l) Geography means a census tract or a block numbering area delineated by the United States Bureau of the Census in the most recent decennial census.

(m) Home mortgage loan means a "home improvement loan" or a "home purchase loan" as defined in Sec. 203.2 of this chapter.

(n) 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.

(o) 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 Sec. 228.25(b).

(p) 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.

(g) 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.

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

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

(t) Small bank means a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than \$250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than \$1 billion.

(u) 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.

(v) 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.

(w) Wholesale bank means a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale bank is in effect, in accordance with Sec. 228.25(b).

Subpart B--Standards for Assessing Performance

Sec. 228.21 Performance tests, standards, and ratings, in general.

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

(1) Lending, investment, and service tests. The Board applies the lending, investment, and service tests, as provided in Secs. 228.22 through 228.24, in evaluating the performance of a bank, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) Community development test for wholesale or limited purpose banks. The Board applies the community development test for a wholesale or limited purpose bank, as provided in Sec. 228.25, except as provided in paragraph (a)(4) of this section.

(3) Small bank performance standards. The Board applies the small bank performance standards as provided in Sec. 228.26 in evaluating the performance of a small bank or a bank that was a small bank during the prior calendar year, unless the bank elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The bank may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks under Sec. 228.42.

(4) Strategic plan. The Board evaluates the performance of a bank under a strategic plan if the bank submits, and the Board approves, a strategic plan as provided in Sec. 228.27.

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

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

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

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

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

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

(6) The bank's public file, as described in Sec. 228.43, and any written comments about the bank's CRA performance submitted to the bank or the Board; and

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

(c) Assigned ratings. The Board assigns to a bank one of the following four ratings pursuant to Sec. 228.28 and Appendix A of this part: ``outstanding''; ``satisfactory''; ``needs to improve''; or ``substantial noncompliance'' as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the Board reflects the bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

(d) Safe and sound operations. This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the Board anticipates banks can meet the standards of this part with safe and sound loans, investments, and [[Page 22192]] 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.

Sec. 228.22 Lending test.

(a) Scope of test. (1) The lending test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the Board will evaluate the bank's consumer lending in one or more of the following categories: motor vehicle, credit card, home equity, other secured, and other unsecured loans. In addition, at a bank's option, the Board will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in Sec. 228.42(c)(1), the data for each category that the bank elects to have the Board evaluate.

(2) The Board considers originations and purchases of loans. The Board will also consider any other loan data the bank may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A bank may ask the Board to consider loans originated or purchased by consortia in which the bank participates or by third

parties in which the bank has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The Board will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) Performance criteria. The Board evaluates a bank's lending performance pursuant to the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

(c) Affiliate lending. (1) At a bank's option, the Board will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to Sec. 228.42.

(2) The Board considers affiliate lending subject to the following constraints:

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

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

(3) The Board does not consider affiliate lending in assessing a bank's performance under paragraph (b)(2)(i) of this section.

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

(1) Will be considered, at the bank's option, if the bank reports the data pertaining to these loans under Sec. 228.42(b)(2); and

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

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

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

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

Sec. 228.23 Investment test.

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

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

(c) Affiliate investment. At a bank's option, the Board will consider, in its assessment of a bank's investment performance, a qualified investment made by an affiliate of the bank, if the qualified investment is not claimed by any other institution.

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

(e) Performance criteria. The Board evaluates the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

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

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

(f) Investment performance rating. The Board rates a bank's investment performance as provided in Appendix A of this part.

Sec. 228.24 Service test.

(a) Scope of test. The service test evaluates a bank's record of helping to [[Page 22193]] meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

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

(c) Affiliate service. At a bank's option, the Board will consider, in its assessment of a bank's service performance, a community development service provided by an affiliate of the bank, if the

community development service is not claimed by any other institution.

(d) Performance criteria--retail banking services. The Board evaluates the availability and effectiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:

- (1) The current distribution of the bank's branches among low-, moderate-, middle-, and upper-income geographies;
- (2) In the context of its current distribution of the bank's branches, the bank's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;
- (3) The availability and effectiveness of alternative systems for delivering retail banking services (e.g., ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and
- (4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(e) Performance criteria--community development services. The Board evaluates community development services pursuant to the following criteria:

- (1) The extent to which the bank provides community development services; and
 - (2) The innovativeness and responsiveness of community development services.
- (f) Service performance rating. The Board rates a bank's service performance as provided in Appendix A of this part.

Sec. 228.25 Community development test for wholesale or limited purpose banks.

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

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

(c) Performance criteria. The Board evaluates the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

- (1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;
- (2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and
- (3) The bank's responsiveness to credit and community development needs.

(d) Indirect activities. At a bank's option, the Board will consider in its community development performance assessment:

- (1) Qualified investments or community development services provided by an affiliate of the bank, if the investments or services are not claimed by any other institution; and
- (2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in Sec. 228.22(c) and (d).

(e) Benefit to assessment area(s)--(1) Benefit inside assessment area(s). The Board considers all qualified investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(2) Benefit outside assessment area(s). The Board considers the qualified investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s).

(f) Community development performance rating. The Board rates a bank's community development performance as provided in Appendix A of this part.

Sec. 228.26 Small bank performance standards.

(a) Performance criteria. The Board evaluates the record of a small bank, or a bank that was a small bank during the prior calendar year, of helping to meet the credit needs of its assessment area(s) 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).

(b) Small bank performance rating. The Board rates the performance of a bank evaluated under this section as provided in Appendix A of this part.

Sec. 228.27 Strategic plan.

(a) Alternative election. The Board will assess a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

- (1) The bank has submitted the plan to the Board as provided for in this section;

(2) The Board has approved the plan;
 (3) The plan is in effect; and
 (4) The bank has been operating under an approved plan for at least one year.

(b) Data reporting. The Board's approval of a plan does not affect the bank's obligation, if any, to report data as required by Sec. 228.42.

(c) Plans in general--(1) Term. A plan may have a term of no more than five years, and any multi-year plan must [[Page 22194]] include annual interim measurable goals under which the Board will evaluate the bank's performance.

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

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

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

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

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

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

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

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

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

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

(3) Satisfactory and outstanding goals. A bank shall specify in its plan measurable goals that constitute "satisfactory" performance. A plan may specify measurable goals that constitute "outstanding" performance. If a bank submits, and the Board approves, both "satisfactory" and "outstanding" performance goals, the Board will consider the bank eligible for an "outstanding" performance rating.

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

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

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

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

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

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

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

(h) Plan amendment. During the term of a plan, a bank may request the Board to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (c) of this section.

(i) Plan assessment. The Board approves the goals and assesses performance under a plan as provided for in Appendix A of this part.

Sec. 228.28 Assigned ratings.

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

(b) Lending, investment, and service tests. The Board assigns a rating for a bank assessed under the lending, investment, and service tests in accordance with the following principles:

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

(2) A bank that receives an "outstanding" rating on both the service test and the investment test and a rating of at least "high

satisfactory'' on the lending test receives an assigned rating of ``outstanding''; and

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

(c) Effect of evidence of discriminatory or other illegal credit practices. Evidence of discriminatory or other illegal credit practices adversely affects the Board's evaluation of a bank's performance. In determining the effect on the bank's assigned rating, the Board considers the nature and extent of the evidence, the policies and procedures that the bank has in place to prevent discriminatory or other illegal credit practices, any corrective action that the bank has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information.

Sec. 228.29 Effect of CRA performance on applications.

(a) CRA performance. Among other factors, the Board takes into account the [[Page 22195]] record of performance under the CRA of:

(1) Each applicant bank for the:

- (i) Establishment of a domestic branch by a State member bank; and
- (ii) Merger, consolidation, acquisition of assets, or assumption of liabilities requiring approval under the Bank Merger Act (12 U.S.C. 1828(c)) if the acquiring, assuming, or resulting bank is to be a State member bank; and

(2) Each insured depository institution (as defined in 12 U.S.C. 1813) controlled by an applicant and subsidiary bank or savings association proposed to be controlled by an applicant:

(i) To become a bank holding company in a transaction that requires approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842);

(ii) To acquire ownership or control of shares or all or substantially all of the assets of a bank, to cause a bank to become a subsidiary of a bank holding company, or to merge or consolidate a bank holding company with any other bank holding company in a transaction that requires approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842); and

(iii) To own, control or operate a savings association in a transaction that requires approval under section 4 of the Bank Holding Company Act (12 U.S.C. 1843).

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

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

(d) Definitions. For purposes of paragraph (a)(2) of this section, ``bank,'' ``bank holding company,'' ``subsidiary,'' and ``savings association'' have the meanings given to those terms in section 2 of the Bank Holding Company Act (12 U.S.C. 1841).

Subpart C--Records, Reporting, and Disclosure Requirements

Sec. 228.41 Assessment area delineation.

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

(b) Geographic area(s) for wholesale or limited purpose banks. The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs (using the MSA 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 (using the MSA 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 a CMSA 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 a CMSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the CMSA.

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

(g) Use of assessment area(s). The Board uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the Board determines that the assessment area(s) do not comply with the requirements of this section.

Sec. 228.42 Data collection, reporting, and disclosure.

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

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

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

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

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

(2) Community development loan data. The aggregate number and aggregate amount of community [[Page 22196]] development loans originated or purchased; and

(3) Home mortgage loans. If the bank is subject to reporting under part 203 of this chapter, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the bank has a home or branch office (or outside any MSA) in accordance with the requirements of part 203 of this chapter.

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

- (i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- (ii) The loan amount at origination or purchase;
- (iii) The loan location; and
- (iv) The gross annual income of the borrower that the bank considered in making its credit decision.

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

(d) Data on affiliate lending. A bank that elects to have the Board consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the bank would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the bank. For home mortgage loans, the bank shall also be prepared to identify the home mortgage loans reported under part 203 of this chapter by the affiliate.

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

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

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

(h) CRA Disclosure Statement. The Board prepares annually for each bank that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

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

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

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

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

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

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

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

(ii) A list grouping each geography in the county or assessment area according to whether the median income in the geography relative to the area median income is less than 10 percent, 10 or more but less

than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

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

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

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

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

(i) Aggregate disclosure statements. The Board, in conjunction with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, prepares annually, for each MSA (including an MSA that crosses a state boundary) and the non-MSA 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, 345, or 563e of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the Board may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

(j) Central data depositories. The Board makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual bank CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The Board publishes a list of the depositories at which the statements are available. [[Page 22197]]

Sec. 228.43 Content and availability of public file.

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

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

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

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

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

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

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

(7) Any other information the bank chooses.

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

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

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

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

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

(ii) The bank's CRA Disclosure Statement. The bank shall place the statement in the public file within three business days of its receipt from the Board.

(2) Banks required to report Home Mortgage Disclosure Act (HMDA) data. A bank required to report home mortgage loan data pursuant to part 203 of this chapter shall include in its public file a copy of the HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council pertaining to the bank for each of the prior two calendar years. In addition, a bank that elected to have the Board consider the mortgage lending of an affiliate for any of these years shall include in its public file the affiliate's HMDA Disclosure Statement for those years. The bank shall place the statement(s) in the public file within three business days after its receipt.

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

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

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

(4) Banks with strategic plans. A bank that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A bank need not include information submitted to the Board on a confidential basis in conjunction with the plan.

(5) Banks with less than satisfactory ratings. A bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its

entire community. The bank shall update the description quarterly.

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

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

(2) At each branch:

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

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

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

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

Sec. 228.44 Public notice by banks.

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

Sec. 228.45 Publication of planned examination schedule.

The Board publishes at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations in that quarter.

Subpart D--Transition Rules

Sec. 228.51 Transition rules.

(a) Effective date. Sections of this part become applicable over a period of time in accordance with the schedule set forth in paragraph (c) of this section.

(b) Data collection and reporting; strategic plan; performance tests and standards. (i) On January 1, 1996, the data collection requirements set forth in Sec. 228.42 (except Sec. 228.42(b) and (g)) become applicable.

(ii) On January 1, 1997, the data reporting requirements set forth in Sec. 228.42(b) and (g) become applicable.

(2) Small banks. Beginning January 1, 1996, the Board evaluates banks that qualify for the small bank performance standards described in Sec. 228.26 under that section.

(3) Strategic plan. Beginning January 1, 1996, a bank that elects to be [[Page 22198]] evaluated under an approved strategic plan pursuant to Sec. 228.27 may submit its strategic plan to the Board for approval.

(4) Other performance tests. (i) Beginning January 1, 1996, a bank may elect to be evaluated under the pertinent revised performance tests described in Secs. 228.22, 228.23, 228.24, and 228.25, if the bank provides the necessary data to permit evaluation.

(ii) Beginning July 1, 1997, the Board evaluates all banks under the pertinent revised performance tests.

(c) Schedule. (1) On July 1, 1995, Secs. 228.11, 228.12, 228.29, and 228.51 become applicable, and Secs. 228.1, 228.2, 228.8, and 228.100 expire.

(2) On January 1, 1996, Sec. 228.41 and the pertinent provisions of Subpart B of this part will apply to banks that elect to be evaluated under Secs. 228.22 through 228.25, banks that submit for approval strategic plans under Sec. 228.27, and banks that qualify for the small bank performance standards described in Sec. 228.26.

(3) On January 1, 1996, Secs. 228.42 (except Sec. 228.42(b) and (g)) and 228.45 become applicable.

(4) On January 1, 1997, Secs. 228.41 and 228.42(b) and (g) become applicable.

(5) On July 1, 1997, Secs. 228.21 through 228.28, 228.43, and 228.44 become applicable, and Secs. 228.3 through 228.7, and 228.51 expire.

Appendix A to Part 228--Ratings

(a) Ratings in general. (1) In assigning a rating, the Board evaluates a bank's performance under the applicable performance criteria in this part, in accordance with Sec. 228.21, and Sec. 228.28, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices.

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

(b) Banks evaluated under the lending, investment, and service tests--(1) Lending performance rating. The Board assigns each bank's lending performance one of the five following ratings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[[Page 22199]]

(2) Investment performance rating. The Board assigns each bank's investment performance one of the five following ratings.

(i) Outstanding. The Board rates a bank's investment performance "outstanding" if, in general, it demonstrates:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Service performance rating. The Board assigns each bank's service performance one of the five following ratings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility 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 Board rates a bank's service performance as being in "substantial noncompliance" if, in general, the bank demonstrates:

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

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

(C) Its services (including, where appropriate, business hours)

vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

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

(c) Wholesale or limited purpose banks. The Board assigns each wholesale or limited purpose bank's community development performance one of the four following ratings.

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

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

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

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

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

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

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

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

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

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

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

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

(4) Substantial noncompliance. The Board rates a wholesale or limited purpose bank's [[Page 22200]] 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. The Board rates the performance of each bank evaluated under the small bank performance standards as follows.

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

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

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

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

(iv) A record of taking appropriate action, as 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

(v) A reasonable geographic distribution of loans given the bank's assessment area(s).

(2) Eligibility for an outstanding rating. A bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding." In assessing whether a bank's performance is "outstanding," the Board considers the extent to which the bank exceeds each of the performance standards for a "satisfactory" rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

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

(e) Strategic plan assessment and rating--(1) Satisfactory goals. The Board approves as "satisfactory" measurable goals that adequately help to meet the credit needs of the bank's assessment area(s).

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

(3) Rating. The Board assesses the performance of a bank operating under an approved plan to determine if the bank has met its plan goals:

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

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

(iii) If the bank fails to meet substantially its plan goals for a satisfactory rating, the Board will rate the bank as either "needs to improve" or "substantial noncompliance," depending on the extent to which it falls short of its plan goals, unless the bank elected in its plan to be rated otherwise, as provided in Sec. 228.27(f)(4).

Appendix B to Part 228--CRA Notice

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

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Reserve Board (Board) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Board also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

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

At least 30 days before the beginning of each quarter, the Federal Reserve System publishes a list of the banks that are scheduled for CRA examination by the Reserve Bank in that quarter. This list is available from (title of responsible official), Federal Reserve Bank of _____ (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and (title of responsible official), Federal Reserve Bank of _____ (address). Your letter, together with any response by us, will be considered by the Federal Reserve System in evaluating our CRA performance and may be made public.

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

(b) Notice for branch offices.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Reserve Board (Board) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Board also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

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

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

At least 30 days before the beginning of each quarter, the Federal Reserve System publishes a list of the banks that are scheduled for CRA examination by the Reserve Bank in that quarter. This list is available from (title of responsible official), Federal Reserve Bank of _____ (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and (title of responsible official), Federal Reserve Bank of _____ (address). Your letter, together with any response by us, will be considered by the Federal Reserve System in evaluating our CRA performance and may be made public.

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

Secs. 228.1, 228.2, 228.8, and 228.100 [Removed]

3. Sections 228.1, 228.2, 228.8, and 228.100 are removed effective July 1, 1995.

Secs. 228.3, 228.4, 228.5, 228.6, and 228.7, and Subpart D [Removed]

4. Sections 228.3, 228.4, 228.5, 228.6, and 228.7, and Subpart D, consisting of Sec. 228.51 are removed effective July 1, 1997.

By order of the Board of Governors of the Federal Reserve System, April 24, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

For the reasons outlined in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends 12 CFR chapter III as set forth below:

PART 345--COMMUNITY REINVESTMENT

1. The authority citation for part 345 is revised to read as follows:

Authority: 12 U.S.C. 1814-1817, 1819-1820, 1828, 1831u and 2901-2907, 3103-3104, and 3108(a).

2. Part 345 is amended by adding Subparts A through D and Appendices A and B to read as follows:

Subpart A--General

Sec.

345.11 Authority, purposes, and scope.
345.12 Definitions.

Subpart B--Standards for Assessing Performance

345.21 Performance tests, standards, and ratings, in general.
345.22 Lending test.
345.23 Investment test.
345.24 Service test.
345.25 Community development test for wholesale or limited purpose banks.
345.26 Small bank performance standards.
345.27 Strategic plan.
345.28 Assigned ratings.
345.29 Effect of CRA performance on applications.

Subpart C--Records, Reporting, and Disclosure Requirements

345.41 Assessment area delineation.
345.42 Data collection, reporting, and disclosure.
345.43 Content and availability of public file.
345.44 Public notice by banks.
345.45 Publication of planned examination schedule.

Subpart D--Transition Rules

345.51 Transition rules.

Appendix A to Part 345--Ratings

Appendix B to Part 345--CRA Notice

Subpart A--General

Sec. 345.11 Authority, purposes, and scope.

(a) Authority and OMB control number--(1) Authority. The authority for this part is 12 U.S.C. 1814-1817, 1819-1820, 1828, 1831u and 2901-2907, 3103-3104, and 3108(a).

(2) OMB control number. The information collection requirements contained in this part were approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 et seq. and have been assigned OMB control number 3064-0092.

(b) Purposes. In enacting the Community Reinvestment Act (CRA), the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

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

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

(c) Scope--(1) General. Except for certain special purpose banks described in paragraph (c)(3) of this section, this part applies to all insured State nonmember banks, including insured State branches as described in paragraph (c)(2) and any uninsured State branch that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(2) Insured State branches. Insured State branches are branches of a foreign bank established and operating under the laws of any State, the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act. In the case of insured State branches, references in this part to "main office" mean the principal branch within the United States and the term "branch" or "branches" refers to any insured State branch or branches located within the United States. The "assessment area" of an insured State branch is the community or communities located within the United States served by the branch as described in Sec. 345.41.

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

Sec. 345.12 Definitions.

For purposes of this part, the following definitions apply:

(a) Affiliate means any company that controls, is controlled by, or is under common control with another company. The term "control" has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) Area median income means:

(1) The median family income for the MSA, if a person or geography is located in an MSA; or
(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 Sec. 345.41.

(d) Remote Service Facility (RSF) means an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the bank, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispersed, or money lent.

(e) Bank means a State nonmember bank, as that term is defined in section 3(e)(2) of the Federal Deposit Insurance Act, as amended (FDIA) (12 U.S.C. 1813(e)(2)), with Federally insured deposits, except as provided in Sec. 345.11(c). The term bank also includes an insured State branch as defined in Sec. 345.11(c).

(f) Branch means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization. The term "branch" only includes a "domestic branch" as that term is defined in section 3(o) of the FDIA (12 U.S.C. 1813(o)).

(g) CMSA means a consolidated metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(h) 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 13 CFR 121.802(a)(2) or have gross annual revenues of \$1 million or less; or

(4) Activities that revitalize or stabilize low- or moderate-income geographies.

(i) 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 it is a multifamily dwelling loan (as described in Appendix A to Part 203 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).

(j) 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 Sec. 345.24(d).

(k) 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 Sec. 226.2 of this title;

(3) Home equity loan, which is a consumer loan secured by a residence of the borrower;

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

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

(l) Geography means a census tract or a block numbering area delineated by the United States Bureau of the Census in the most recent decennial census.

(m) Home mortgage loan means a "home improvement loan" or a "home purchase loan" as defined in Sec. 203.2 of this title.

(n) 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.

(o) 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 Sec. 345.25(b).

(p) 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.

(q) 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.

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

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

(t) Small bank means a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than \$250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than \$1 billion.

(u) 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.

(v) 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.

(w) Wholesale bank means a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale bank is in effect, in accordance with Sec. 345.25(b).

Subpart B--Standards for Assessing Performance

Sec. 345.21 Performance tests, standards, and ratings, in general.

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

(1) Lending, investment, and service tests. The FDIC applies the lending, investment, and service tests, as provided in Secs. 345.22 through 345.24, in evaluating the performance of a bank, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) Community development test for wholesale or limited purpose banks. The FDIC applies the community development test for a wholesale or limited purpose bank, as provided in Sec. 345.25, except as provided in paragraph (a)(4) of this section.

(3) Small bank performance standards. The FDIC applies the small bank performance standards as provided in Sec. 345.26 in evaluating the performance of a small bank or a bank that was a small bank during the prior calendar year, unless the bank elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The bank may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks under Sec. 345.42. [[Page 22203]]

(4) Strategic plan. The FDIC evaluates the performance of a bank under a strategic plan if the bank submits, and the FDIC approves, a strategic plan as provided in Sec. 345.27.

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

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

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

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

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

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

(6) The bank's public file, as described in Sec. 345.43, and any written comments about the bank's CRA performance submitted to the bank or the FDIC; and

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

(c) Assigned ratings. The FDIC assigns to a bank one of the following four ratings pursuant to Sec. 345.28 and Appendix A of this part: "outstanding"; "satisfactory"; "needs to improve"; or "substantial noncompliance" as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the FDIC reflects the bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

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

Sec. 345.22 Lending test.

(a) Scope of test. (1) The lending test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the FDIC will evaluate the bank's consumer lending in one or more of the following categories: motor vehicle, credit card, home equity, other secured, and other unsecured loans. In addition, at a bank's option, the FDIC will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in Sec. 345.42(c)(1), the data for each category that the bank elects to have the FDIC evaluate.

(2) The FDIC considers originations and purchases of loans. The FDIC will also consider any other loan data the bank may choose to provide, including data on loans outstanding, commitments and letters of credit.

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

(b) Performance criteria. The FDIC evaluates a bank's lending performance pursuant to the following criteria:

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

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

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

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

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

(3) Borrower characteristics. The distribution, particularly in the bank's assessment area(s), of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower

characteristics, including the number and amount of:

- (i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;
 - (ii) Small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less;
 - (iii) Small business and small farm loans by loan amount at origination; and
 - (iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;
- (4) Community development lending. The bank's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and
- (5) Innovative or flexible lending practices. The bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.
- (c) Affiliate lending. (1) At a bank's option, the FDIC will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to Sec. 345.42.
- (2) The FDIC considers affiliate lending subject to the following constraints:
- (i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and
 - (ii) If a bank elects to have the FDIC consider loans within a particular lending category made by one or more of the bank's affiliates in a particular assessment area, the bank shall elect to have the FDIC consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the bank's affiliates.
- (3) The FDIC does not consider affiliate lending in assessing a bank's performance under paragraph (b)(2)(i) of this section.
- (d) Lending by a consortium or a third party. Community development loans originated or purchased by a consortium in which the bank participates or by a third party in which the bank has invested:
- (1) Will be considered, at the bank's option, if the bank reports the data pertaining to these loans under Sec. 345.42(b)(2); and
 - (2) May be allocated among participants or investors, as they choose, [[Page 22204]] for purposes of the lending test, except that no participant or investor:
 - (i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or
 - (ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.
- (e) Lending performance rating. The FDIC rates a bank's lending performance as provided in Appendix A of this part.

Sec. 345.23 Investment test.

- (a) Scope of test. The investment test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).
- (b) Exclusion. Activities considered under the lending or service tests may not be considered under the investment test.
- (c) Affiliate investment. At a bank's option, the FDIC will consider, in its assessment of a bank's investment performance, a qualified investment made by an affiliate of the bank, if the qualified investment is not claimed by any other institution.
- (d) Disposition of branch premises. Donating, selling on favorable terms, or making available on a rent-free basis a branch of the bank that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.
- (e) Performance criteria. The FDIC evaluates the investment performance of a bank pursuant to the following criteria:
 - (1) The dollar amount of qualified investments;
 - (2) The innovativeness or complexity of qualified investments;
 - (3) The responsiveness of qualified investments to credit and community development needs; and
 - (4) The degree to which the qualified investments are not routinely provided by private investors.
- (f) Investment performance rating. The FDIC rates a bank's investment performance as provided in Appendix A of this part.

Sec. 345.24 Service test.

- (a) Scope of test. The service test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.
- (b) Area(s) benefited. Community development services must benefit a bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).
- (c) Affiliate service. At a bank's option, the FDIC will consider, in its assessment of a bank's service performance, a community development service provided by an affiliate of the bank, if the community development service is not claimed by any other institution.
- (d) Performance criteria--retail banking services. The FDIC evaluates the availability and effectiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:
 - (1) The current distribution of the bank's branches among low-, moderate-, middle-, and upper-income geographies;
 - (2) In the context of its current distribution of the bank's branches, the bank's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;
 - (3) The availability and effectiveness of alternative systems for delivering retail banking services (e.g., RSFs, RSFs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and
 - (4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.
- (e) Performance criteria--community development services. The FDIC evaluates community development services pursuant to the following criteria:

- (1) The extent to which the bank provides community development services; and
- (2) The innovativeness and responsiveness of community development services.
- (f) Service performance rating. The FDIC rates a bank's service performance as provided in Appendix A of this part.

Sec. 345.25 Community development test for wholesale or limited purpose banks.

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

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

(c) Performance criteria. The FDIC evaluates the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

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

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

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

(d) Indirect activities. At a bank's option, the FDIC will consider in its community development performance assessment:

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

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in Sec. 345.22 (c) and (d).

(e) Benefit to assessment area(s)--(1) Benefit inside assessment area(s). The FDIC considers all qualified investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(2) Benefit outside assessment area(s). The FDIC considers the qualified investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank [[Page 22205]] has adequately addressed the needs of its assessment area(s).

(f) Community development performance rating. The FDIC rates a bank's community development performance as provided in Appendix A of this part.

Sec. 345.26 Small bank performance standards.

(a) Performance criteria. The FDIC evaluates the record of a small bank, or a bank that was a small bank during the prior calendar year, of helping to meet the credit needs of its assessment area(s) 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).

(b) Small bank performance rating. The FDIC rates the performance of a bank evaluated under this section as provided in Appendix A of this part.

Sec. 345.27 Strategic plan.

(a) Alternative election. The FDIC will assess a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the FDIC as provided for in this section;

(2) The FDIC has approved the plan;

(3) The plan is in effect; and

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

(b) Data reporting. The FDIC's approval of a plan does not affect the bank's obligation, if any, to report data as required by Sec. 345.42.

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

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

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

(d) Public participation in plan development. Before submitting a plan to the FDIC for approval, a bank shall:

(1) Informally seek suggestions from members of the public in its

assessment area(s) covered by the plan while developing the plan;

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

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

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

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

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

(2) Confidential information. A bank may submit additional information to the FDIC on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the FDIC to judge the merits of the plan.

(3) Satisfactory and outstanding goals. A bank shall specify in its plan measurable goals that constitute "satisfactory" performance. A plan may specify measurable goals that constitute "outstanding" performance. If a bank submits, and the FDIC approves, both "satisfactory" and "outstanding" performance goals, the FDIC will consider the bank eligible for an "outstanding" performance rating.

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

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

(2) Public participation. In evaluating the plan's goals, the FDIC considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the bank to public comment on the plan.

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

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

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

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

(h) Plan amendment. During the term of a plan, a bank may request the FDIC to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank shall

[[Page 22206]] develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (c) of this section.

(i) Plan assessment. The FDIC approves the goals and assesses performance under a plan as provided for in Appendix A of this part.

Sec. 345.28 Assigned ratings.

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

(b) Lending, investment, and service tests. The FDIC assigns a rating for a bank assessed under the lending, investment, and service tests in accordance with the following principles:

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

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

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

(c) Effect of evidence of discriminatory or other illegal credit practices. Evidence of discriminatory or other illegal credit practices adversely affects the FDIC's evaluation of a bank's performance. In determining the effect on the bank's assigned rating, the FDIC considers the nature and extent of the evidence, the policies and procedures that the bank has in place to prevent discriminatory or other illegal credit practices, any corrective action that the bank has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information.

Sec. 345.29 Effect of CRA performance on applications.

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

- (1) The establishment of a domestic branch or other facility with the ability to accept deposits;
 - (2) The relocation of the bank's main office or a branch;
 - (3) The merger, consolidation, acquisition of assets, or assumption of liabilities; and
 - (4) Deposit insurance for a newly chartered financial institution.
- (b) New financial institutions. A newly chartered financial institution shall submit with its application for deposit insurance a description of how it will meet its CRA objectives. The FDIC takes the description into account in considering the application and may deny or condition approval on that basis.
- (c) Interested parties. The FDIC takes into account any views expressed by interested parties that are submitted in accordance with the FDIC's procedures set forth in part 303 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.
- (d) Denial or conditional approval of application. A bank's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

Subpart C--Records, Reporting, and Disclosure Requirements

Sec. 345.41 Assessment area delineation.

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

(b) Geographic area(s) for wholesale or limited purpose banks. The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs (using the MSA 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 RSFs.

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

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

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

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

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

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

(4) May not extend substantially beyond a CMSA 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 a CMSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the CMSA.

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

(g) Use of assessment area(s). The FDIC uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the FDIC determines that the assessment area(s) do not comply with the requirements of this section.

Sec. 345.42 Data collection, reporting, and disclosure.

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

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

(2) The loan amount at origination;

(3) The loan location; and

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

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

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

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

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

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

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

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

purchased; and

(3) Home mortgage loans. If the bank is subject to reporting under part 203 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 203 of this title.

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

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

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

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

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

(d) Data on affiliate lending. A bank that elects to have the FDIC consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the bank would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the bank. For home mortgage loans, the bank shall also be prepared to identify the home mortgage loans reported under part 203 of this title by the affiliate.

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

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

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

(h) CRA Disclosure Statement. The FDIC prepares annually for each bank that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

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

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

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

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

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

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

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

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

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

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

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the bank; and [[Page 22208]]

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

(i) Aggregate disclosure statements. The FDIC, in conjunction with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, prepares annually, for each MSA (including an MSA that crosses a state boundary) and the non-MSA 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 563e of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the FDIC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

(j) Central data depositories. The FDIC makes the aggregate

disclosure statements, described in paragraph (i) of this section, and the individual bank CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The FDIC publishes a list of the depositories at which the statements are available.

Sec. 345.43 Content and availability of public file.

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

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

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

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

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

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

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

(7) Any other information the bank chooses.

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

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

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

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

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

(ii) The bank's CRA Disclosure Statement. The bank shall place the statement in the public file within three business days of its receipt from the FDIC.

(2) Banks required to report Home Mortgage Disclosure Act (HMDA) data. A bank required to report home mortgage loan data pursuant part 203 of this title shall include in its public file a copy of the HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council pertaining to the bank for each of the prior two calendar years. In addition, a bank that elected to have the FDIC consider the mortgage lending of an affiliate for any of these years shall include in its public file the affiliate's HMDA Disclosure Statement for those years. The bank shall place the statement(s) in the public file within three business days after receipt.

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

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

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

(4) Banks with strategic plans. A bank that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A bank need not include information submitted to the FDIC on a confidential basis in conjunction with the plan.

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

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

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

(2) At each branch:

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

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

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

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

Sec. 345.44 Public notice by banks.

A bank shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in Appendix B of this part. Only a branch of a bank having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a bank that is an affiliate of a holding company shall include the next to the last sentence of [[Page 22209]] 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.

Sec. 345.45 Publication of planned examination schedule.

The FDIC publishes at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations in that quarter.

Subpart D--Transition Rules

Sec. 345.51 Transition rules.

(a) Effective date. Sections of this part become applicable over a period of time in accordance with the schedule set forth in paragraph (c) of this section.

(b) Data collection and reporting; strategic plan; performance tests and standards--(1) Data collection and reporting. (i) On January 1, 1996, the data collection requirements set forth in Sec. 345.42 (except Sec. 345.42(b) and (g)) become applicable.

(ii) On January 1, 1997, the data reporting requirements set forth in Sec. 345.42(b) and (g) become applicable.

(2) Small banks. Beginning January 1, 1996, the FDIC evaluates banks that qualify for the small bank performance standards described in Sec. 345.26 under that section.

(3) Strategic plan. Beginning January 1, 1996, a bank that elects to be evaluated under an approved strategic plan pursuant to Sec. 345.27 may submit its strategic plan to the FDIC for approval.

(4) Other performance tests. (i) Beginning January 1, 1996, a bank may elect to be evaluated under the pertinent revised performance tests described in Secs. 345.22, 345.23, 345.24, and 345.25, if the bank provides the necessary data to permit evaluation.

(ii) Beginning July 1, 1997, the FDIC evaluates all banks under the pertinent revised performance tests.

(c) Schedule. (1) On July 1, 1995, Secs. 345.11, 345.12, 345.29, and 345.51 become applicable, and Secs. 345.1, 345.2, 345.8, 345.101 and 345.102 expire.

(2) On January 1, 1996, Sec. 345.41 and the pertinent provisions of Subpart B of this part will apply to banks that elect to be evaluated under Secs. 345.22 through 345.25, banks that submit for approval strategic plans under Sec. 345.27, and banks that qualify for the small bank performance standards described in Sec. 345.26.

(3) On January 1, 1996, Secs. 345.42 (except Sec. 345.42(b) and (g)) and 345.45 become applicable.

(4) On January 1, 1997, Secs. 345.41 and 345.42(b) and (g) become applicable.

(5) On July 1, 1997, Secs. 345.21 through 345.28, 345.43, and 345.44 become applicable, and Secs. 345.3 through 345.7, and 345.51 expire.

Appendix A to Part 345--Ratings

(a) Ratings in general.--(1) In assigning a rating, the FDIC evaluates a bank's performance under the applicable performance criteria in this part, in accordance with Sec. 345.21, and Sec. 345.28, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices.

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

(b) Banks evaluated under the lending, investment, and service tests.--(1) Lending performance rating. The FDIC assigns each bank's lending performance one of the five following ratings.

(i) Outstanding. The FDIC rates a bank's lending performance "outstanding" if, in general, it demonstrates:

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

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

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

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

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

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

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

(ii) High satisfactory. The FDIC rates a bank's lending performance "high satisfactory" if, in general, it demonstrates:

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

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

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

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

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

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

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

loans.

(iii) Low satisfactory. The FDIC rates a bank's lending performance "low satisfactory" if, in general, it demonstrates:

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

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

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

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

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

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

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

(iv) Needs to improve. The FDIC rates a bank's lending performance "needs to improve" if, in general, it demonstrates:

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

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

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

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

(E) A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of \$1 million or less, consistent with safe and sound operations; [[Page 22210]]

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

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

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

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

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

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

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

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

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

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

(2) Investment performance rating. The FDIC assigns each bank's investment performance one of the five following ratings.

(i) Outstanding. The FDIC rates a bank's investment performance "outstanding" if, in general, it demonstrates:

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

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

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

(ii) High satisfactory. The FDIC rates a bank's investment performance "high satisfactory" if, in general, it demonstrates:

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

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

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

(iii) Low satisfactory. The FDIC rates a bank's investment performance "low satisfactory" if, in general, it demonstrates:

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

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

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

(iv) Needs to improve. The FDIC rates a bank's investment performance "needs to improve" if, in general, it demonstrates:

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

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

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

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

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

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

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

(3) Service performance rating. The FDIC assigns each bank's service performance one of the five following ratings.

(i) Outstanding. The FDIC rates a bank's service performance "outstanding" if, in general, the bank demonstrates:

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

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

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

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

(ii) High satisfactory. The FDIC rates a bank's service performance "high satisfactory" if, in general, the bank demonstrates:

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

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

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

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

(iii) Low satisfactory. The FDIC rates a bank's service performance "low satisfactory" if, in general, the bank demonstrates:

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

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

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

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

(iv) Needs to improve. The FDIC rates a bank's service performance "needs to improve" if, in general, the bank demonstrates:

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

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

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

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

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

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

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

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

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

(c) Wholesale or limited purpose banks. The FDIC assigns each wholesale or limited purpose bank's community development performance one of the four following ratings.

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

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

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

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

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

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

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

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

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

(i) A poor level of community development loans, community

development services, or qualified investments, particularly investments that are not routinely provided by private investors;

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

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

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

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

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

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

(d) Banks evaluated under the small bank performance standards. The FDIC rates the performance of each bank evaluated under the small bank performance standards as follows.

(1) Eligibility for a satisfactory rating. The FDIC rates a bank's performance "satisfactory" if, in general, the bank demonstrates:

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

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

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

(iv) A record of taking appropriate action, as 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

(v) A reasonable geographic distribution of loans given the bank's assessment area(s).

(2) Eligibility for an outstanding rating. A bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding." In assessing whether a bank's performance is "outstanding," the FDIC considers the extent to which the bank exceeds each of the performance standards for a "satisfactory" rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

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

(e) Strategic plan assessment and rating. (1) Satisfactory goals. The FDIC approves as "satisfactory" measurable goals that adequately help to meet the credit needs of the bank's assessment area(s).

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

(3) Rating. The FDIC assesses the performance of a bank operating under an approved plan to determine if the bank has met its plan goals:

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

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

(iii) If the bank fails to meet substantially its plan goals for a satisfactory rating, the FDIC will rate the bank as either "needs to improve" or "substantial noncompliance," depending on the extent to which it falls short of its plan goals, unless the bank elected in its plan to be rated otherwise, as provided in Sec. 345.27(f)(4).

Appendix B to Part 345--CRA Notice

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

Community Reinvestment Act Notice

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

Your involvement is encouraged.

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

At least 30 days before the beginning of each quarter, the FDIC publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Regional Manager, Division of Compliance and Consumer Affairs, FDIC (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and FDIC Regional Manager. Your letter, together with any response by us, will be considered by the FDIC in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the FDIC Regional Manager. You may also request from the FDIC Regional Manager an announcement of our applications covered by the CRA filed with the FDIC. We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible

official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by bank holding companies.

(b) Notice for branch offices.

Community Reinvestment Act Notice

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

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the FDIC, and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) a map showing the assessment area containing this branch, which is the area in which the FDIC evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this [[Page 22212]] assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

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

At least 30 days before the beginning of each quarter, the FDIC publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Regional Manager, Division of Compliance and Consumer Affairs, FDIC (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and the FDIC Regional Manager. Your letter, together with any response by us, will be considered by the FDIC in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the FDIC Regional Manager. You may also request from the FDIC Regional Manager an announcement of our applications covered by the CRA filed with the FDIC. We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by bank holding companies.

Secs. 345.1, 345.2, 345.8, 345.101, and 345.102, and the undersigned center heading preceding Sec. 345.101 [Removed]

3. Sections 345.1, 345.2, 345.8, 345.101 and 345.102, and the undersigned center heading preceding Sec. 345.101 are removed effective July 1, 1995.

Secs. 345.3, 345.4, 345.5, 345.6, 345.7, and subpart D [Removed]

4. Sections 345.3, 345.4, 345.5, 345.6, 345.7, and 345.51 are removed effective July 1, 1997.

By order of the Board of Directors of the Federal Deposit Insurance Corporation:

Dated: April 24, 1995.
Robert E. Feldman,
Acting Executive Secretary,
Office of Thrift Supervision

12 CFR Chapter V

For the reasons outlined in the joint preamble, the Office of Thrift Supervision amends 12 CFR chapter V as set forth below:

PART 563e--COMMUNITY REINVESTMENT

1. The authority citation for part 563e is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

2. Part 563e is amended by adding Subparts A through D and Appendices A and B to read as follows:

Subpart A--General

Sec.
563e.11 Authority, purposes, and scope.
563e.12 Definitions.

Subpart B--Standards for Assessing Performance

563e.21 Performance tests, standards, and ratings, in general.
563e.22 Lending test.
563e.23 Investment test.
563e.24 Service test.
563e.25 Community development test for wholesale or limited purpose savings associations.
563e.26 Small savings association performance standards.
563e.27 Strategic plan.
563e.28 Assigned ratings.
563e.29 Effect of CRA performance on applications.

Subpart C--Records, Reporting, and Disclosure Requirements

563e.41 Assessment area delineation.
563e.42 Data collection, reporting, and disclosure.

- 563e.43 Content and availability of public file.
- 563e.44 Public notice by savings associations.
- 563e.45 Publication of planned examination schedule.

Subpart D--Transition Rules

- 563e.51 Transition rules.

Appendix A to Part 563e--Ratings

Appendix B to Part 563e--CRA Notice

Subpart A--General

Sec. 563e.11 Authority, purposes, and scope.

(a) Authority and OMB control number--(1) 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, 4, and 10, as added, of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462a, 1463, 1464, and 1467a); and sections 4, 6, and 18(c), as amended of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1828(c)).

(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 1550-0012.

(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 OTS 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 OTS takes that record into account in considering certain applications.

(c) Scope. This part applies to all savings associations as defined in Sec. 561.43 of this subchapter.

Sec. 563e.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

(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 Sec. 563e.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) 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.

(f) CMSA means a consolidated metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(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; [[Page 22213]]

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of 13 CFR 121.802(a)(2) or have gross annual revenues of \$1 million or less; or

(4) Activities that revitalize or stabilize low- or moderate-income geographies.

(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 it is a multifamily dwelling loan (as described in Appendix A to Part 203 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 Sec. 563e.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 Sec. 226.2 of this title;

(3) Home equity loan, which is a consumer loan secured by a residence of the borrower;

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

(5) 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 or a block numbering area delineated by the United States Bureau of the Census in the most recent decennial census.

(l) Home mortgage loan means a ``home improvement loan'' or a ``home purchase loan'' as defined in Sec. 203.2 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 Sec. 563e.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) MSA means a metropolitan statistical area or a primary metropolitan statistical area as defined by the Director of the Office of Management and Budget.

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

(s) Small savings association means a savings association that, as of December 31 of either of the prior two calendar years, had total assets of less than \$250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than \$1 billion.

(t) Small business loan means a loan included in ``loans to small businesses'' as defined in the instructions for preparation of the Thrift Financial Report.

(u) Small farm loan means a loan included in ``loans to small farms'' as defined in the instructions for preparation of the Thrift Financial Report.

(v) 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 Sec. 563e.25(b).

Subpart B--Standards for Assessing Performance

Sec. 563e.21 Performance tests, standards, and ratings, in general.

(a) Performance tests and standards. The OTS assesses the CRA performance of a savings association in an examination as follows:

(1) Lending, investment, and service tests. The OTS applies the lending, investment, and service tests, as provided in Secs. 563e.22 through 563e.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 OTS applies the community development test for a wholesale or limited purpose savings association, as provided in Sec. 563e.25, except as provided in paragraph (a)(4) of this section.

(3) Small savings association performance standards. The OTS applies the small savings association performance standards as provided in Sec. 563e.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 Sec. 563e.42.

(4) Strategic plan. The OTS evaluates the performance of a savings association under a strategic plan if the savings association submits, and the OTS approves, a strategic plan as provided in Sec. 563e.27.

(b) Performance context. The OTS 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 Sec. 563e.43, and any written comments about the savings association's

CRA performance submitted to the savings association or the OTS; and

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

(c) Assigned ratings. The OTS assigns to a savings association one of the following four ratings pursuant to Sec. 563e.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 OTS 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 OTS 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.

Sec. 563e.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 OTS will evaluate the savings association's consumer lending in one or more of the following categories: motor vehicle, credit card, home equity, other secured, and other unsecured loans. In addition, at a savings association's option, the OTS will evaluate one or more categories of consumer lending, if the savings association has collected and maintained, as required in Sec. 563e.42(c)(1), the data for each category that the savings association elects to have the OTS evaluate.

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

(b) Performance criteria. The OTS 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 OTS will consider loans by an affiliate of the savings association, if the savings association provides data on the affiliate's loans pursuant to Sec. 563e.42.

(2) The OTS 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 OTS 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 OTS consider, in accordance with paragraph (c)(1) of this section, all [[Page 22215]] the loans within that lending category in that particular assessment area made by all of the savings association's affiliates.

(3) The OTS 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 Sec. 563e.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 OTS rates a savings association's lending performance as provided in Appendix A of this part.

Sec. 563e.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 OTS 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 OTS 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 OTS rates a savings association's investment performance as provided in Appendix A of this part.

Sec. 563e.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 OTS 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 OTS 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 OTS 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 OTS rates a savings association's service performance as provided in Appendix A of this part.

Sec. 563e.25 Community development test for wholesale or limited purpose savings associations.

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

(c) Performance criteria. The OTS 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 OTS 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 Sec. 563e.22 (c) and (d).

(e) Benefit to assessment area(s).--(1) Benefit inside assessment area(s). The OTS 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 OTS 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 OTS rates a savings association's community development performance as provided in Appendix A of this part.

Sec. 563e.26 Small savings association performance standards.

(a) Performance criteria. The OTS evaluates the record of a small savings association, or a savings association that was a small savings association during the prior calendar year, of helping to meet the credit needs of its assessment area(s) 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).

(b) Small savings association performance rating. The OTS rates the performance of a savings association evaluated under this section as provided in Appendix A of this part.

Sec. 563e.27 Strategic plan.

(a) Alternative election. The OTS 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 OTS as provided for in this section;

(2) The OTS 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 OTS's approval of a plan does not affect the savings association's obligation, if any, to report data as required by Sec. 563e.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 OTS 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 OTS 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 OTS 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 OTS on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the OTS 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 OTS approves, both "satisfactory" and "outstanding" performance goals, the OTS 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 OTS 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 OTS will act upon a plan within 60 calendar days after the OTS receives the complete plan and other material required under paragraph (d) of this section. If the OTS fails to act within this time period, the plan shall be deemed approved unless the OTS extends the review period for good cause.

(2) Public participation. In evaluating the plan's goals, the OTS 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 OTS 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 OTS 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 (c) of this section.

(i) Plan assessment. The OTS approves the goals and assesses performance under a plan as provided for in Appendix A of this part.

Sec. 563e.28 Assigned ratings.

(a) Ratings in general. Subject to paragraphs (b) and (c) of this section, the OTS 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 OTS 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. Evidence of discriminatory or other illegal credit practices adversely affects the OTS's evaluation of a savings association's performance. In determining the effect on the savings association's assigned rating, the OTS considers the nature and extent of the evidence, the policies and procedures that the savings association has in place to prevent discriminatory or other illegal credit practices, any corrective action that the savings association has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information.

Sec. 563e.29 Effect of CRA performance on applications.

(a) CRA performance. Among other factors, the OTS 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 OTS 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 OTS takes the description into account in considering the application and may deny or condition approval on that

basis.

(c) Interested parties. The OTS 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

Sec. 563e.41 Assessment area delineation.

(a) In general. A savings association shall delineate one or more assessment areas within which the OTS evaluates the savings association's record of helping to meet the credit needs of its community. The OTS does not evaluate the savings association's delineation of its assessment area(s) as a separate performance criterion, but the OTS 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 (using the MSA 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 (using the MSA boundaries that [[Page 2218]] 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 a CMSA 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 a CMSA boundary, the savings association shall delineate separate assessment areas for the areas inside and outside the CMSA.

(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 OTS uses the assessment area(s) delineated by a savings association in its evaluation of the savings association's CRA performance unless the OTS determines that the assessment area(s) do not comply with the requirements of this section.

Sec. 563e.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 OTS) 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 OTS in machine readable form (as prescribed by the OTS) 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 203 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 203 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 OTS) 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, home equity, 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 OTS 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 203 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 OTS 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 [[Page 22219]] 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 OTS by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) CRA Disclosure Statement. The OTS 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 OTS, in conjunction with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, prepares annually, for each MSA (including an MSA that crosses a state boundary) and the non-MSA 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 OTS 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 OTS 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 OTS publishes a list of the depositories at which the statements are available.

Sec. 563e.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 OTS. The savings association shall place this copy in the public file within 30 business days after its receipt from the OTS;

(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 [[Page 22220]] 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 OTS.

(2) Savings associations required to report Home Mortgage Disclosure Act (HMDA) data. A savings association required to report home mortgage loan data pursuant to part 203 of this title shall include in its public file a copy of the HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council pertaining to the savings association for each of the prior two calendar years. In addition, a savings association that elected to have the OTS consider the mortgage lending of an affiliate for any of these years shall include in its public file the affiliate's HMDA Disclosure Statement for those years. The savings association shall place the statement(s) in the public file within three business days after its receipt.

(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 OTS 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.

Sec. 563e.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.

Sec. 563e.45 Publication of planned examination schedule.

The OTS 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.

Subpart D--Transition Rules

Sec. 563e.51 Transition rules.

(a) Effective date. Sections of this part become applicable over a period of time in accordance with the schedule set forth in paragraph (c) of this section.

(b) Data collection and reporting; strategic plan; performance tests and standards--(1) Data collection and reporting. (i) On January 1, 1996, the data collection requirements set forth in Sec. 563e.42 (except Sec. 563e.42(b) and (g)) become applicable.

(ii) On January 1, 1997, the data reporting requirements set forth in Sec. 563e.42(b) and (g) become applicable.

(2) Small savings associations. Beginning January 1, 1996, the OTS evaluates savings associations that qualify for the small savings association performance standards described in Sec. 563e.26 under that section.

(3) Strategic plan. Beginning January 1, 1996, a savings association that elects to be evaluated under an approved strategic plan pursuant to Sec. 563e.27 may submit its strategic plan to the OTS for approval.

(4) Other performance tests. (i) Beginning January 1, 1996, a savings association may elect to be evaluated under the pertinent revised performance tests described in Secs. 563e.22, 563e.23, 563e.24, and 563e.25, if the savings association provides the necessary data to permit evaluation.

(ii) Beginning July 1, 1997, the OTS evaluates all savings associations under the pertinent revised performance tests.

(c) Schedule. (1) On July 1, 1995, Secs. 563e.11, 563e.12, 563e.29, and 563e.51 become applicable, and Secs. 563e.1, 563e.2, and 563e.8 expire.

(2) On January 1, 1996, Sec. 563e.41 and the pertinent provisions of Subpart B of this part will apply to savings associations that elect to be evaluated under Secs. 563e.22 through 563e.25, savings associations that submit for approval strategic plans under Sec. 563e.27, and savings associations that qualify for the small savings association performance standards described in Sec. 563e.26.

(3) On January 1, 1996, Secs. 563e.42 (except Sec. 563e.42(b) and (g)) and 563e.45 become applicable.

(4) On January 1, 1997, Secs. 563e.41 and 563e.42(b) and (g) become applicable.

(5) On July 1, 1997, Secs. 563e.21 through 563e.28, 563e.43, and 563e.44 become applicable, and Secs. 563e.3 through 563e.7, and 563e.51 expire.

Appendix A to Part 563e--Ratings

(a) Ratings in general. (1) In assigning a rating, the OTS evaluates a savings association's performance under the applicable performance criteria in this part, in accordance with Sec. 563e.21 and Sec. 563e.28, which provides for 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 [[Page 22221]] 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 OTS assigns each savings association's lending performance one of the five following ratings.

(i) Outstanding. The OTS 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 OTS 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 OTS 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 OTS 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 OTS 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 OTS assigns each savings association's investment performance one of the five following ratings.

(i) Outstanding. The OTS 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 OTS 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 OTS 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 OTS 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. [[Page 22222]]

(v) Substantial noncompliance. The OTS 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 OTS assigns each savings association's service performance one of the five following ratings.

(i) Outstanding. The OTS 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 OTS 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 OTS 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 OTS 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 OTS 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 OTS assigns each wholesale or limited purpose savings association's community development performance one of the four following ratings.

(1) Outstanding. The OTS 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 OTS 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 OTS 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 OTS 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 standards. The OTS rates the performance of each savings association evaluated under the small savings association performance standards as follows:

(1) Eligibility for a satisfactory rating. The OTS rates a savings association's performance "satisfactory" if, in general, the savings association demonstrates:

- (i) 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, lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;
- (ii) A majority of its loans and, as appropriate, other lending-related activities are in its assessment area(s);
- (iii) A distribution of loans to and, as appropriate, other lending related-activities for individuals of different income levels (including low- and moderate-income [[Page 22223]] individuals) and businesses and farms of different sizes that is reasonable given the demographics of the savings association's assessment area(s);
- (iv) A record of taking appropriate action, as 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
- (v) A reasonable geographic distribution of loans given the savings association's assessment area(s).

(2) Eligibility for an outstanding rating. A 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 an overall rating of "outstanding." In assessing whether a savings association's performance is "outstanding," the OTS 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).

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

(e) Strategic plan assessment and rating. (1) Satisfactory goals. The OTS 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 OTS will approve those goals as "outstanding."

(3) Rating. The OTS 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 OTS 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 OTS 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 OTS 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 Sec. 25.27(f)(4).

Appendix B to Part 563e--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 Thrift Supervision (OTS) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The OTS 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 OTS; 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 OTS publishes a nationwide list of the savings associations that are scheduled for CRA examination in that quarter. This list is available from the 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 OTS (address). Your letter, together with any response by us, will be considered by the OTS in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Regional Director. You may also request from the Regional Director an announcement of our applications covered by the CRA filed with the OTS. We are an affiliate of (name of holding company), a savings and loan holding company. You may request from the Regional Director 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 Thrift Supervision (OTS) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The OTS 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 OTS, 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 OTS 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 OTS publishes a nationwide list of the savings associations that are scheduled for CRA examination in that quarter. This list is available from the 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 Regional Director (address). Your letter, together with any response by us, will be considered by the OTS in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Regional Director. You may also request from the Regional Director an announcement of our applications covered by the CRA filed with the OTS. We are an affiliate of (name of holding company), a savings and loan holding company. You may request from the Regional Director an announcement of applications covered by the CRA filed by savings and loan holding companies.

Secs. 563e.1, 563e.2, and 563e.8 [Removed]

3. Sections 563e.1, 563e.2, and 563e.8 are removed effective July 1, 1995.

Secs. 563e.3, 563e.4, 563e.5, 563e.6, and 563e.7 and Subpart D [Removed]

4. Sections 563e.3, 563e.4, 563e.5, 563e.6 and 563e.7, and subpart D, consisting of 563e.51 are removed effective July 1, 1997.

Dated: April 19, 1995.

By the Office of Thrift Supervision.

Jomathan L Fiechter,

Acting Director.

[FR Doc. 95-10503 Filed 5-3-95; 8:45 am]

BILLING CODES 4810-33-P, 6210-01-P, 6714-01-P, 6720-01-P