

D R A F T

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency

12 CFR Part 25
[Docket No. 05-0_]
RIN 1557-AB98

FEDERAL RESERVE SYSTEM
12 CFR Part 228
[Regulation BB; Docket No. R-1225]

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 345
RIN 3064-AC89

Community Reinvestment Act Regulations

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

ACTION: Joint final rule.

SUMMARY: The OCC, Board, and FDIC (collectively, “federal banking agencies” or “the agencies”) are issuing this joint final rule that revises certain provisions of our rules implementing the Community Reinvestment Act (CRA). The agencies are taking this action after carefully considering public comments received in response to the joint notice of proposed rulemaking published on March 11, 2005 (the “March proposal”). The joint final rule addresses regulatory burden imposed on small banks with an asset size between \$250 million and \$1 billion by exempting them from CRA loan collection and reporting obligations. It also exempts such banks from the large bank lending, investment, and service tests, and makes them eligible for evaluation under the small bank lending test and a flexible new community development test. Holding company affiliation is no longer a factor in determining which CRA evaluation standards apply to a bank. In addition, the joint final rule revises the term “community development” to include activities to revitalize and stabilize distressed or underserved rural areas and designated disaster areas. Finally, it adopts without change the amendments to the regulations to address the impact on a bank’s CRA rating of evidence of discrimination or other credit practices that violate an applicable law, rule, or regulation.

EFFECTIVE DATE: This joint final rule is effective September 1, 2005.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

The CRA requires the federal banking and thrift agencies to assess the record of each insured depository institution of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the

institution and to take that record into account when the agency evaluates an application by the institution for a deposit facility.¹

Rulemaking History

In 1995, when the OCC, the Board, the FDIC, and the Office of Thrift Supervision (OTS) (collectively, “federal banking and thrift agencies” or “the four agencies”) adopted major amendments to regulations implementing the Community Reinvestment Act, they committed to reviewing the amended regulations in 2002 for their effectiveness in placing performance over process, promoting consistency in evaluations, and eliminating unnecessary burden. (60 FR 22156, 22177 (May 4, 1995)). The federal banking and thrift agencies indicated that they would determine whether and, if so, how the regulations should be amended to better evaluate financial institutions’ performance under the CRA, consistent with the Act’s authority, mandate, and intent.

The four agencies’ review was initiated in July 2001 with publication in the Federal Register of an advance notice of proposed rulemaking requesting comment on whether the regulations were effective in meeting the stated goals of the 1995 rulemaking and whether any changes should be made to the rules (66 FR 37602 (July 19, 2001)). The approximately 400 comments reflected a consensus that certain fundamental elements of the regulations are sound, but demonstrated a disagreement over the need and reasons for change.

In February 2004, the four agencies published a notice of proposed rulemaking (69 FR 5729 (Feb. 6, 2004)). Among other things, the proposal would have increased the small bank asset size threshold to \$500 million, without regard to holding company affiliation. Commenters were deeply split on this proposal, with financial institutions and their trade associations urging additional burden relief for more institutions and community organizations opposed to allowing any additional financial institutions to be evaluated as “small” institutions. On July 16, 2004, the OCC and the Board announced that they would not proceed with their respective February 2004 proposals. The OCC did not formally withdraw the proposal, but did not adopt it. The Board formally withdrew its proposal.

On August 18, 2004, the OTS published a final rule that expanded the category of “small savings associations” under the OTS’ CRA regulations to those with under \$1 billion in assets, regardless of holding company affiliation (69 FR 51155 (Aug. 18, 2004)). Following its publication of a notice of proposed rulemaking in November 2004, the OTS also adopted a final rule that allows a thrift that is evaluated as a large retail institution to determine the weight that will be assigned to lending, investments, and services in its CRA evaluation. (70 FR 10023 (Mar. 2, 2005)).

On August 20, 2004, the FDIC issued a proposal on the CRA evaluation of banks defined as “small” (69 FR 51611 (Aug. 20, 2004)). The FDIC proposal would have expanded the category of “small banks” to those under \$1 billion, regardless of any holding-company size or affiliation. For small banks with assets between \$250 million and \$1 billion, the FDIC proposal would have added to the five performance criteria of the current streamlined small bank test a new sixth criterion taking into account a bank’s record of community development lending, investments, or services, but also asked for comment on whether those community development activities should be evaluated in a separate test. The FDIC received over 11,000 comments in response to its proposal. Banks and their trade associations supported a change in the small bank dollar threshold, primarily as a way to reduce administrative burden, but expressed mixed views

¹ 12 U.S.C. 2903.

on whether community development activities should be evaluated as a sixth criterion in the small bank evaluation or as a separate test. Community organizations almost universally opposed any increase in the small bank threshold. However, these commenters generally supported the proposal to require such banks to be evaluated under a separately rated community development test in addition to the small bank lending test, if the small bank threshold were to be increased.²

The Proposed Rule

The OCC, the Board, and the FDIC jointly issued the proposed amendments to their CRA regulations, which were published in the Federal Register on March 11, 2005. The proposal was developed after thorough consideration of all the comments that the agencies had received in response to their previous proposals. The March proposal responded to community banks concerned about regulatory burden by extending eligibility for streamlined lending evaluations and the exemption from data reporting to banks under \$1 billion, without regard to holding company assets. The new proposal also provided an adjustment of this threshold for inflation, based on changes to the Consumer Price Index.

The proposal addressed the concerns of community organizations that had urged the federal banking and thrift agencies to continue to evaluate community development participation by providing that the community development records of banks between \$250 million and \$1 billion, termed “intermediate small banks,” would be separately evaluated and rated, but provided a new, more streamlined basis than the current rule for doing so. Under the proposal, an intermediate small bank would not be eligible for an overall rating of “satisfactory” unless it received ratings of “satisfactory” on both the lending and community development tests.

The proposal also responded to suggestions from both community banks and community organizations that the current definition of “community development” was too narrow by proposing to expand the definition of community development activities to include certain activities in underserved rural areas and designated disaster areas. Finally, the proposal provided that evidence of discrimination, or evidence of credit practices that violate an applicable law, rule, or regulation, could adversely affect an agency’s evaluation of a bank’s CRA performance and included an illustrative list of such practices.

Together, the agencies received over 10,000 public comments, including identical comments sent to each agency, from consumer and community organizations, banks and bank trade associations, academics, federal and state government representatives, and individuals. In general, commenters recognized that the proposal had the potential to strike an appropriate balance between the need to provide meaningful regulatory relief to small banks and the need to preserve and encourage meaningful community development activities by those banks.

The Final Rule

Increase in Size Threshold for Small Banks from \$250 Million to \$1 Billion

Comments on Proposed Rule

The agencies proposed to reduce undue regulatory burden by extending eligibility for streamlined lending evaluations and the exemption from data reporting to banks under \$1 billion without regard to holding company affiliation. In addition, the agencies proposed to define small

² For a more detailed history of CRA rulemaking activities by the banking agencies since 2001, please refer to the supplementary information published in the Federal Register with the joint notice of proposed rulemaking (70 FR 12148, 12149 (Mar. 11, 2005)).

banks with assets between \$250 million and \$1 billion as “intermediate small banks.” The proposal also would annually adjust the asset size for small and intermediate small banks based on changes to the Consumer Price Index.

Most community organizations opposed the proposal to raise the small bank threshold to \$1 billion while most banks supported the increase. Community organizations expressed a concern that an increase in the threshold would cause banks to reduce their investments and services in low- and moderate-income areas. Although they preferred that the agencies not increase the increase, a number of community organization commenters noted that the proposed evaluation of intermediate small banks under a community development test and the streamlined lending test was a notable improvement over the previous proposals to raise the small bank threshold.

Community organizations also expressed concern that an increase in the small bank threshold would reduce public data on small business, small farm, and community development loans. Community organizations objected to this result on the basis that communities would lack the means to evaluate the small business and small farm lending of intermediate small banks. A few community organizations offered specific examples of how they or others have used information about such lending, including, for example, a series of studies examining impediments to capital formation by business owners in low- and moderate-income areas. Some community organizations asserted that intermediate small banks make more small business, small farm and community development loans, as a percentage of bank assets, than larger banks. Thus, they believe that the loss of the intermediate small bank lending data will significantly affect the relevance of the remaining data, particularly in markets that include numbers of intermediate small banks. Some commenters also noted that the proposal would affect the Home Mortgage Disclosure Act (HMDA) requirements to report certain loans outside of an MSA for intermediate small banks.

The vast majority of bank and bank trade association commenters noted that increasing the small bank threshold would provide substantial and needed regulatory burden reduction because intermediate small banks would be relieved of the obligation to collect and report information about small business, small farm, and community development loans. They also noted that, given the inclusion of the community development test for intermediate small banks, elimination of the data collection and reporting requirements was the principal regulatory relief component of the proposed amendments. However, a few banks stated that this relief would not be realized fully if banks continue to collect information about community development loans, investments, and services, and provide it to examiners for use in evaluating the bank’s performance under the proposed community development test.

A number of banks and their trade associations commented that the small bank size threshold should be raised to \$1 billion without creating a tier of intermediate small banks that would be subject to the proposed community development test. A few bank commenters suggested defining an intermediate small bank subject to the new community development test as a bank with assets between \$500 million and \$1 billion, and to permit institutions with less than \$500 million in assets to be evaluated solely under the streamlined small bank lending test.

Some community organization commenters criticized the proposal to adjust the asset threshold annually for small and intermediate small banks based on changes to the Consumer Price Index (CPI) because it could increase the number of banks that are exempt from the large bank evaluation standards and further decrease the availability of small business, small farm, and

community development loan data. Most banks that commented on the issue supported tying the small and intermediate small bank thresholds to changes in the CPI.

Provisions of Final Rule

The joint final rule retains the proposed asset size threshold for small banks of less than \$1 billion and the annual adjustment to the threshold based on changes to the Consumer Price Index. The text of the “small bank” definition describing the “intermediate small bank” category has been revised for clarity. The federal banking agencies believe that raising the asset size threshold provides important regulatory relief for community banks. As discussed below, the final rule also will preserve and encourage meaningful CRA activities by intermediate small banks by means of a new community development test.

As a result of the rule change, data on the distribution of small business loans and small farm loans extended by intermediate small banks will no longer be publicly available. In revising the rule, the agencies have considered the adequacy of substitute sources of information. Call Report data, although they lack the loan-location and business-size information in the CRA data, provide the public with annual outstanding amounts of small business and small farm loans. Moreover, an intermediate small bank’s CRA performance evaluation includes, as appropriate, a description of its small business and small farm lending performance, as well as a description of any community development loans the bank has made. These sources will give the public information on intermediate small banks’ records of extending small business, small farm, and community development loans. On balance, the agencies believe the costs of the mandatory data collection and reporting by intermediate small banks, including the fixed costs that weigh more heavily on smaller banks, outweigh the benefits.

Further, under the CRA and Home Mortgage Disclosure Act (HMDA) regulations, large banks generally must collect and report information about the location of property securing home loans located outside metropolitan statistical areas (MSAs) and metropolitan divisions in which the institution has a home or branch office, or outside any MSA (12 CFR 203.4(e)). But for small banks, collecting and reporting this location information is optional. Thus, under this joint final rule, intermediate small banks will no longer be required to collect and report information on the location of mortgage loans outside MSAs and metropolitan divisions in which the banks have home or branch offices.

Summary information about where such mortgage loans were made, and detailed information about the applicants or borrowers, will nevertheless continue to be available. Mortgage loan location information is summarized in the CRA performance evaluation as part of the evaluation of the geographic distribution of a bank’s loans, as appropriate. Moreover, some newly designated intermediate small banks may opt to report loan location information as some small banks have done in the past. Furthermore, intermediate small banks covered by HMDA will continue to report borrower or applicant race, ethnicity, gender, and income even when property location need not be reported. The agencies believe that the additional value of requiring intermediate small banks to report loan location information on all of their mortgage loans does not justify the cost of reporting such information.³ Although an intermediate small bank will no longer be required to collect and report data on small business or small farm loans or on the location of certain nonmetropolitan mortgage loans, the agencies will continue to

³ Even were the proposal not adopted, intermediate small banks would continue to be exempt from reporting loan location information on mortgage loans made in counties with populations of less than 30,000.

evaluate such lending under the streamlined lending test if it constitutes a major product line of the bank.

Community Development Test for Intermediate Small Banks

Comments on Proposed Rule

The March proposal would have added a new community development test that would be separately rated in CRA examinations for intermediate small banks. The new community development test would evaluate an intermediate small bank's community development loans, qualified investments, and community development services, resulting in a single rating for community development performance. Overall CRA ratings for intermediate small banks would be based on ratings for this community development test and the streamlined small bank lending test.

Most community organization commenters generally favored the retention of the large bank lending, investment, and service tests for evaluation of all banks with assets of \$250 million or more. On the other hand, many of these commenters noted that the proposed intermediate small bank examination standards – the streamlined small bank lending test plus the proposed community development test – were significantly preferable to permitting additional banks to be evaluated under only the streamlined small bank lending test. In this regard, community organizations strongly supported the provision in the proposed rule to require an intermediate small bank to receive a “satisfactory” rating on both the community development and the small bank lending tests in order to receive an overall “satisfactory” rating.

Many bank commenters opposed the creation of separate new standards for intermediate small banks. For example, many community bankers commented that all banks under \$1 billion should be examined solely under the streamlined lending test. Some bank and bank trade associations urged the agencies to adopt final rules that assign greater weight to retail lending than to community development in the overall evaluation of an intermediate small bank's CRA performance. A few commenters stated that, under the proposal, community development would receive greater weight in an intermediate small bank's overall rating than it does under the large bank lending, investment, and service tests that currently apply to such banks. They urged the agencies to clarify that intermediate small banks, at their option, could continue to choose to be evaluated under the large bank lending, investment, and service tests.

Regarding the activities evaluated under the proposed community development test, most community organizations stated that an institution should be required to engage in all three activities – community development loans, qualified investments, and community development services – in order to earn a “satisfactory” rating on the community development test. Although community organizations believed that an institution's rating on the community development test should take account of bank capacity and community opportunities for community development, they asserted that the primary consideration should be the institution's responsiveness to community needs. Moreover, many community organizations requested that the community development test also evaluate an intermediate small bank's provision of community development services through branches located in low- and moderate-income areas.

Many banks and bank trade associations commented favorably on the flexibility that the community development test offered. Some large banks requested that the proposed community development test be made available to banks with assets of \$1 billion or more as a substitute for the existing investment and service tests.

Provisions of Final Rule

The final rule adopts the proposed community development test for intermediate small banks without change. The number and amount of community development loans, the number and amount of qualified investments, and the provision of community development services, by an intermediate small bank, and the bank's responsiveness through such activities to community development lending, investment, and services needs, will be evaluated in the context of the bank's capacities, business strategy, the needs of the relevant community, and the number and types of opportunities for community development activities. The agencies believe that, given these performance context factors, the community development test will provide a better framework for assessing community development performance by intermediate small banks than the separate lending, investment, and service tests. As noted in the preamble to the proposed rule, the community development test will be applied flexibly to permit a bank to apply its resources strategically to the types of community development activities (loans, investments, and services) that are most responsive to helping to meet community needs, even when those activities are not necessarily innovative, complex, or new. ("Innovativeness" and "complexity," factors examiners consider when evaluating a large bank under the lending, investment, and service tests, are not factors in the intermediate small banks' community development test.) The agencies will incorporate these considerations as appropriate into examination guidance and procedures to ensure flexible application of the standards.

In providing this flexibility for intermediate small banks, the federal banking agencies do not intend to suggest that a bank may simply ignore one or more categories of community development or arbitrarily decrease the level of such activities. Nor does the joint final rule prescribe any required threshold level or allocation of community development loans, qualified investments, and community development services for these banks. Instead, the OCC, the FDIC, and the Board expect that a bank will appropriately assess the needs in its community, engage in different types of community development activities based on those needs and the bank's capacities, and that it will take reasonable steps to apply its community development resources strategically to meet those needs.⁴ As the agencies indicated on adoption of the 1995 regulation, the agencies will expect a bank to make an assessment using information normally used to develop a business plan or identify potential markets and customers.⁵ Examiners will consider the bank's assessment of community needs along with information from community, government, civic, and other sources to gain a working knowledge of community needs.⁶ The flexibility inherent in the community development test will allow intermediate small banks to focus on meeting the substance of community needs through these means, without undue regulatory consequences from the form of the response.

Under the joint final rule, retail banking services provided by intermediate small banks will no longer be evaluated in a separate service test. Instead, the extent to which such banks provide community development services to low- and moderate-income people will be taken into account in the community development test. Thus, the federal banking agencies will consider not only the types of services provided to benefit low- and moderate-income people, such as low-cost bank checking accounts and low-cost remittance services, but also the provision and

⁴ As discussed in the supplementary information published with the proposed rule, the agencies anticipate that examiners will exercise their discretion, using performance context, to assign appropriate weight in a bank's current period rating to prior-period outstanding investments that reflect a substantial financial commitment or outlay by the bank designed to have a multi-year impact, in addition to investments made during the current examination cycle.

⁵ 60 FR 22156, 22163 (May 4, 1995).

⁶ Id.

availability of services to low- and moderate-income people, including through branches and other facilities located in low- and moderate-income areas.

The federal banking agencies believe that providing flexibility to intermediate small banks in how they apply their community development resources to respond to community needs through the strategic use of loans, investments, and services will reduce burden on these banks while making the evaluation of their community development records more effective.⁷

The agencies are not revising the provision in the existing regulations that permits any small bank, including an intermediate small bank, to choose to be evaluated under the large bank lending, investment, and service tests at its option. Any small bank that opts to be evaluated under the lending, investment, and service tests will be required to collect and report small business, small farm, and community development loan data.⁸

Community Development Definition

Comments on Proposed Rule

The regulations' present definition of "community development" covers four categories of activity. Three categories (affordable housing, community services, and economic development) are defined in terms of the activity's targeting of specific persons (low- or moderate-income people in the first two categories, small farms or businesses in the third). A fourth category (revitalization or stabilization activities) is defined in terms of the activity's targeting of specific areas, namely, low- or moderate-income census tracts.

The OCC, the FDIC, and the Board proposed to amend two of the categories – activities that revitalize or stabilize an area, and affordable housing. Under one proposed amendment, a bank's support for activities that revitalize or stabilize an area would receive consideration not only in low- or moderate-income census tracts (referred to as "geographies" in the regulations), but also in "underserved rural areas."⁹ The proposal would thus expand the number and kinds of rural areas in which bank activities that revitalize or stabilize communities are eligible for community development consideration (referred to herein as "eligible rural tracts"). The proposal responded to the scarcity of eligible rural tracts, which appeared to limit the effectiveness of the regulations in encouraging rural community development.¹⁰ The proposed amendment would also give consideration to bank activities that revitalize or stabilize designated disaster areas.

The agencies sought comment on three general alternatives for increasing the number and kinds of rural tracts in which bank activities are eligible for community development

⁷ A few commenters requested that the community development test be available to banks with assets of more than \$1 billion, for the sake of increasing flexibility for those banks, too. The agencies have not made this change. However, a large bank seeking more flexibility than it finds in the present three-part test can consider a strategic plan. See 12 CFR 25.27, 228.27, & 345.27.

⁸ See 12 CFR 25.21(a)(3), 228.21(a)(3), & 345.21(a)(3).

⁹ Staff interpretations of activities that "revitalize or stabilize" an area can be found in Interagency Questions and Answers Regarding Community Reinvestment, (66 FR 36620, 36625-26, July 12, 2001) (Q&A _12(h)(4)-1 and _12(i)-4).

¹⁰ The scarcity is both absolute and relative. Only 15 percent of nonmetropolitan tracts are now classified as "low- or moderate-income," and 59 percent of nonmetropolitan counties lack a single low- or moderate-income tract. In comparison, 31 percent of metropolitan tracts are classified as "low- or moderate-income" and only 18 percent of metropolitan counties lack a single low- or moderate-income tract. See Robert B. Avery, Glenn B. Canner, et al., "Community Banks and Rural Development: Research Relating to Proposals to Revise the Regulations That Implement the Community Reinvestment Act," Federal Reserve Bulletin, Spring 2005, Table 14.

consideration. The first alternative was to expand the definition of “low- or moderate-income” tracts in rural areas. Two specific options were raised: increasing the threshold for a low- or moderate-income tract from a median income of 80 percent of the state nonmetropolitan median income to 90 percent, or changing the baseline against which a nonmetropolitan tract’s median income is compared to the median income of the entire state (not just its nonmetropolitan parts). The second alternative was to retain the present definition of a tract’s income status, but identify a set of rural tracts that, while not low- or moderate-income, were nonetheless shown by other relevant indicators to be “underserved” or otherwise in need of bank support to revitalize or stabilize. Specific indicators on which the agencies sought comment were rates of poverty, unemployment, and population loss used as “distress” indicators by the Community Development Financial Institutions (CDFI) Fund, United States Department of the Treasury. The third alternative was to consider eligible any rural area that had been designated by a federal, state, tribal, or local government as in need of revitalization or stabilization.

Under another proposed amendment, bank support for affordable housing would receive consideration in “underserved rural areas” or designated disaster areas even if the housing benefited individuals not defined as “low- or moderate-income.”¹¹ The agencies indicated that the proposal’s premise was that *affordable* housing – in addition to other activities that revitalize and stabilize underserved rural areas – may meet a critical need of individuals in certain underserved rural areas, even if those individuals may not meet the technical requirements of the definition of “low- or moderate-income” in the regulation.

Banks and community organizations alike generally supported expanding the definition of “community development” to make bank activities eligible for community development consideration in a larger number of rural areas. Banks argued that having few or no eligible tracts in their assessment areas meant they felt pressure to make community development investments outside of their assessment areas merely for the sake of their CRA evaluations.

Bank commenters suggested that “rural” be defined using existing government definitions. Some commenters suggested using the Office of Management and Budget’s concept of nonmetropolitan areas (areas outside Metropolitan Statistical Areas, or MSAs), though a few requested flexibility to treat certain parts of MSAs as rural, too. Others suggested the Census Bureau’s definition of “rural.” Some suggested using several criteria, including population density.

Banks asked that any rule distinguishing “underserved” rural areas be simple. Some expressed concern that using the CDFI Fund distress criteria would be complicated and cause uncertainty; but some indicated the criteria were appropriate. Many banks suggested that an area be eligible regardless of its income if targeted by a government agency for redevelopment. Community banks expressed a strong preference that a bank’s support for meeting community needs such as education, infrastructure, and healthcare be considered as “community development” in rural communities of all kinds, not just “underserved” or low- or moderate-income communities.

Community organizations disagreed that all rural areas should be eligible, but agreed that more rural areas should be eligible than are now. Many requested that the agencies consider both expanding the standard for classifying rural tracts as “low- or moderate-income” and adopting criteria such as the distress criteria of the CDFI Fund to identify additional eligible

¹¹ Staff interpretations of “affordable housing” can be found in the Interagency Questions and Answers Regarding Community Development, 66 Fed.Reg. 36620 (July 12, 2001) (“Q&A”), Q&A _12(h)(1)-1.

tracts.¹² At the same time, community organizations generally sought to keep the proportion of eligible rural tracts in rough parity with the proportion of eligible urban tracts.

Like bank commenters, community organizations offered a variety of suggestions for defining “rural.” For example, some suggested including any area with a population of less than 10,000, while others suggested using several criteria, including population, household income, the area’s economic base, and distance from a metropolitan area. Some cautioned against treating exurbs of large MSAs as “rural.”

As noted above, banks and community organizations alike generally supported expanding the “community development” definition to include activities that benefit underserved rural areas. Few comments distinguished between the proposal to amend the “revitalize or stabilize” category and the proposal to amend the “affordable housing” category but, among those that did comment specifically on a category, more commented specifically in favor of expanding the “revitalize or stabilize” category.

Banks favored revising the definition of “community development” to include activities in a designated disaster area. They noted that such areas are easily identified and have special redevelopment needs. Some, but not all, community organizations opposed the revision. Organizations that opposed and those that did not oppose the revision shared the view that the regulation should not give consideration to bank responses to disasters that do not meet the needs of affected low- or moderate-income people.

Provisions of Final Rule

The agencies are revising the definition of “community development” to increase the number and kinds of rural tracts in which bank activities are eligible for community development consideration. In doing so, the agencies are revising the “revitalize or stabilize” category of the definition of “community development,” to provide that activities that revitalize or stabilize areas designated by the agencies as “distressed or underserved nonmetropolitan middle-income geographies” will qualify as community development activities.

The final rule uses the term “nonmetropolitan,” which means an area outside of an MSA, to refer to rural areas. The final rule also describes qualifying rural geographies as “distressed or underserved,” while the proposal used only the term “underserved.” The agencies believe that the phrase “distressed or underserved” better describes the eligible geographies that will be designated using the factors discussed more fully below.

Eligible rural tracts will continue to include tracts currently defined as “low-income” or as “moderate-income,” and the agencies have not revised the definitions of those terms. Eligible rural tracts will also include middle-income, nonmetropolitan tracts designated by the agencies as distressed or underserved based on either or both of two sets of criteria: criteria indicating a community is in distress (rates of poverty, unemployment, and population loss), and criteria indicating a community may have difficulty meeting essential community needs (population size, density, and dispersion).

¹² On the whole, community organizations did not express a strong preference between raising the threshold income for a moderate-income tract to 90% of nonmetropolitan state median income and changing the baseline against which a tract’s income is measured to the state median income. They generally opposed, however, a threshold of 100 percent of nonmetropolitan state median income. Some organizations that favored using the CDFI Fund distress criteria suggested that additional criteria also be considered.

The agencies believe that using these criteria to identify eligible areas has advantages over simply expanding the definition of “low- or moderate-income” tracts for rural areas. The distress criteria permit a more careful targeting of the middle-income tracts that are most in need of revitalization or stabilization. Simply changing the definition of “moderate-income” to include some presently middle-income tracts would (a) fail to cover many rural middle-income tracts in distress and (b) cover many tracts not necessarily in distress, or in less distress than other rural tracts that would not be covered. In addition, some rural communities, albeit middle-income and not necessarily in distress, have such small and thinly distributed populations that they have difficulty financing the fixed costs of essential community needs such as essential infrastructure and community facilities; moreover, residents may have to travel long distances to reach certain facilities, such as hospitals. The challenges facing such communities are reflected in several comments suggesting the agencies use factors such as population size, density, and distance from a population center to identify eligible areas. Simply changing the definition of “moderate-income” to include some presently middle-income tracts would not effectively identify those communities, either. Finally, changing the definition of “low- or moderate-income tract” for one purpose (evaluating community development activities) but not for other purposes (evaluating retail lending and service activities) could create confusion and the appearance of inconsistency.

To facilitate planning, the agencies will publish a list of eligible rural tracts that are distressed or underserved on the web site of the Federal Financial Institutions Examination Council.¹³ Year-to-year changes in the tracts designated based on the distress criteria are expected to be minimal; to account for such changes the agencies will specify a uniform lag period -- of at least one year -- for removal from the list of any tract designated based on those criteria. The lag will help promote investments that take an extended period to arrange. A qualifying loan, investment, or service in the area will count so long as the bank made, or entered a binding commitment to make, the loan or investment or provided, or entered a binding commitment to provide, the service while the area was designated or during the lag period.

The “distressed or underserved” designations will be based on objective criteria. A middle-income, nonmetropolitan tract will be designated if it is in a county that meets one or more of the following triggers that the CDFI Fund employs as “distress criteria”: (1) an unemployment rate of at least 1.5 times the national average, (2) a poverty rate of 20 percent or more, or (3) a population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of 5 percent or more over the five-year period preceding the most recent census.¹⁴ Activities qualify for “revitalize or stabilize” community development consideration in these tracts, like in low- or moderate-income tracts, based on the regulation and applicable interagency guidance.

A middle-income, nonmetropolitan tract will also be designated if it meets criteria for population size, density, and dispersion that indicate the area’s population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The agencies will use as the basis for the designations the “urban influence codes” maintained by the Economic Research Service of the

¹³ The Website address is: www.ffiec.gov.

¹⁴ 12 CFR 1805.201(b)(3). The CDFI Fund uses other criteria, as well, including an income trigger different from the definition of “low- or moderate-income” under the CRA regulations. The other criteria, however, will not be used in the CRA regulation’s definition of “community development.”

United States Department of Agriculture.¹⁵ In areas so designated, bank financing for construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, or affordable housing generally will be considered to meet essential community needs, so long as the infrastructure or facility serves low- and moderate-income individuals. Other bank activities in such areas generally will not qualify for revitalization or stabilization consideration, unless the area meets the distress criteria. In these cases, the agencies will continue to decide on a case-by-case basis whether a particular activity qualifies for such consideration based on the regulation and applicable interagency guidance.

The agencies are also revising the definition of “community development” to make bank activities to revitalize or stabilize designated disaster areas eligible for CRA consideration. Disaster areas may be designated by federal or state government. Such designations include, for example, Major Disaster Declarations administered by the Federal Emergency Management Agency. A designation will expire for purposes of CRA when it expires according to the applicable law under which it was declared. As the agencies indicated with the proposal, examiners will give significant weight to the extent to which a bank’s revitalization activities in a disaster area benefit low- or moderate-income individuals.

The final rule does not incorporate the specific proposal to amend the “affordable housing” category of the community development definition. The proposal would have included affordable housing that benefits individuals who reside in underserved rural areas or designated disaster areas, even if the individuals are not technically “low- or moderate-income.” The agencies believe it is appropriate to maintain the focus of the separate “affordable housing” category on characteristics of the residents of the housing, and not to expand this category to consider characteristics of the residents’ communities without regard to the residents’ income level characteristics.¹⁶ Thus, under the regulation, a bank activity that has a primary purpose of providing housing affordable to low- or moderate-income individuals continues to qualify as “community development” regardless of the location of the housing.¹⁷ In addition, such an activity may receive additional weight in the evaluation if the examiner determines that the activity helps to revitalize or stabilize a low- or moderate-income census tract, a distressed or underserved rural area, or a designated disaster area. However, as described previously, a bank activity that provides affordable housing, but not necessarily for low- or moderate-income individuals, may qualify as an activity that revitalizes or stabilizes an eligible nonmetropolitan area. For example, a bank activity that provides housing for middle- or upper-income individuals in an eligible rural area qualifies as “community development” when part of a *bona fide* plan to revitalize or stabilize the community by attracting a major new employer that will

¹⁵ The codes can be found at <http://www.ers.usda.gov/Briefing/Rurality/urbaninf/>. The agencies are considering designating middle-income tracts in the counties coded “7,” “10,” “11,” or “12.” The counties coded “11” or “12” have population densities under five people per square mile, are not adjacent to either a metropolitan or micropolitan area, and do not have a town with a population greater than 10,000. The counties coded “7” or “10” have population densities between five and seven people per square mile and do not have a town with a population greater than 2,500, though they border a micropolitan or small metropolitan area. These counties are concentrated in the Great Plains, but appear elsewhere, too. A map at the web site shows where these counties are located.

¹⁶ In contrast to the lack of census tracts in rural areas that meet the regulation’s definition of “low- or moderate-income geography,” there is not a comparable lack of individuals residing in rural areas who meet the regulation’s definition of “low- or moderate-income individual.” Under the regulation’s definition of a “low- or moderate-income individual,” the average nonmetropolitan middle-income tract has a low- and moderate-income population of 38 percent.

¹⁷ For guidance on application of the “primary purpose” standard, see Q&A _12(i)-7.

offer significant long-term employment opportunities to low- and moderate-income members of the community.

Effect of Certain Credit Practices on CRA Evaluations

Comments on Proposed Rule

The OCC, the FDIC, and the Board proposed to revise the regulations to address the impact on a bank's CRA rating of evidence of discrimination or other illegal credit practices. The agencies proposed that evidence of discrimination, or evidence of credit practices that violate an applicable law, rule, or regulation, would adversely affect an agency's evaluation of a bank's CRA performance. The agencies also proposed to revise the regulations to include an illustrative list of such practices. This list includes evidence of discrimination against applicants on a prohibited basis in violation of, for example, the Equal Credit Opportunity (15 U.S.C. 1691 *et seq.*) or Fair Housing Acts (42 U.S.C. 3601 *et seq.*); evidence of illegal referral practices in violation of section 8 of the Real Estate Settlement Procedures Act (12 U.S.C. 2607); evidence of violations of the Truth in Lending Act (12 U.S.C. 1601 *et seq.*) concerning a consumer's right to rescind a credit transaction secured by a principal residence; evidence of violations of the Home Ownership and Equity Protection Act (15 U.S.C. 1639); and evidence of unfair or deceptive credit practices in violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)).¹⁸

Further, the March proposal clarified that a bank's evaluation could be adversely affected by such practices regardless of whether the practices involve loans in the bank's assessment area(s) or in any other location or geography. In addition, as proposed, a bank's CRA evaluation also could be adversely affected by evidence of such practices by any affiliate in connection with loans in the bank's assessment area(s), if any loans of that affiliate have been considered in the bank's CRA evaluation.

Most community organizations strongly supported the proposal. Many of these commenters recommended that the provision should be expanded to include evidence of discriminatory or other illegal credit practices by any affiliate of a bank, whether or not such affiliate's loans were included in the bank's CRA evaluation. Some bank and bank trade association commenters opposed the standard as unnecessary, because other legal remedies are available to address discriminatory or other illegal credit practices. Many of these commenters also opposed extending the "illegal credit practices" standard to loans by an affiliate that are considered in a bank's lending performance. Furthermore, a few large banks were concerned that their CRA performance will be adversely affected by "technical" violations of law.

Provisions of Final Rule

The joint final rule adopts without change the proposed amendments to the agencies' regulations that address the impact on a bank's CRA rating of evidence of discrimination or other illegal credit practices. The final rule states that evidence of discrimination, or evidence of credit practices that violate an applicable law, rule, or regulation, adversely affects an agency's evaluation of a bank's CRA performance. The rule includes an illustrative, but not comprehensive, list of such practices. It also provides that a bank's evaluation is adversely affected by such practices by the bank regardless of whether the practices involve loans in the bank's assessment area(s) or in any other location or geography. The rule also provides that a

¹⁸ Evidence of credit practices that violate other laws, rules or regulations, including a federal banking agency regulation or a state law, if applicable, also may adversely affect a bank's CRA evaluation.

bank's CRA evaluation is also adversely affected by evidence of discrimination or other illegal credit practices by any affiliate in connection with loans inside the bank's assessment area(s), if any loans of that affiliate have been considered in the bank's CRA evaluation. The adverse effect on the bank's CRA rating of illegal credit practices by an affiliate is limited to affiliate loans within the bank's assessment area(s) because, under the regulations, a bank may not elect to include as part of its CRA evaluation affiliate loans outside the bank's assessment area(s).

The agencies believe that providing in the CRA regulations examples of violations that give rise to adverse CRA consequences, rather than having such examples solely in interagency guidance on the regulations,¹⁹ will improve the usefulness of the regulations and provide critical information in primary compliance source material. Further, because affiliate loans may be included by a bank in its lending evaluation for favorable consideration, evidence of discrimination or other illegal credit practices in an affiliate's loans in an assessment area of the bank can adversely affect the bank's CRA rating, if loans by that affiliate have been considered in the bank's CRA evaluation. The agencies believe that, in general, the same CRA standards generally should apply to loans included in the bank's CRA lending record that are made by an affiliate in the bank's assessment area and those that are made by the bank in any geography.

Interagency Guidance

The agencies intend to issue interagency CRA guidance for comment in the near future. The guidance will address new provisions adopted in this joint final rule and related issues (for example, the appropriate lag period for removal of a census tract from the list of designated distressed or underserved nonmetropolitan middle-income geographies). The guidance will also conform existing interagency questions and answers to the regulatory revisions, where needed.

Effective Date

The joint final rule becomes effective September 1, 2005. The agencies will issue interim interagency examination procedures for the community development test applicable to intermediate small banks in advance of the effective date of the regulation.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), Pub. L. 103-325, authorizes a banking agency to issue a rule that contains additional reporting, disclosure, or other requirements to be effective before the first day of the calendar quarter that begins on or after the date on which the regulations are published in final form if the agency finds good cause for an earlier effective date. 12 U.S.C. 4802(b)(1). This joint final rule takes effect September 1, 2005. As discussed earlier in this "Supplementary Information," the changes adopted by this joint final rule reduce regulatory burden by extending eligibility for streamlined lending evaluations and the exemption from data reporting to banks under \$1 billion without regard to holding company affiliation. Because this joint final rule eliminates data collection and reporting burden for banks with assets between \$250 million and \$1 billion and banks with assets below \$250 million that are affiliated with a holding company with bank and thrift assets of \$1 billion or above, and will provide greater flexibility in the CRA evaluations of such institutions, the agencies find good cause for the September 1, 2005, effective date.

Regulatory Flexibility Act

OCC and FDIC: Under section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not

¹⁹ See Q&A_28(c)-1.

required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. The OCC and the FDIC have reviewed the impact of this joint final rule on small banks and certify that the joint final rule will not have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) has defined “small entities” for banking purposes as a bank or savings institution with less than \$150 million in assets. See 13 CFR 212.01. This joint final rule primarily affects banks with assets of at least \$250 million and under \$1 billion. The amendments decrease the regulatory burden for banks within that asset range by relieving them of certain reporting and recordkeeping requirements applicable to larger institutions.

The elimination of the \$1 billion holding company threshold as a factor in determining whether banks will be subject to the streamlined CRA examination or the more in-depth CRA examination applicable to larger institutions will affect a limited number of small banks, which are affiliated with holding companies with assets over \$1 billion. The FDIC estimates that only 110 of approximately 5,300 FDIC-regulated banks had assets of under \$150 million and were affiliated with a holding company with over \$1 billion in assets. The OCC estimates that only 36 of approximately 2,000 OCC-regulated banks met these criteria. Because so few small banks will be affected by the revisions to Parts 25 and 345, a regulatory flexibility analysis is not required. Furthermore, the OCC and the FDIC did not receive any comments regarding the March proposal’s economic impact on small banks with assets of under \$150 million.

Board: The Board has prepared a final regulatory flexibility analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

1. Statement of the need for and objectives of the final rule.

As described in the **Supplementary Information** section, the Board, together with the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, seeks to improve the effectiveness of the CRA regulations in placing performance over process, promoting consistency in evaluations, and eliminating unnecessary burden. The final rule is intended to reduce unnecessary burden while maintaining or improving CRA’s effectiveness in evaluating performance.

2. Summary of issues raised by comments in response to the initial regulatory flexibility analysis.

The Board received several comments on matters raised in its initial regulatory flexibility analysis. As described more fully in the **Supplementary Information** section, a number of commenters supported expansion of the number and kinds of rural census tracts eligible for community development consideration. Several banks expressed concern that definitions of eligible rural census tracts would impose burden on them to document an activity’s qualification, and urged the use of simple, objective definitions, including if possible the use of definitions from existing federal programs. In response, the final rule defines “distressed or underserved” rural areas with reference to objective criteria set forth by the Department of the Treasury (CDFI Fund) and the Department of Agriculture; and it defines “rural” with reference to objective criteria set forth by the Office of Management and Budget. The agencies have also agreed that the Federal Financial Institutions Examination Council will publish and update an annual list of eligible rural census tracts, and will allow for a lag time before a tract loses its designation.

As is also described in the **Supplementary Information** section, the agencies received a number of comments on provisions regarding the effect of evidence of illegal credit practices on CRA evaluations. Several commenters asserted that the proposal amounted to superimposing consumer credit laws onto CRA examinations and ratings. The Board notes that the final rule would not subject banks any size to consumer credit laws to which they are not already subject; the rule would not place new compliance, reporting, or recordkeeping requirements on small institutions.

3. Description of small entities affected by the final rule.

The final rule applies to all state-chartered banks that are members of the Federal Reserve System; there are approximately 922 such banks. The RFA requires the Board to consider the effect of the final rule on small entities, which are defined for RFA purposes as all banks with assets of less than \$150 million. There are 419 state member banks with assets of less than \$150 million. All but about 12 state member banks with assets of less than \$150 million are already subject to a streamlined CRA evaluation that is not affected by this final rule. The rule eliminates data reporting requirements for these 12 state member banks by eliminating holding-company affiliation as a disqualification for treatment as a “small bank” under the CRA regulations.

4. Reporting, Recordkeeping and Other Compliance Requirements.

The final rule does not impose any new reporting or recordkeeping requirements, as defined in section 603 of the RFA. As noted, the rule eliminates holding-company affiliation as a disqualification for treatment as a “small bank” under the CRA regulations. Accordingly, the rule eliminates data reporting requirements for about 12 state member banks with assets of less than \$150 million. As noted above, all other state member banks with assets of less than \$150 million are already exempt from this reporting requirement.

As is described in section 2 of this regulatory flexibility analysis, the Board believes that the revisions to the definition of “community development” do not place additional compliance costs or burdens on small institutions. The Board believes the same of the provisions regarding the effect of evidence of illegal credit practices on CRA evaluations.

5. Steps taken to minimize the economic impact on small entities.

The final rule maintains the approach of the existing CRA regulations in exempting small entities from reporting requirements and providing for streamlined lending evaluations for small entities. A complete exemption of small entities from all of the CRA’s requirements would be impermissible under the CRA statute. As noted, of 419 state member banks with assets of less than \$150 million, all but 12 already were subject to a streamlined CRA process. The final rule minimizes the economic impact on small entities by making these 12 state member banks eligible for the streamlined CRA process.

Executive Order 12866

The OCC has determined that this joint final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the

expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the joint final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, the joint final rule is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number (OCC, 1557-0160; Board, 7100-0197; and FDIC, 3064-0092).

The OCC and the FDIC submitted their documentation to OMB for review and approval and the information collections have been approved. The Board has approved this revised information collection under its delegated authority from OMB.

Title of Information Collection:

OCC: Community Reinvestment Act Regulation--12 CFR 25.

Board: Recordkeeping, Reporting, and Disclosure Requirements in Connection with Regulation BB (Community Reinvestment Act).

FDIC: Community Reinvestment--12 CFR 345.

Frequency of Response: Annual.

Affected Public:

OCC: National banks.

Board: State member banks.

FDIC: State nonmember banks.

Abstract: This Paperwork Reduction Act section estimates the burden that will be associated with the regulations due to the changes to the definition of “small bank” to increase the asset threshold from \$250 million to \$1 billion and eliminate any consideration of holding-company size. Under the two changes, approximately 1,500 banks would be evaluated as small or intermediate small banks. That estimate is based on data for all FDIC-insured institutions that filed Call Reports for year-end 2004. Those data also underlie the estimated paperwork burden that is associated with the regulations. The change to adopt a separate community development test in the performance standards for intermediate small banks will have no impact on paperwork burden because the evaluation is based on information prepared by examiners.

Estimated Paperwork Burden under the Proposal:

OCC:

Number of Respondents: 1,853.

Estimated Time per Response: Small business and small farm loan register, 219 hours; consumer loan data, 326 hours; other loan data, 25 hours; assessment area delineation, 2 hours; small business and small farm loan data, 8 hours; community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; data on lending by a consortium or third party, 17

hours; affiliated lending data, 38 hours; request for designation as a wholesale or limited purpose bank, 4 hours; strategic Plan, 275 hours; and public file, 10 hours.

Total Estimated Annual Burden: 160,542 hours.

Board:

Number of Respondents: 914.

Estimated Time per Response: Small business and small farm loan register, 219 hours; consumer loan data, 326 hours; other loan data, 25 hours; assessment area delineation, 2 hours; small business and small farm loan data, 8 hours; community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; data on lending by a consortium or third party, 17 hours; affiliated lending data, 38 hours; request for designation as a wholesale or limited purpose bank, 4 hours; and public file, 10 hours.

Total Estimated Annual Burden: 97,017 hours.

FDIC:

Number of Respondents: 5,264.

Estimated Time per Response: Small business and small farm loan register, 219 hours; consumer loan data, 326 hours; other loan data, 25 hours; assessment area delineation, 2 hours; small business and small farm loan data, 8 hours; community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; data on lending by a consortium or third party, 17 hours; affiliated lending data, 38 hours; request for designation as a wholesale or limited purpose bank, 4 hours; and public file, 10 hours.

Total Estimated Annual Burden: 203,589 hours.

Comment Request:

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments should be addressed to:

OCC: Mary H. Gottlieb or Camille Dixon, Office of the Comptroller of the Currency, Legislative and Regulatory Activities Division, Attention: Docket No. 05-04, 250 E Street, S.W., Mailstop 8-4, Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit their comments by fax to (202) 874-4889 or by e-mail to camille.dixon@occ.treas.gov.

Board: Comments should refer to Docket No. R-1225 and may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Please consider submitting your comments through the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>, by e-mail to regs.comments@federalreserve.gov, or by fax to the Office of the Secretary at (202) 452-3819 or (202) 452-3102. Rules proposed by the Board and other federal agencies may also be viewed and commented on at <http://www.regulations.gov>. All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (C and 20th Streets, N.W.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Leneta G. Gregorie, Legal Division, Room MB-3082, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429. All comments should refer to the title of the proposed collection. In the alternative, comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.; submitted via the Agency Web site: <http://www.FDIC.gov/regulations/laws/federal/propose.html>; or submitted by e-mail: comments@FDIC.gov. Comments received will be posted without change to <http://www.FDIC.gov/regulations/laws/federal/propose.html>, including any personal information provided. Comments may also be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

Comments should also be sent to Mark D. Menchik, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, 725 17th Street, N.W., Washington, DC 20503. Comments may also be sent by e-mail to Mark.D.Menchik@omb.eop.gov.

Executive Order 13132

The OCC has determined that this joint final rule does not have any Federalism implications, as required by Executive Order 13132.

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, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

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

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR CHAPTER I

Authority and Issuance

For the reasons discussed in the joint preamble, part 25 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 25 – COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

2. In § 25.12, revise paragraphs (g)(4) and (u) to read as follows:

§ 25.12 Definitions.

* * * * *

(g) Community development means:

* * * * *

(4) Activities that revitalize or stabilize—

- (i) Low- or moderate-income geographies;
- (ii) Designated disaster areas; or

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

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

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

* * * * *

(u) Small bank—(1) Definition. Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1 billion. Intermediate small bank means a small bank with assets of at least \$250 million as of December 31 of both of the prior two calendar years and less than \$1 billion as of December 31 of either of the prior two calendar years.

(2) Adjustment. The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the OCC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

* * * * *

3. Revise § 25.26 to read as follows:

§ 25.26 Small bank performance standards.

(a) Performance criteria—(1) Small banks with assets of less than \$250 million. The OCC evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

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

(b) Lending test. A small bank’s lending performance is evaluated pursuant to the following criteria:

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

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

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

(4) The geographic distribution of the bank’s loans; and

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

(c) Community development test. An intermediate small bank’s community development performance also is evaluated pursuant to the following criteria:

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

(2) The number and amount of qualified investments;

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

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

3. Revise § 25.28, paragraph (c) to read as follows:

§ 25.28 Assigned ratings.

* * * * *

(c) Effect of evidence of discriminatory or other illegal credit practices.

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

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

- (ii) Violations of the Home Ownership and Equity Protection Act;
- (iii) Violations of section 5 of the Federal Trade Commission Act;
- (iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and
- (v) Violations of the Truth in Lending Act provisions regarding a consumer’s right of rescission.

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

4. In Appendix A to part 25, revise paragraph (d) to read as follows:

Appendix A to Part 25—Ratings

* * * * *

(d) Banks evaluated under the small bank performance standards. (1) Lending test ratings. (i) Eligibility for a satisfactory lending test rating. The OCC rates a small bank’s lending performance “satisfactory” if, in general, the bank demonstrates:

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

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

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

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

(E) A reasonable geographic distribution of loans given the bank’s assessment area(s).

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

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

(2) Community development test ratings for intermediate small banks—(i) Eligibility for a satisfactory community development test rating. The OCC rates an intermediate small bank’s community development performance “satisfactory” if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) or a broader statewide or regional area that includes the bank’s assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area’s need for such community development activities, and the availability of such opportunities for community development in the bank’s assessment area(s).

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

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

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

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

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

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

* * * * *

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

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

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

2. In § 228.12, revise paragraphs (g)(4) and (u) to read as follows:

§ 228.12 Definitions.

* * * * *

(g) Community development means:

* * * * *

(4) Activities that revitalize or stabilize—

(i) Low- or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, based on—

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

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

* * * * *

(u) Small bank—(1) Definition. Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1 billion. Intermediate small bank means a small bank with assets of at least \$250 million as of December 31 of both of the prior two calendar years and less than \$1 billion as of December 31 of either of the prior two calendar years.

(2) Adjustment. The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the Board, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

* * * * *

3. Revise § 228.26 to read as follows:

§ 228.26 Small bank performance standards.

(a) Performance criteria—(1) Small banks with assets of less than \$250 million. The Board evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

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

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

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

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

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

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

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

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

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

(2) The number and amount of qualified investments;

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

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

3. Revise § 228.28(c) to read as follows:

§ 228.28 Assigned ratings.

* * * * *

(c) Effect of evidence of discriminatory or other illegal credit practices. (1) The Board's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance. In connection with any type of lending activity described in § 228.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

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

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

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

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

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

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the Board considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable)

has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

4. In Appendix A to part 228, revise paragraph (d) to read as follows:

Appendix A to Part 228—Ratings

* * * * *

(d) Banks evaluated under the small bank performance standards. (1) Lending test ratings. (i) Eligibility for a satisfactory lending test rating. The Board rates a small bank's lending performance "satisfactory" if, in general, the bank demonstrates:

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

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

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

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

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

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

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

(2) Community development test ratings for intermediate small banks—(i) Eligibility for a satisfactory community development test rating. The Board rates an intermediate small bank's community development performance "satisfactory" if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) Eligibility for an outstanding community development test rating. The Board rates an intermediate small bank's community development performance "outstanding" if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

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

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

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

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

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

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

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

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

2. In § 345.12, revise paragraphs (g)(4) and (u) to read as follows:

§ 345.12 Definitions.

* * * * *

(g) Community development means:

* * * * *

(4) Activities that revitalize or stabilize—

(i) Low- or moderate-income geographies;

(ii) Designated disaster areas; or

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

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

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

* * * * *

(u) Small bank—(1) Definition. Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1 billion. Intermediate small bank means a small bank with assets of at least \$250 million as of December 31 of both of the prior two calendar years and less than \$1 billion as of December 31 of either of the prior two calendar years.

(2) Adjustment. The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the FDIC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

* * * * *

3. Revise § 345.26 to read as follows:

§ 345.26 Small bank performance standards.

(a) Performance criteria—(1) Small banks with assets of less than \$250 million. The FDIC evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

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

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

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

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

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

(4) The geographic distribution of the bank’s loans; and

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

(c) Community development test. An intermediate small bank’s community development performance also is evaluated pursuant to the following criteria:

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

(2) The number and amount of qualified investments;

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

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

3. Revise § 345.28(c) to read as follows:

§ 345.28 Assigned ratings.

* * * * *

(c) Effect of evidence of discriminatory or other illegal credit practices. (1) The FDIC’s evaluation of a bank’s CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank’s lending performance. In connection with any type of lending activity described in §345.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

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

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

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

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

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

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

4. In Appendix A to part 345, revise paragraph (d) to read as follows:

Appendix A to Part 345—Ratings

* * * * *

(d) Banks evaluated under the small bank performance standards—(1) Lending test ratings.

(i) Eligibility for a satisfactory lending test rating. The FDIC rates a small bank’s lending performance “satisfactory” if, in general, the bank demonstrates:

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

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

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

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

(E) A reasonable geographic distribution of loans given the bank’s assessment area(s).

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

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

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

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

(iii) Needs to improve or substantial noncompliance ratings. An intermediate small bank may also receive a community development test rating of “needs to improve” or “substantial

noncompliance” depending on the degree to which its performance has failed to meet the standards for a “satisfactory” rating.

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

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

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

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

* * * * *