

CRA Final Rule

Introduction and Overview



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About The Instructor



Adam Witmer is President and CEO of Compliance Cohort, LLC where he writes articles and teaches on all compliance topics. Having taught hundreds of times to thousands of bankers throughout the country, Adam takes a three part approach to compliance instruction: to educate, to empower, and to entertain. This is achieved by focusing on relevant topics, speaking in simple to understand, layman's terms, and by keeping it light and humorous whenever possible. Adam has found that this "3-E" approach allows students to learn as quickly and effectively as possible. And, it adds a little bit of fun to an otherwise dreadful topic.

Prior to going full time for Compliance Cohort LLC, Adam held a number of roles in financial institutions both big and small. Most recently, Adam was an executive at a small community bank in Northern Indiana where he oversaw the bank's risk management, BSA, compliance, and audit programs. He has also held positions as a Senior Consultant for a national consulting firm, an AVP and Director of Compliance for a regional multi-bank holding company, a banker at a large national bank, and a loan originator at a mortgage subsidiary of a regional community bank. A Certified Regulatory Compliance Manager (CRCM) through the American Bankers Association, Adam earned his bachelor's degree at Taylor University and his MBA at Indiana Tech. He currently resides in the lake country of Northern Indiana with his wife and three children.

Chapter 1

Introduction

Introduction

The CRA was passed by Congress as part of the Housing and Community Development Act of 1977 and is designed to encourage regulated banks to help meet the credit needs of the communities in which they are chartered. Specifically, Congress found that “(1) regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business; (2) the convenience and needs of communities include the need for credit services as well as deposit services; and (3) regulated financial institutions have [a] continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.”

The CRA requires the agencies to “assess the institution’s record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution.” Upon completing this assessment, the statute requires the agencies to “prepare a written evaluation of the institution’s record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.”

The statute further provides that each agency must consider a bank’s CRA performance “in its evaluation of an application for a deposit facility by such institution.”

Since its enactment, Congress has amended the CRA several times, including through: the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (which required public disclosure of a bank’s CRA written evaluation and rating); the Federal Deposit Insurance Corporation Improvement Act of 1991 (which required the inclusion of a bank’s CRA examination data in the determination of its CRA rating); the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (which permits the agencies to provide favorable consideration where the bank has donated, sold on favorable terms, or made available rent-free any branch of the bank “located in any predominantly minority neighborhood to any minority depository institution or women’s depository institution”); the Housing and Community Development Act of 1992 (which included assessment of the record of nonminority-owned and nonwomen-owned banks in cooperating with minority-owned and women-owned banks and LICUs); the Riegle-Neal Interstate -Banking and Branching Efficiency Act of 1994 (which (1) required an agency to consider an out-of-State national bank’s or State bank’s CRA rating when determining whether to allow interstate branches, and (2) prescribed certain requirements for the contents of the written CRA evaluation for banks with interstate branches); and the Gramm-Leach-Bliley Act of 1999 (which, among other things, provided regulatory relief for smaller banks by reducing the frequency of their CRA examinations).

Additionally, Congress directed the agencies to publish regulations to carry out the CRA’s purposes. In 1978, the agencies promulgated the first CRA regulations, which included evidence of prohibited discriminatory or other illegal credit practices as a performance factor as discussed further in the next section. Since then, the agencies have together significantly

revised and sought to clarify their CRA regulations twice - in 1995 and 2005 – with the most substantive interagency update occurring in 1995. In addition, the agencies have periodically jointly published the Interagency Questions and Answers Regarding Community Reinvestment (Interagency Questions and Answers)²⁹ to provide guidance on the CRA regulations.

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Chapter 2

Overview of Current CRA Regulations

Overview of Current CRA Regulations

CRA Performance Evaluations

The current CRA regulations provide different methods to evaluate a bank's CRA performance depending on the asset size and business strategy of the bank. Under the current framework:

- **Small banks** – currently, those with assets of less than \$376 million as of December 31 of either of the prior two calendar years – are evaluated under a lending test and may receive an “Outstanding” rating based only on their retail lending performance. Qualified investments, services, and delivery systems that enhance credit availability in a bank's assessment areas may be considered for an “Outstanding” rating, but only if the bank meets or exceeds the lending test criteria in the small bank performance standards.
- **Intermediate small banks** – currently, those with assets of at least \$376 million as of December 31 of both of the prior two calendar years and less than \$1.503 billion as of December 31 of either of the prior two calendar years – are evaluated under the lending test for small banks and a community development test. The intermediate small bank community development test evaluates all community development activities together.
- **Large banks** – currently, those with assets of at least \$1.503 billion as of December 31 of both of the prior two calendar years – are evaluated under separate lending, investment, and service tests. The lending and service tests consider both retail and community development activities, and the investment test focuses on qualified community development investments. To facilitate the agencies' CRA analysis, large banks are required to report annually certain data on community development loans, small business loans, and small farm loans (small banks and intermediate small banks are not required to report these data unless they opt into being evaluated under the large bank lending test).
- **Designated wholesale banks** (those engaged in only incidental retail lending) and **limited purposes banks** (those offering a narrow product line to a regional or broader market) are evaluated under a standalone community development test.
- **Banks of any size** may elect to be evaluated under a strategic plan that sets out measurable, annual goals for lending, investment, and service activities in order to achieve a “Satisfactory” or an “Outstanding” rating. A strategic plan must be developed with community input and approved by the appropriate Federal financial supervisory agency.

The agencies also consider applicable performance context information to develop their analysis and conclusions when conducting CRA examinations. Performance context comprises

a broad range of economic, demographic, and bank- and community-specific information that examiners review to calibrate a bank's CRA evaluation to its communities.

Assessment Areas

The current CRA regulations require a bank to delineate one or more assessment areas in which the bank's record of meeting its CRA obligations is evaluated. The regulations require a bank to delineate assessment areas generally consisting of one or more MSAs or metropolitan divisions, or one or more contiguous political subdivisions in which the bank has its main office, branches, and deposit-taking ATMs, as well as the surrounding geographies (i.e., census tracts) in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the bank chooses, such as consumer loans on which the bank elects to have its performance assessed).

The statute instructs the agencies to assess a bank's record of meeting the credit needs of its "entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution, and . . . [to] take such record into account in its evaluation of an application for a deposit facility by such institution." The statute does not prescribe the delineation of assessment areas, but they are an important aspect of the regulation because the agencies use assessment areas to determine what constitutes a bank's "community" for purposes of the evaluation of a bank's CRA performance.

Qualifying Activities

The CRA regulations and the Interagency Questions and Answers provide detailed information, including applicable definitions and descriptions, respectively, regarding activities that are eligible for CRA consideration in the evaluation of a bank's CRA performance. Banks that are evaluated under a performance test that includes a review of their retail activities are assessed in connection with retail lending activity (e.g., home mortgage loans, small business loans, small farm loans, and consumer loans) and, where applicable, retail banking service activities (e.g., the current distribution of a bank's branches in geographies of different income levels, and the availability and effectiveness of the bank's alternative systems for delivering banking services to low- and moderate-income geographies and individuals).

Banks evaluated under a performance test that includes a review of their community development activities are assessed with respect to community development lending, qualified investments, and community development services, which must have a primary purpose of community development.

Guidance for Performance Evaluations

In addition to information included in their CRA regulations, the agencies also provide information to the public regarding how CRA performance tests are applied, where CRA activities are considered, and what activities are eligible through publicly available CRA performance evaluations, the Interagency Questions and Answers, interagency CRA examination procedures, and interagency instructions for writing performance evaluations.

Chapter 3

Summary of the Final Rule

Summary of the Final Rule

The CRA is a seminal piece of legislation that requires the OCC, Board, and the FDIC (together referred to as the agencies, and each, individually, the agency) to assess a bank's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the bank's safe and sound operation. Upon completing this examination, the statute requires the agencies to "prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods." The statute further provides that each agency must consider a bank's CRA performance "in its evaluation of an application for a deposit facility by such institution." The agencies implement the CRA and establish the framework and criteria by which the agencies assess a bank's performance through their individual CRA regulations, which are supplemented by supervisory guidance. Under the CRA regulations, the agencies apply different evaluation standards for banks of different asset sizes and types.

The agencies issued a Notice of Proposed Rulemaking published in the Federal Register on June 3, 2022, (NPR, proposal, or the proposed rule), seeking comment on updates to their respective CRA regulations to achieve the following objectives:

- Strengthen the achievement of the core purpose of the statute;
- Adapt to changes in the banking industry, including the expanded role of mobile and online banking;
- Provide greater clarity and consistency in the application of the regulations;
- Tailor performance standards to account for differences in bank size and business models and local conditions;
- Tailor data collection and reporting requirements and use existing data whenever possible;
- Promote transparency and public engagement;
- Confirm that CRA and fair lending responsibilities are mutually reinforcing; and
- Promote a consistent regulatory approach that applies to banks regulated by all three agencies.

The agencies believe that each objective is met through the promulgation of this final rule. Additional discussion of, and commenter feedback received regarding, the agencies' objectives can be found in Section III.B of this SUPPLEMENTARY INFORMATION.

This section provides a summary of the final rule and highlights certain key elements and changes as compared to the proposal. For a more detailed discussion, including the agencies' considerations of the comments received, see Sections III and IV of this SUPPLEMENTARY INFORMATION.

Bank Asset Size Categories and Limited Purpose Banks

The final rule implements a revised regulatory framework for the CRA that, like the current framework, is based on bank asset size and business model. This tailoring of the framework recognizes the capacity and resource differences among banks. Under the final rule, banks are classified as either a large bank, an intermediate bank, a small bank, or a limited purpose bank. Pursuant to the final rule: large banks are those with assets of at least \$2 billion as of December 31 in both of the prior two calendar years; intermediate banks are those with assets of at least \$600 million as of December 31 in both of the prior two calendar years and less than \$2 billion as of December 31 in either of the prior two calendar years; and small banks are those with assets of less than \$600 million as of December 31 in either of the prior two calendar years. These asset-size thresholds will be adjusted annually for inflation.

The final rule revises the definition of limited purpose bank to include both those banks currently considered "limited purpose banks" and those currently considered "wholesale banks," as those terms are defined under the current regulation and were defined under the proposal. Specifically, the final rule defines a limited purpose bank as a bank that is not in the business of extending certain loans, except on an incidental and accommodation basis, and for which a designation as a limited purpose bank is in effect. The final rule therefore does not reference "wholesale banks" because a separate definition is no longer necessary. The agencies have also clarified that limited purpose banks are not evaluated as small, intermediate, or large banks.

Evaluation Framework

Overview

The final rule's performance evaluation framework utilizes performance tests to evaluate a bank's performance in meeting the credit needs of its entire community. In finalizing this evaluation framework, the agencies seek to meet the objectives described above, including: strengthening the achievement of the core purpose of the statute; tailoring to account for differences in bank size, business model, and local conditions; and adapting to changes in the banking industry, including the rise of mobile and online banking. Depending on a bank's asset size or limited purpose bank designation, the agencies will evaluate banks under one or a combination of the following seven performance tests: the Retail Lending Test; the Retail

Services and Products Test; the Community Development Financing Test; the Community Development Services Test; the Intermediate Bank Community Development Test; the Small Bank Lending Test; and the Community Development Financing Test for Limited Purpose Banks. The agencies have also retained the strategic plan option, with revisions, as an alternative method for evaluation under the CRA.

The agencies will evaluate large banks under four performance tests: the Retail Lending Test, the Retail Services and Products Test, the Community Development Financing Test, and the Community Development Services Test. The agencies will evaluate intermediate banks under the Retail Lending Test and either the current community development test, referred to in the final rule as the Intermediate Bank Community Development Test, or, at the bank's option, the Community Development Financing Test. The agencies will evaluate small banks under either the current small bank test, referred to in the final rule as the Small Bank Lending Test or, at the bank's option, the Retail Lending Test. Finally, the agencies will evaluate limited purpose banks, under the Community Development Financing Test for Limited Purpose Banks.

The final rule also provides that relevant activities of a bank's operations subsidiaries or operating subsidiaries are included in a bank's performance evaluation. Relevant activities of other affiliates would be considered at a bank's option.

For each applicable performance test, the agencies will assign conclusions reflecting the bank's performance in its facility-based assessment areas, and in the case of the Retail Lending Test, certain other geographic areas. In most instances, including for small banks that opt to be evaluated under the Retail Lending Test, the agencies will assign one of five conclusions to the bank: "Outstanding"; "High Satisfactory"; "Low Satisfactory"; "Needs to Improve"; or "Substantial Noncompliance." For small banks evaluated under the Small Bank Lending Test, the agencies will assign one of four conclusions: "Outstanding"; "Satisfactory"; "Needs to Improve"; or "Substantial Noncompliance."

The conclusions assigned in connection with each of the applicable performance tests are combined to develop a bank's CRA ratings. The agencies may assign a bank one of the four ratings, as indicated in the statute: "Outstanding"; "Satisfactory"; "Needs to Improve"; or "Substantial Noncompliance."

For banks that are evaluated under more than one performance test, specific weights are applied to each performance test conclusion, with weighting varying by bank asset size. For large banks: the Retail Lending Test is weighted at 40 percent; the Retail Services and Products Test is weighted at 10 percent; the Community Development Financing Test is weighted at 40 percent; and the Community Development Services Test is weighted at 10 percent. Relative to the proposal, this large bank weighting reflects a decrease in the percentages assigned to the Retail Lending Test and the Retail Services and Products Test and a resulting increase in the percentage assigned to the Community Development Financing Test. For intermediate banks, each applicable performance test is weighted at 50 percent.

As noted above, banks of all sizes will maintain the option to elect to be evaluated under an approved strategic plan. Among other revisions, the final rule updates the standards for obtaining approval for such plans. The final rule clarifies the proposal to explain the circumstances in which banks must include the performance tests that would apply in the absence of a strategic plan, the modifications and additions that banks may make to those tests, and the justifications that banks must provide for their draft plans.

Retail Lending Test

The Retail Lending Test evaluates a bank's record of helping to meet the credit needs of its entire community through the bank's origination and purchase of home mortgage loans, multifamily loans, small business loans, and small farm loans, as well as through automobile lending if the bank is a majority automobile lender. Specifically, the Retail Lending Test includes an evaluation of how banks are serving low- and moderate-income individuals, small businesses, small farms, and low- and moderate-income census tracts in the bank's facility-based assessment areas and, as applicable, retail lending assessment areas and outside retail lending areas. As noted above, under the final rule, intermediate and large banks are required to be evaluated under the Retail Lending Test, and small banks may opt to be evaluated under this performance test.

The Retail Lending Test includes two sets of metrics, as well as additional factors that are used to complement the use of metrics. First, the Retail Lending Volume Screen measures the volume of a bank's retail lending relative to its deposit base in a facility-based assessment area and compares that ratio to a Retail Lending Volume Threshold based on the aggregate ratio for all reporting banks with at least one branch in the same facility-based assessment area.

Second, the agencies evaluate the geographic distribution and borrower distribution of a bank's major product lines in its Retail Lending Test Areas (facility-based assessment areas, retail lending assessment areas, and outside retail lending area) using a series of metrics and benchmarks. For example, for a bank's closed-end mortgage lending in a Retail Lending Test Area, the geographic distribution analysis evaluates the bank's percentage of lending (1) in low-income census tracts and (2) in moderate-income census tracts, while the borrower distribution analysis evaluates the bank's percentage of lending (3) to low-income borrowers and (4) to moderate-income borrowers. Under the final rule, the agencies evaluate the distribution of a large bank's major product lines in its facility-based assessment areas, any retail lending assessment areas the bank is required to delineate, and its outside retail lending area. For intermediate banks, and small banks that opt to be evaluated under the Retail Lending Test, the agencies evaluate the distribution of the bank's major product lines in its facility-based assessment areas and any outside retail lending area, if applicable. Regardless of the geographic area in which a bank is evaluated, for most major product lines, a bank's performance relative to the retail lending distribution benchmarks is translated into a

recommended conclusion using performance ranges that establish the level of performance needed to achieve a particular conclusion, such as “High Satisfactory.”

In addition, in the final rule the agencies consider a list of additional factors that are intended to account for circumstances in which the retail lending distribution metrics and benchmarks may not accurately or fully reflect a bank’s retail lending performance, or in which the benchmarks may not appropriately represent the credit needs and opportunities in an area.

In response to commenter feedback, the agencies sought ways to ensure that the final rule’s Retail Lending Test appropriately balances the agencies’ objectives. For example, the agencies adjusted some of the multipliers utilized as part of the Retail Lending Test to make “Outstanding” and “High Satisfactory” Retail Lending Test supporting conclusions more attainable relative to the proposal, while maintaining an appropriate degree of rigor. Moreover, as compared to the proposal, the final rule reduces the number of product lines potentially evaluated under the Retail Lending Test from six to three (closed-end home mortgage loans, small business loans, and small farm loans) for most banks. In addition, the agencies will only evaluate a bank’s automobile loans if automobile loans represent a majority of the bank’s retail lending, or if the bank opts to have its automobile loans evaluated under the Retail Lending Test.

Retail Services and Products Test

The Retail Services and Products Test utilizes a tailored approach to evaluate the availability of a bank’s retail banking services and retail banking products and the responsiveness of those services and products to the credit needs of the bank’s entire community, including low- and moderate-income individuals, low- and moderate-income census tracts, small businesses, and small farms. Under the final rule, this performance test maintains the overall approach set out in the NPR, with certain modifications, and incorporates benchmarks to evaluate the availability of a bank’s branch and remote service facilities. In addition, the agencies will evaluate the digital and other delivery systems of some banks.

Evaluation of the retail banking services of a large bank with assets greater than \$10 billion includes a review of the bank’s branch availability and services, remote service facilities (including ATMs), and digital delivery systems and other delivery systems. The agencies will also consider the digital delivery systems and other delivery systems of large banks with assets less than or equal to \$10 billion if the bank does not operate any branches or, for banks that operate at least one branch, at the bank’s option.

Evaluation of a bank’s retail banking products includes a review of the responsiveness of the bank’s credit products and programs, and availability and usage of responsive deposit products. The agencies will not evaluate the availability and usage of responsive deposit products in connection with large banks with assets less than or equal to \$10 billion, unless the bank opts in.

Community Development Financing Test

The Community Development Financing Test evaluates how well large banks and intermediate banks that opt into the performance test meet the community development financing needs in each facility-based assessment area, each State or multistate MSA, as applicable, and for the institution. The test is not assessed in retail lending assessment areas.

The Community Development Financing Test includes the following elements: (1) a Community Development Financing Metric used to evaluate the dollar volume of a bank's community development loans and investments relative to the bank's deposit base; (2) standardized benchmarks to aid in evaluating performance; and (3) an impact and responsiveness review to ensure consideration of community development loans and investments that are particularly impactful or responsive. The final rule also includes a metric for banks with assets greater than \$10 billion to measure the bank's community development investments relative to deposits. This metric is intended to ensure a focus on certain bank community development investments (including Federal Low-Income Housing Tax Credit (LIHTC) and New Market Tax Credit (NMTC) investments). This metric is applied at the institution level and may only contribute positively to a bank's Community Development Financing Test conclusion.

Community Development Services Test

The Community Development Services Test considers the importance of community development services in fostering partnerships among different stakeholders, building capacity, and creating conditions for effective community development, including in rural areas. The agencies will evaluate large banks under this performance test in facility-based assessment areas, in States, multistate MSAs, and nationwide.

Under the final rule, the evaluation includes a qualitative review of relevant community development services data, and an impact and responsiveness review to assess services that are particularly responsive to community needs. After considering commenter feedback, the performance test does not require a metric of community development service hours per full-time employee for banks with assets greater than \$10 billion. Moreover, the final rule maintains the existing requirement that volunteer services considered under this performance test must be related to the provision of financial services or the expertise of bank staff and must have a community development purpose. The performance test will provide consideration for activities that promote financial literacy for low- or moderate-income individuals, households, and families, even if the activities benefit individuals, households, and families of other income levels as well.

Geographic Areas in which a Bank's Activities are Considered

Facility-based assessment areas

As under the current CRA regulations, the final rule maintains facility-based assessment areas as the cornerstone of the CRA evaluation framework. The final rule adopts the delineation requirements for facility-based assessment areas mostly as set out in the proposal with clarifying changes. Specifically, banks will continue to delineate facility-based assessment areas in the MSAs or nonmetropolitan areas of States in which the following facilities are located: main offices, branches, and deposit-taking remote service facilities. As under the proposal, large banks are required to delineate facility-based assessment areas composed of whole counties, while intermediate and small banks will continue to be permitted to delineate facility-based assessment areas consisting of partial counties. The final rule continues to provide that facility-based assessment areas may not reflect illegal discrimination and may not arbitrarily exclude low- or moderate-income census tracts.

Retail lending assessment areas

The final rule requires a large bank to delineate a new type of assessment area, referred to as retail lending assessment areas, in an MSA or the nonmetropolitan area of a State in which the large bank has a concentration of closed-end home mortgage or small business lending outside of its facility-based assessment area(s). Large banks are evaluated under the Retail Lending Test, but not the other performance tests, in retail lending assessment areas. Relative to the proposal, the final rule tailors the retail lending assessment area requirement by exempting large banks that conduct more than 80 percent of their retail lending within facility-based assessment areas.

Upon consideration of commenter feedback regarding the retail lending assessment area proposal, the final rule increases, relative to the proposal, the loan count thresholds that trigger the retail lending assessment area delineation requirement to at least 150 closed-end home mortgage loans or at least 400 small business loans in each year of the prior two calendar years. The final rule also simplifies the evaluation of a large bank's retail lending performance by reducing the number of product lines potentially evaluated in a retail lending assessment area from six to two product lines, and only evaluating a product line if the bank exceeds the relevant loan count threshold.

Outside retail lending areas

Under the final rule, the agencies will evaluate the retail lending performance of all large banks, certain intermediate banks, and certain small banks that opt to be evaluated under the Retail Lending Test in the outside retail lending area, which consists of the nationwide area outside of the bank's facility-based assessment areas and applicable retail lending assessment areas,

excluding certain nonmetropolitan counties. Evaluation in these areas is designed to facilitate a comprehensive evaluation of a bank's retail lending to low- and moderate-income individuals and communities under the Retail Lending Test, and to adapt to changes in the banking industry, such as mobile and online banking. For an intermediate bank or a small bank that opts to be evaluated under the Retail Lending Test, the agencies evaluate the bank's retail lending performance in the outside retail lending area on a mandatory basis if the bank conducts a majority of its retail lending outside of its facility-based assessment areas. If the intermediate or small bank does not conduct a majority of its retail lending outside of its facility-based assessment areas, the bank may opt to have its retail lending in its outside retail lending area evaluated.

Areas for eligible community development activities

Like the proposal, the final rule provides that all banks will receive consideration for any qualified community development loans, investments, or services, regardless of location. In assessing a large bank's Community Development Financing Test performance, the final rule includes a focus on performance within facility-based assessment areas. Specifically, when developing conclusions for a State, multistate MSA, or for the institution overall, the final rule combines two components through a weighted average calculation: (1) performance within the bank's facility-based assessment areas in the State, multistate MSA, or for the institution overall; and (2) performance across the entire State, multistate MSA, and for the institution. The weights of the two components are based on the percentage of a bank's retail lending and deposits inside its facility-based assessment areas. For example, for a bank with a relatively low percentage of retail lending and deposits inside its facility-based assessment areas, the bank's performance within its facility-based assessment areas receives less weight than its performance across the entire State, multistate MSA, or nationwide area. In this way, the Community Development Financing Test recognizes differences in bank business models.

Categories of Community Development

Updated community development definition

Under the current CRA regulations, in evaluating a bank's CRA performance, banks may receive community development consideration for community development loans, investments, and services under various tests.

The final rule updates the definition of community development to provide banks with additional clarity regarding the loans, investments, and services that the agencies have determined support community development. The agencies believe these activities are responsive to the needs of low- and moderate-income individuals and communities, designated distressed or underserved nonmetropolitan areas, Native Land Areas, small businesses, and small farms.

Specifically, the agencies have defined the following eleven community development categories in the final rule:

- Affordable housing, which has five components: (1) rental housing in conjunction with a government affordable housing plan, program, initiative, tax credit, or subsidy; (2) multifamily rental housing with affordable rents; (3) one-to-four family rental housing with affordable rents in a nonmetropolitan area; (4) affordable owner-occupied housing for low- or moderate-income individuals; and (5) mortgage-backed securities.
- Economic development, which includes loans, investments, and services undertaken in conjunction or in syndication with government programs; loans, investments, and services provided to intermediaries; and other forms of assistance to small businesses and small farms. Unlike the proposal, this category includes direct loans to small businesses and small farms in conjunction or in syndication with government programs that meet a size and purpose test.
- Community supportive services, which includes activities that assist, benefit, or contribute to the health, stability, or well-being of low- or moderate-income individuals, and replaces the current rule’s “community services targeted to low- or moderate-income individuals” category.
- Six categories of place-based activities, which replace the revitalization and stabilization activities component of the current rule. Each of the final place-based categories adopts a focus on targeted geographic areas and includes common place-based eligibility criteria that must be met. The six place-based categories are:
 - Revitalization or stabilization activities;
 - Essential community facilities;
 - Essential community infrastructure;
 - Recovery activities that promote the recovery of a designated disaster area;
 - Disaster preparedness and weather resiliency activities; and
 - Qualifying activities in Native Land Areas.
- Activities with minority depository institutions (MDIs), women’s depository institutions (WDIs), low-income credit unions (LICUs), and community development financial institutions (CDFIs).
- Financial literacy, which retains the proposed approach of qualifying activities assisting individuals, families, and households of all income levels, including low- or moderate-income individuals, families, and households.

Illustrative list and confirmation process

To promote clarity and consistency, the final rule also provides that the agencies will issue, maintain, and periodically update a publicly available illustrative list of non-exhaustive examples of loans, investments, and services that qualify for community development consideration. In

addition, the final rule includes a process through which banks can confirm with the appropriate Federal financial supervisory agency whether a particular loan, investment, or service is eligible for community development consideration.

Impact and responsiveness review

To promote clarity and consistency in the final rule, the agencies will evaluate the extent to which a bank's community development loans, investments, and services are impactful and responsive in meeting community development needs, through the application of a non-exhaustive list of review factors. Such factors were referred to as impact review factors in the agencies' proposal but are referred to as impact and responsiveness factors in the final rule.

Data Collection, Maintenance, and Reporting

Consistent with the proposal, the agencies are not imposing any new data collection and reporting requirements for small and intermediate banks. For large banks, the final rule leverages existing data where possible and introduces updated data collection, maintenance, and reporting requirements to fill gaps in the current regulation and facilitate implementation of the final rule. For example, the final rule requires certain large banks to collect, maintain, and report data that would enable the agencies both to implement the metrics and benchmarks included in the Retail Lending Test and Community Development Financing Test, and to evaluate activities under the Retail Services and Products Test. These data requirements are intended to support greater clarity and consistency in the application of the CRA regulations and are tailored by bank size, such as by introducing certain data requirements only for those large banks with assets over \$10 billion dollars.

The final rule requires the agencies to publish on their respective websites certain information related to the distribution by borrower income level, race, and ethnicity of a large bank's home mortgage loan originations and applications in each of the bank's assessment areas. This disclosure would leverage existing data available under the Home Mortgage Disclosure Act (HMDA).

Transition

Although the effective date of the final rule is April 1, 2024, the applicability date for the majority of the provisions is January 1, 2026. Specifically, the following provisions of the final rule will become applicable on January 1, 2026: final §§ __.12 through __.15; final §§ __.17 through __.30; final § __.42(a); the data collection and maintenance requirements in final § __.42(c), (d), (e), and (f); and appendices A through F. Banks will have until January 1, 2027, to comply with the reporting requirements of § __.42(c), (d), (e), and (f), with data reporting requirements every April 1 beginning in 2027. In final § __.51, the agencies have also included transition provisions

relating to: applicability of the current CRA regulations; HMDA data disclosures; CRA consideration of eligible loans, investments, services, or products; strategic plans; and a particular ratings standard relating to minimum performance requirements applicable to large banks. Until the applicability dates for these provisions, banks will follow the current CRA regulations, included as appendix G to the revised CRA regulations.

Transition to Section 1071 Data

As discussed in the section-by-section analysis of §§ __.12, __.22, and __.42, the agencies have included amendments to transition to the use of Consumer Financial Protection Bureau's (CFPB) Section 1071 Final Rule small business and small farm lending data (Section 1071 data) once the data are available. The Section 1071 data would replace CRA small business and small farm lending data required to be collected, maintained, and reported pursuant to final § __.42(a)(1) and (b)(1).

With respect to the agencies' transition to using Section 1071 data, as indicated in the section-by-section analysis of § __.12, the agencies have removed proposed references to Section 1071 data in the final rule's regulatory text. Instead, each agency is adopting separate agency-specific amendatory text that provides for a transition to Section 1071 data. These transition amendments implement the intent of the agencies articulated in the proposal to leverage Section 1071 data while accounting for the current uncertainty surrounding the availability of that data. Specifically, when effective, these transition amendments will add appropriate references to the Section 1071 rulemaking, remove references to Call Report-based small business and small farm data, and make other corresponding changes to the final rule regulatory text.

The agencies are not including an effective date for these Section 1071-related transition amendments in the final rule. Instead, once the availability of Section 1071 data is clarified, the agencies will take steps to provide appropriate notice in the Federal Register of the effective date of the transition amendments. The agencies expect that the effective date will be on January 1 of the relevant year to align with the final rule's data collection and reporting, benchmark calculations, and performance analysis, which all are based on whole calendar years.

Implementation

The agencies expect to issue supervisory guidance, including examination procedures, to promote clarity and transparency regarding implementation of the final rule. In addition, the agencies will conduct outreach and training to facilitate implementation of the final rule. For instance, the agencies expect to develop data reporting guides and technical assistance materials to assist banks in understanding supervisory expectations with respect to the final

rule's data reporting requirements. In addition, the agencies expect to develop templates, such as for the submission of digital and other delivery systems data as well as for responsive deposit products data, to increase consistency, and will continue to explore other tools to improve efficiency and reduce burden. The agencies are also planning to develop data tools for banks and the public that will increase familiarity with the operation of the performance tests and allow for monitoring of performance relative to benchmarks based on historical data.

Each of the topics highlighted through this Summary of the Final Rule are discussed in greater detail in the section-by-section analysis in Section IV of this SUPPLEMENTARY INFORMATION. The agencies are setting forth in this SUPPLEMENTARY INFORMATION the final rule using common regulation text for ease of review. The agencies have also included agency-specific amendatory text¹² where necessary to account for differing agency authority and terminology.

Chapter 4

The CRA Final Rule

Structure of the Final Rule

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Subpart A - General

§__.11 Authority, purposes, and scope

(a) [Reserved].

(b) **Purposes.** This part implements the requirement in the Community Reinvestment Act (12 U.S.C. 2901 et seq.) (CRA) that the [Agency] assess a bank’s record of helping to meet the credit needs of the local communities in which the bank is chartered, consistent with the safe and sound operation of the bank, and to take this record into account in the agency’s evaluation of an application for a deposit facility by the bank. Accordingly, this part:

- (1) Establishes the framework and criteria by which the [Agency] assesses a bank’s record of responding to the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank; and
- (2) Provides that the [Agency] takes that record into account in considering certain applications.

(c) [Reserved].

§__.12 Definitions.

For purposes of this part, the following definitions apply:

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

Affordable housing means activities described in § __.13(b).

Area median income means:

- (1) The median family income for the MSA (as defined in this section), if an individual, family, household, or census tract is located in an MSA that has not been subdivided into metropolitan divisions, or for the metropolitan division, if an individual, family, household, or census tract is located in an MSA that has been subdivided into metropolitan divisions; or
- (2) The statewide nonmetropolitan median family income, if an individual, family, household, or census tract is located in a nonmetropolitan area.

Assets means a bank's total assets as reported in Schedule RC of the Consolidated Reports of Condition and Income (Call Report) as filed under 12 U.S.C. 161, 1464, or 1817, as applicable, or Schedule RAL of the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks as filed under 12 U.S.C. 1817 or 3102(b) or (c)(5), as applicable.

Branch means a staffed banking facility, whether shared or unshared, that the [Agency] approved or authorized as a branch and that is open to, and accepts deposits from, the general public.

Census tract means a census tract delineated by the U.S. Census Bureau.

Closed-end home mortgage loan has the same meaning given to the term "closed-end mortgage loan" in 12 CFR 1003.2, excluding loan transactions set forth in 12 CFR 1003.3(c)(1) through (c)(10) and (c)(13) and multifamily loans as defined in this section.

Combination of loan dollars and loan count means, when applied to a particular ratio, the average of:

- (1) The ratio calculated using loans measured in dollar volume; and
- (2) The ratio calculated using loans measured in number of loans.

Community development means activities described in § __.13(b) through (l).

Community Development Financial Institution (CDFI) means an entity that satisfies the definition in section 103(5)(A) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)) and is certified by the U.S. Department of the Treasury's Community Development Financial Institutions Fund as meeting the requirements set forth in 12 CFR 1805.201(b).

Community development investment means a lawful investment, including a legally binding commitment to invest, that is reported on Schedule RC-L of the Call Report or on Schedule L of the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, as applicable; deposit; membership share; grant; or monetary or in-kind donation that supports community development, as described in § __.13.

Community development loan means a loan, including a legally binding commitment to extend credit, such as a standby letter of credit, that supports community development, as described in § __.13. A community development loan does not include any home mortgage loan considered under the Retail Lending Test in § __.22, with the exception of one-to-four family home mortgage loans for rental housing with affordable rents in nonmetropolitan areas under § __.13(b)(3).

Community development services means the performance of volunteer services by a bank's or its affiliate's board members or employees, performed on behalf of the bank, where those services:

- (1) Support community development, as described in § __.13; and
- (2) Are related to the provision of financial services, which include credit, deposit, and other personal and business financial services, or services that reflect a board member's or employee's expertise at the bank or affiliate, such as human resources, information technology, and legal services.

Consumer loan means a loan to one or more individuals for household, family, or other personal expenditures and that is one of the following types of loans:

- (1) Automobile loan as defined in Schedule RC-C of the Call Report;
- (2) Credit card loan, which has the same meaning as "credit card" in Schedule RC-C of the Call Report;
- (3) Other revolving credit plan, as defined in Schedule RC-C of the Call Report; and
- (4) Other consumer loan, as defined in Schedule RC-C of the Call Report.

County means any county, county equivalent, or statistically equivalent entity as defined by the U.S. Census Bureau.

Depository institution means any institution subject to the CRA, as described in 12 CFR 25.11, 228.11, and 345.11.

Deposits has the following meanings:

(1) For banks that collect, maintain, and report deposits data as provided in § __.42, deposits means deposits in domestic offices of individuals, partnerships, and corporations, and of commercial banks and other depository institutions in the United States as defined in Schedule RC-E of the Call Report; deposits does not include U.S. Government deposits, State and local government deposits, domestically held deposits of foreign governments or official institutions, or domestically held deposits of foreign banks or other foreign financial institutions; and

(2) For banks that do not collect, maintain, and report deposits data as provided in § __.42, deposits has the same meaning as in the FDIC's Summary of Deposits Reporting Instructions.

Deposit location means:

(1) For banks that collect, maintain, and report deposits data as provided in § __.42, the address on file with the bank for purposes of the Customer Identification Program required by 31 CFR 1020.220 or another documented address at which the depositor resides or is located.

(2) For banks that do not collect, maintain, and report deposits data as provided in § __.42, the county of the bank facility to which the deposits are assigned in the FDIC's Summary of Deposits.

Digital delivery system means a channel through which banks offer retail banking services electronically, such as online banking or mobile banking.

Distressed or underserved nonmetropolitan middle-income census tract means a census tract publicly designated as such by the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC), based on the criteria in paragraphs (1) and (2) of this definition, compiled in a list, and published annually by the Federal Financial Institutions Examination Council (FFIEC).

(1) A nonmetropolitan middle-income census tract is designated as distressed if it is in a county that meets one or more of the following criteria:

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

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

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

(2) A nonmetropolitan middle-income census tract is designated as underserved if it meets the criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the census tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The criteria for these designations are based on the Urban Influence Codes established by the U.S. Department of Agriculture's Economic Research Service numbered "7," "10," "11," or "12."

Evaluation period means the period, generally in calendar years, during which a bank conducted the activities that the [Agency] evaluates in a CRA examination, in accordance with the [Agency]'s guidelines and procedures.

Facility-based assessment area means a geographic area delineated pursuant to § __.16.

High Opportunity Area means an area identified by the Federal Housing Finance Agency for purposes of the Duty to Serve Underserved Markets regulation in 12 CFR 1282, subpart C.

Home mortgage loan means a closed-end home mortgage loan or an open-end home mortgage loan as these terms are defined in this section.

Income level includes:

(1) Low-income, which means:

- (i) For individuals, families, or households, income that is less than 50 percent of the area median income; or
- (ii) For a census tract, a median family income that is less than 50 percent of the area median income.

(2) Moderate-income, which means:

- (i) For individuals, families, or households, income that is at least 50 percent and less than 80 percent of the area median income; or
- (ii) For a census tract, a median family income that is at least 50 percent and less than 80 percent of the area median income.

(3) Middle-income, which means:

- (i) For individuals, families, or households, income that is at least 80 percent and less than 120 percent of the area median income; or

(ii) For a census tract, a median family income that is at least 80 percent and less than 120 percent of the area median income.

(4) Upper-income, which means:

(i) For individuals, families, or households, income that is 120 percent or more of the area median income; or

(ii) For a census tract, a median family income that is 120 percent or more of the area median income.

Intermediate bank means a bank, excluding a bank designated as a limited purpose bank pursuant to § __.26, that had assets of at least \$600 million as of December 31 in both of the prior two calendar years and less than \$2 billion as of December 31 in either of the prior two calendar years. The [Agency] adjusts and publishes the figures in this paragraph annually, 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 12-month period ending in November, with rounding to the nearest million.

Large bank means a bank, excluding a bank designated as a limited purpose bank pursuant to § __.26, that had assets of at least \$2 billion as of December 31 in both of the prior two calendar years. The [Agency] adjusts and publishes the figure in this paragraph annually, 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 12-month period ending in November, with rounding to the nearest million.

Large Depository Institution means any depository institution, excluding depository institutions designated as limited purpose banks or savings associations pursuant to 12 CFR 25.26(a) and depository institutions designated as limited purpose banks pursuant to 12 CFR 228.26(a) or 345.26(a), that meets the asset size threshold of a large bank.

Limited purpose bank means a bank that is not in the business of extending closed-end home mortgage loans, small business loans, small farm loans, or automobile loans evaluated under § __.22 to retail customers, except on an incidental and accommodation basis, and for which a designation as a limited purpose bank is in effect, pursuant to § __.26.

Loan location. A loan is located as follows:

(1) A consumer loan is located in the census tract where the borrower resides at the time that the borrower submits the loan application;

(2) A home mortgage loan or a multifamily loan is located in the census tract where the property securing the loan is located; and

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

Low-cost education loan means any private education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(8)) (including a loan under a State or local education loan program), originated by the bank for a student at an “institution of higher education,” as generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

Low-income credit union (LICU) has the same meaning given to that term in 12 CFR 701.34.

Low-Income Housing Tax Credit (LIHTC) means a Federal tax credit for housing persons of low income pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

Major product line means a product line that the [Agency] evaluates in a particular Retail Lending Test Area, pursuant to § __.22(d)(2) and paragraphs II.b.1 and II.b.2 of appendix A of this part.

Majority automobile lender means a bank for which more than 50 percent of its home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans were automobile loans, as determined pursuant to paragraph II.b.3 of appendix A of this part.

Metropolitan area means any MSA.

Metropolitan division has the same meaning as that term is defined by the Director of the Office of Management and Budget.

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

Minority depository institution (MDI) means:

(1) For purposes of activities conducted pursuant to 12 U.S.C. 2907(a), “minority depository institution” as defined in 12 U.S.C. 2907(b)(1); and (2) For all other purposes:

(i) “Minority depository institution” as defined in 12 U.S.C. 2907(b)(1);

(ii) “Minority depository institution” as defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 1463 note); or

(iii) A depository institution considered to be a minority depository institution by the appropriate Federal banking agency. For purposes of this paragraph, “appropriate Federal banking agency” has the meaning given to it in 12 U.S.C. 1813(q).

Mission-driven nonprofit organization means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) and exempt from taxation under section 501(a) of such Code that benefits or serves primarily low- or moderate-income individuals or communities, small businesses, or small farms.

MSA means a metropolitan statistical area as that term is defined by the Director of the Office of Management and Budget.

Multifamily loan means an extension of credit that is secured by a lien on a “multifamily dwelling” as defined in 12 CFR 1003.2.

Multistate MSA means an MSA that crosses a State boundary.

Nationwide area means the entire United States and its territories. Native Land Area means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States, as described in 18 U.S.C. 1151(a);

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, as described in 18 U.S.C. 1151(b);

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same, as defined in 18 U.S.C. 1151(c);

(4) Any land held in trust by the United States for tribes or Native Americans or tribally-held restricted fee land;

(5) Reservations established by a State government for a tribe or tribes recognized by the State;

(6) Any Native village, as defined in 43 U.S.C. 1602(c), in Alaska;

(7) Lands that have the status of Hawaiian Home Lands as defined in section 204 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108), as amended;

(8) Areas defined by the U.S. Census Bureau as Alaska Native Village Statistical Areas, Oklahoma Tribal Statistical Areas, Tribal-Designated Statistical Areas, or American Indian Joint-Use Areas; and

(9) Land areas of State-recognized Indian tribes and heritage groups that are defined and recognized by individual States and included in the U.S. Census Bureau's annual Boundary and Annexation Survey.

New Markets Tax Credit (NMTC) means a Federal tax credit pursuant to section 45D of the Internal Revenue Code of 1986 (26 U.S.C. 45D).

Nonmetropolitan area means any area that is not located in an MSA.

Open-end home mortgage loan has the same meaning as given to the term "open-end line of credit" in 12 CFR 1003.2, excluding loan transactions set forth in 12 CFR 1003.3(c)(1) through (c)(10) and (c)(13) and multifamily loans as defined in this section.

Other delivery system means a channel, other than branches, remote services facilities, or digital delivery systems, through which banks offer retail banking services.

Outside retail lending area means the geographic area delineated pursuant to § __.18.

Persistent poverty county means a county that has had poverty rates of 20 percent or more for 30 years, as publicly designated by the Board, FDIC, and OCC, compiled in a list, and published annually by the FFIEC.

Product line means a bank's loans in one of the following, separate categories in a particular Retail Lending Test Area:

(1) Closed-end home mortgage loans;

(2) Small business loans;

(3) Small farm loans; and

(4) Automobile loans, if a bank is a majority automobile lender or opts to have its automobile loans evaluated pursuant to § __.22.

Remote service facility means an automated, virtually staffed, or unstaffed banking facility owned or operated by, or operated exclusively for, a bank, such as an automated teller machine (ATM), interactive teller machine, cash dispensing machine, or other remote electronic facility, that is open to the general public and at which deposits are accepted, cash dispersed, or money lent.

Reported loan means:

(1) A home mortgage loan or a multifamily loan reported by a bank pursuant to the Home Mortgage Disclosure Act, as implemented by 12 CFR part 1003; or

(2) A small business loan or a small farm loan reported by a bank pursuant to § __.42.

Retail banking products means credit and deposit products or programs that facilitate a lending or depository relationship between the bank and consumers, small businesses, or small farms.

Retail banking services means retail financial services provided by a bank to consumers, small businesses, or small farms and include a bank's systems for delivering retail financial services.

Retail lending assessment area means a geographic area delineated pursuant to § __.17.

Retail Lending Test Area means a facility-based assessment area, a retail lending assessment area, or an outside retail lending area.

Small bank means a bank, excluding a bank designated as a limited purpose bank pursuant to § __.26, that had assets of less than \$600 million as of December 31 in either of the prior two calendar years. The [Agency] adjusts and publishes the dollar figure in this paragraph annually 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 12-month period ending in November, with rounding to the nearest million.

Small business means a business, other than a farm, that had gross annual revenues for its preceding fiscal year of \$5 million or less.

Small business loan means, notwithstanding the definition of “small business” in this section, a loan included in “loans to small businesses” as defined in the instructions for preparation of the Call Report.

Small farm means a farm that had gross annual revenues for its preceding fiscal year of \$5 million or less.

Small farm loan means, notwithstanding the definition of “small farm” in this section, a loan included in “loans to small farms” as defined in the instructions for preparation of the Call Report.

State means a U.S. State or territory, and includes the District of Columbia.

Targeted census tract means:

- (1) A low-income census tract or a moderate-income census tract; or
- (2) A distressed or underserved nonmetropolitan middle-income census tract.

Tribal government means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list most recently published pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Women’s depository institution (WDI) means “women’s depository institution” as defined in 12 U.S.C. 2907(b)(2).

§__.13 Consideration of community development loans, community development investments, and community development services

As provided in paragraph (a) of this section, a bank may receive consideration for a loan, investment, or service that supports community development as described in paragraphs (b) through (l) of this section.

(a) Full and partial credit for community development loans, community development investments, and community development services.

(1) *Full credit.* A bank will receive credit for its entire loan, investment, or service if it meets the majority standard in paragraph (a)(1)(i) of this section; meets the bona fide intent standard in paragraph (a)(1)(ii) of this section; involves an MDI, WDI, LICU, and

CDFI as provided in paragraph (a)(1)(iii) of this section; or involves a LIHTC as provided in paragraph (a)(1)(iv) of this section.

(i) *Majority standard.* A loan, investment, or service meets the majority standard if:

(A) The loan, investment, or service supports community development under one or more of paragraphs (b) through (l) of this section; and

(B)

(1) For loans, investments, or services supporting community development under paragraphs (b)(1) through (b)(3) of this section, the majority of the housing units are affordable to low- or moderate-income individuals, families, or households;

(2) For loans, investments, or services supporting community development under paragraphs (b)(4), (b)(5), and (d) of this section, the majority of the beneficiaries are, or the majority of dollars benefit or serve, low- or moderate-income individuals, families, or households;

(3) For loans, investments, or services supporting community development under paragraph (c) of this section, the majority of the beneficiaries are, or the majority of dollars benefit or serve, small businesses or small farms;

(4) For loans, investments, or services supporting community development under paragraphs (e), (f), (g), and (i) of this section, the majority of the beneficiaries are, or the majority of dollars benefit or serve, residents of targeted census tracts;

(5) For loans, investments, or services supporting community development under paragraph (h) of this section, the majority of the beneficiaries are, or the majority of dollars benefit or serve, residents of designated disaster areas;

(6) For loans, investments, or services supporting community development under paragraph (j) of this section, the majority of the beneficiaries are, or the majority of dollars benefit or serve, residents of Native Land Areas; or

(7) For loans, investments, or services supporting community development under paragraph (l) of this section, the loan, investment, or service primarily supports community development under paragraph (l) of this section.

(ii) Bona fide intent standard. A loan, investment, or service meets the bona fide intent standard if

(A) The housing units, beneficiaries, or proportion of dollars necessary to meet the majority standard are not reasonably quantifiable pursuant to paragraph (a)(1)(i) of this section;

(B) The loan, investment, or service has the express, bona fide intent of community development under one or more of paragraphs (b) through (l) of this section; and

(C) The loan, investment, or service is specifically structured to achieve community development under one or more of paragraphs (b) through (l) of this section.

(iii) MDI, WDI, LICU, and CDFI. The loan, investment, or service supports community development under paragraph (k) of this section.

(iv) LIHTC. The loan, investment, or service supports LIHTC-financed affordable housing under paragraph (b)(1) of this section.

(2) *Partial credit.* If a loan, investment, or service supporting affordable housing under paragraph (b)(1) of this section does not meet the majority standard under paragraph (a)(1)(i) of this section, a bank will receive partial credit for the loan, investment, or service in proportion to the percentage of total housing units in any development that are affordable to low- or moderate-income individuals.

(b) Affordable housing. Affordable housing comprises the following:

(1) *Rental housing in conjunction with a government affordable housing plan, program, initiative, tax credit, or subsidy.* Rental housing for low- or moderate-income individuals purchased, developed, financed, rehabilitated, improved, or preserved in conjunction with a Federal, State, local, or tribal government affordable housing plan, program, initiative, tax credit, or subsidy.

(2) *Multifamily rental housing with affordable rents.* Multifamily rental housing purchased, developed, financed, rehabilitated, improved, or preserved if:

(i) For the majority of units, the monthly rent as underwritten by the bank, reflecting post-construction or post-renovation changes as applicable, does not exceed 30 percent of 80 percent of the area median income; and

(ii) One or more of the following additional criteria are met:

(A) The housing is located in a low- or moderate-income census tract;

(B) The housing is located in a census tract in which the median income of renters is low- or moderate-income and the median rent does not exceed 30 percent of 80 percent of the area median income;

(C) The housing is purchased, developed, financed, rehabilitated, improved, or preserved by any nonprofit organization with a stated mission of, or that otherwise directly supports, providing affordable housing; or

(D) The bank provides documentation that a majority of the housing units are occupied by low- or moderate-income individuals, families, or households.

(3) *One-to-four family rental housing with affordable rents in a nonmetropolitan area.* Oneto-four family rental housing purchased, developed, financed, rehabilitated, improved, or preserved in a nonmetropolitan area that meets the criteria in paragraph (b)(2) of this section;

(4) *Affordable owner-occupied housing for low- or moderate-income individuals.* Assistance for low- or moderate-income individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing, excluding loans by a bank directly to one or more owner-occupants of such housing.

(5) *Mortgage-backed securities.* Purchases of mortgage-backed securities where a majority of the underlying loans are not loans that the bank originated or purchased and:

(i) Are home mortgage loans made to low- or moderate-income individuals; or

(ii) Are loans that finance multifamily affordable housing that meets the requirements of paragraph (b)(1) of this section.

(c) Economic development. Economic development comprises:

(1) *Government-related support for small businesses and small farms.* Loans, investments, and services undertaken in conjunction or in syndication with Federal, State, local, or tribal government plans, programs, or initiatives that support small businesses or small farms, as follows:

(i) *Loans, investments, and services other than direct loans to small businesses and small farms.* Loans, investments, and services that support small businesses or small farms in accordance with how small businesses and small farms are defined in the applicable plan, program, or initiative, but excluding loans by a bank directly to small businesses or small farms (either as defined in a government plan, program, or initiative or in § __.12). If the government plan, program, or initiative does not identify a standard for the size of the small

businesses or small farms supported by the plan, program, or initiative, the small businesses or small farms supported must meet the definition of small business or small farm in § __.12. Loans to, investments in, or services provided to the following are presumed to meet the criteria of this paragraph:

(A) Small Business Investment Company (13 CFR 107);

(B) New Markets Venture Capital Company (13 CFR 108);

(C) Qualified Community Development Entity (26 U.S.C. 45D(c)); or

(D) U.S. Department of Agriculture Rural Business Investment Company (7 CFR 4290.50).

(ii) Direct loans to small businesses and small farms. Loans by a bank directly to businesses or farms, including, but not limited to, loans in conjunction or syndicated with a U.S. Small Business Administration (SBA) Certified Development Company (13 CFR 120.10) or Small Business Investment Company (13 CFR 107), that meet the following size and purpose criteria:

(A) Size eligibility standard. Loans that may be considered under paragraph (c)(1)(ii) of this section must be to businesses and farms that meet the size eligibility standards of the U.S. Small Business Administration Development Company (13 CFR 121.301) or Small Business Investment Company (13 CFR 121.301 and 13 CFR 121.201) programs or that meet the definition of small business or small farm in § __.12.

(B) Purpose test. Loans that may be considered under paragraph (c)(1)(ii) of this section must have the purpose of promoting permanent job creation or retention for low- or moderate-income individuals or in low- or moderate-income census tracts.

(2) Intermediary support for small businesses and small farms. Loans, investments, or services provided to intermediaries that lend to, invest in, or provide assistance, such as financial counseling, shared space, technology, or administrative assistance, to small businesses or small farms; or

(3) Other support for small businesses and small farms. Assistance, such as financial counseling, shared space, technology, or administrative assistance, to small businesses or small farms.

(d) Community supportive services. Community supportive services are activities that assist, benefit, or contribute to the health, stability, or well-being of low- or moderate-income individuals, such as childcare, education, workforce development and job training programs,

health services programs, and housing services programs. Community supportive services include, but are not limited to, activities that:

- (1) Are conducted with a mission-driven nonprofit organization;
- (2) Are conducted with a nonprofit organization located in and serving low- or moderate-income census tracts;
- (3) Are conducted in a low- or moderate-income census tract and targeted to the residents of the census tract;
- (4) Are offered to individuals at a workplace where the majority of employees are low- or moderate-income, based on U.S. Bureau of Labor Statistics data for the average wage for workers in that particular occupation or industry;
- (5) Are provided to students or their families through a school at which the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture's National School Lunch Program;
- (6) Primarily benefit or serve individuals who receive or are eligible to receive Medicaid;
- (7) Primarily benefit or serve individuals who receive or are eligible to receive Federal Supplemental Security Income, Social Security Disability Insurance, or support through other Federal disability assistance programs; or
- (8) Primarily benefit or serve recipients of government assistance plans, programs, or initiatives that have income qualifications equivalent to, or stricter than, the definitions of low- and moderate-income as defined in this part. Examples include, but are not limited to, the U.S. Department of Housing and Urban Development's section 8, 202, 515, and 811 programs or the U.S. Department of Agriculture's section 514, 516, and Supplemental Nutrition Assistance programs.

(e) Revitalization or stabilization.

(1) *In general.* Revitalization or stabilization comprises activities that support revitalization or stabilization of targeted census tracts, including adaptive reuse of vacant or blighted buildings, brownfield redevelopment, support of a plan for a business improvement district or main street program, or any other activity that supports revitalization or stabilization, and that:

- (i) Are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus on revitalizing or stabilizing targeted census tracts;

(ii) Benefit or serve residents, including low- or moderate-income individuals, of targeted census tracts; and

(iii) Do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in targeted census tracts.

(2) *Mixed-use revitalization or stabilization project.* Projects to revitalize or stabilize a targeted census tract that include both commercial and residential components qualify as revitalization or stabilization activities under this paragraph, if:

(i) The criteria in paragraph (e)(1) of this section are met; and

(ii) More than 50 percent of the project is non-residential as measured by the percentage of total square footage or dollar amount of the project.

(f) Essential community facilities. Essential community facilities are public facilities that provide essential services generally accessible by a local community, including, but not limited to, schools, libraries, childcare facilities, parks, hospitals, healthcare facilities, and community centers that benefit or serve targeted census tracts, and that:

(1) Are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus on benefitting or serving targeted census tracts;

(2) Benefit or serve residents, including low- or moderate-income individuals, of targeted census tracts; and

(3) Do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in targeted census tracts.

(g) Essential community infrastructure. Essential community infrastructure comprises activities benefitting or serving targeted census tracts, including, but not limited to, broadband, telecommunications, mass transit, water supply and distribution, and sewage treatment and collection systems, and that:

(1) Are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus on benefitting or serving targeted census tracts;

(2) Benefit or serve residents, including low- or moderate-income individuals, of targeted census tracts; and

(3) Do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in targeted census tracts.

(h) Recovery of designated disaster areas.

(1) *In general.* Activities that promote recovery of a designated disaster area are those that revitalize or stabilize geographic areas subject to a Major Disaster Declaration administered by the Federal Emergency Management Agency (FEMA), and that:

(i) Are undertaken in conjunction with a disaster plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus on benefitting or serving the designated disaster area;

(ii) Benefit or serve residents, including low- or moderate-income individuals, of the designated disaster area; and

(iii) Do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in the designated disaster area.

(2) *Eligibility limitations for loans, investments, or services supporting recovery of a designated disaster area.*

(i) Loans, investments, or services that support recovery from a designated disaster in counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures) are not eligible for consideration under this paragraph, unless the Board, the FDIC, and the OCC announce a temporary exception.

(ii) The [Agency] will consider loans, investments, and services that support recovery from a designated disaster under this paragraph for 36 months after a Major Disaster Declaration, unless that time period is extended by the Board, the FDIC, and the OCC.

(i) Disaster preparedness and weather resiliency. Disaster preparedness and weather resiliency activities assist individuals and communities to prepare for, adapt to, and withstand natural disasters or weather-related risks or disasters. Disaster preparedness and weather resiliency activities benefit or serve targeted census tracts and:

(1) Are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus on benefitting or serving targeted census tracts;

(2) Benefit or serve residents, including low- or moderate-income individuals, in targeted census tracts; and

(3) Do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in targeted census tracts.

(j) Revitalization or stabilization, essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency in Native Land Areas.

(1) Revitalization or stabilization, essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency activities in Native Land Areas are activities specifically targeted to and conducted in Native Land Areas.

(2) Revitalization or stabilization activities in Native Land Areas are defined consistent with paragraph (e) of this section, but specifically:

(i) Are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes an explicit focus on revitalizing or stabilizing Native Land Areas and a particular focus on low- or moderate-income households.

(ii) Benefit or serve residents in Native Land Areas, with substantial benefits for low- or moderate-income individuals in Native Land Areas; and

(iii) Do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in Native Land Areas.

(3) Essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency activities in Native Land Areas are defined consistent with paragraphs (f), (g), and (i) of this section, respectively, but specifically:

(i) Are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes an explicit focus on benefitting or serving Native Land Areas;

(ii) Benefit or serve residents, including low- or moderate-income individuals, in Native Land Areas; and

(iii) Do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in Native Land Areas.

(k) Activities with MDIs, WDIs, LICUs, or CDFIs. Activities with MDIs, WDIs, LICUs, or CDFIs are loans, investments, or services undertaken by any bank, including by an MDI, WDI, or CDFI bank evaluated under part 25, 228, or 345 of this title, in cooperation with an MDI, WDI, LICU, or CDFI. Such activities do not include investments by an MDI, WDI, or CDFI bank in itself.

(l) Financial literacy. Activities that promote financial literacy are those that assist individuals, families, and households, including low- or moderate-income individuals, families, and

households, to make informed financial decisions regarding managing income, savings, credit, and expenses, including with respect to homeownership.

§__.14 Community development illustrative list; Confirmation of eligibility

(a) Illustrative list.

(1) *Issuing and maintaining the illustrative list.* The Board, the FDIC, and the OCC jointly issue and maintain a publicly available illustrative list of non-exhaustive examples of loans, investments, and services that qualify for community development consideration as provided in § __.13.

(2) *Modifying the illustrative list.*

(i) The Board, the FDIC, and the OCC update the illustrative list in paragraph (a)(1) of this section periodically.

(ii) If the Board, the FDIC, and the OCC determine that a loan or investment is no longer eligible for community development consideration, the owner of the loan or investment at the time of the determination will continue to receive community development consideration for the remaining term or period of the loan or investment. However, these loans or investments will not be considered eligible for community development consideration for any new purchasers of that loan or investment after the agencies make a determination that the loan or investment is no longer eligible for community development consideration.

(b) Confirmation of eligibility.

(1) *Request for confirmation of eligibility.* A bank subject to this part may request that the [Agency] confirm that a loan, investment, or service is eligible for community development consideration by submitting a request to, and in a format prescribed by, the [Agency].

(2) *Determination of eligibility.*

(i) To determine the eligibility of a loan, investment, or service for which a request has been submitted under paragraph (b)(1) of this section, the [Agency] considers:

(A) Information that describes and supports the request; and

(B) Any other information that the [Agency] deems relevant.

(ii) The Board, the FDIC, and the OCC expect and are presumed to jointly determine eligibility of a loan, investment, or service under paragraph (b)(2)(i) of this section to promote consistency. Before making a determination under paragraph (b)(2)(i) of this section, the [Agency] consults with the [other Agencies] regarding the eligibility of a loan, investment, or service.

(iii) The [Agency] may impose limitations or requirements on a determination of the eligibility of a loan, investment, or service to ensure consistency with this part.

(3) *Notification of eligibility.* The [Agency] notifies the requestor and the [other Agencies] in writing of any determination under paragraph (b)(2) of this section, as well as the rationale for such determination.

§__.15 Impact and responsiveness review of community development loans, community development investments, and community development services.

(a) Impact and responsiveness review, in general. Under the Community Development Financing Test in § __.24, the Community Development Services Test in § __.25, and the Community Development Financing Test for Limited Purpose Banks in § __.26, the [Agency] evaluates the extent to which a bank's community development loans, community development investments, and community development services are impactful and responsive in meeting community development needs in each facility-based assessment area and, as applicable, each State, multistate MSA, and the nationwide area. The [Agency] evaluates the impact and responsiveness of a bank's community development loans, community development investments, or community development services based on paragraph (b) of this section, and may take into account performance context information pursuant to § __.21(d).

(b) Impact and responsiveness review factors. Factors considered in evaluating the impact and responsiveness of a bank's community development loans, community development investments, and community development services include, but are not limited to, whether the community development loan, community development investment, or community development service:

(1) Benefits or serves one or more persistent poverty counties;

(2) Benefits or serves one or more census tracts with a poverty rate of 40 percent or higher;

(3) Benefits or serves one or more geographic areas with low levels of community development financing;

- (4) Supports an MDI, WDI, LICU, or CDFI, excluding certificates of deposit with a term of less than one year;
- (5) Benefits or serves low-income individuals, families, or households;
- (6) Supports small businesses or small farms with gross annual revenues of \$250,000 or less;
- (7) Directly facilitates the acquisition, construction, development, preservation, or improvement of affordable housing in High Opportunity Areas;
- (8) Benefits or serves residents of Native Land Areas;
- (9) Is a grant or donation;
- (10) Is an investment in projects financed with LIHTCs or NMTCs;
- (11) Reflects bank leadership through multi-faceted or instrumental support; or
- (12) Is a new community development financing product or service that addresses community development needs for low- or moderate-income individuals, families, or households.

Subpart B - Geographic Considerations

§__.16 Facility-based assessment areas.

(a) In general. A bank must delineate one or more facility-based assessment areas within which the [Agency] evaluates the bank's record of helping to meet the credit needs of its entire community pursuant to the performance tests and strategic plan described in § __.21.

(b) Geographic requirements for facility-based assessment areas.

(1) Except as provided in paragraph (b)(3) of this section, a bank's facility-based assessment areas must include each county in which a bank has a main office, a branch, or a deposit-taking remote service facility, as well as the surrounding counties in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans).

(2) Except as provided in paragraph (b)(3) of this section, each of a bank's facility-based assessment areas must consist of a single MSA, one or more contiguous counties within an MSA, or one or more contiguous counties within the nonmetropolitan area of a State.

(3) An intermediate bank or a small bank may adjust the boundaries of its facility-based assessment areas to include only the portion of a county that it reasonably can be expected to serve, subject to paragraph (c) of this section. A facility-based assessment area that includes a partial county must consist of contiguous whole census tracts.

(c) Other limitations on the delineation of a facility-based assessment area. Each of a bank's facility-based assessment areas:

(1) May not reflect illegal discrimination; and

(2) May not arbitrarily exclude low- or moderate-income census tracts. In determining whether a bank has arbitrarily excluded low- or moderate-income census tracts from a facility-based assessment area, the [Agency] takes into account the bank's capacity and constraints, including its size and financial condition.

(d) Military banks. Notwithstanding the requirements of this section, a military bank whose customers are not located within a defined geographic area may delineate the entire United States and its territories as its sole facility-based assessment area.

(e) Use of facility-based assessment areas. The [Agency] uses the facility-based assessment areas delineated by a bank in its evaluation of the bank's CRA performance unless the [Agency] determines that the facility-based assessment areas do not comply with the requirements of this section.

§ __.17 Retail lending assessment areas.

(a) In general.

(1) Based upon the criteria described in paragraphs (b) and (c) of this section, a large bank must delineate retail lending assessment areas within which the [Agency] evaluates the bank's record of helping to meet the credit needs of its entire community pursuant to § __.22.

(2) A large bank is not required to delineate retail lending assessment areas for a particular calendar year if, in the prior two calendar years, the large bank originated or purchased within its facility-based assessment areas more than 80 percent of its home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans if automobile loans are a product line for the large bank as described in paragraph II.a.1 of appendix A of this part.

(3) If, in a retail lending assessment area delineated pursuant to paragraph (c) of this section, the large bank did not originate or purchase any reported loans in any of the product lines that formed the basis of the retail lending assessment area delineation

pursuant to paragraph (c)(1) or (c)(2) of this section, the [Agency] will not consider the retail lending assessment area to have been delineated for that calendar year.

(b) Geographic requirements for retail lending assessment areas.

(1) A large bank's retail lending assessment area must consist of either:

(i) The entirety of a single MSA (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation applies), excluding any counties inside the large bank's facility-based assessment areas; or

(ii) All of the counties in the nonmetropolitan area of a State (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation applies), excluding:

(A) Any counties included in the large bank's facility-based assessment areas; and

(B) Any counties in which the large bank did not originate any closed-end home mortgage loans or small business loans that are reported loans during that calendar year.

(2) A retail lending assessment area may not extend beyond a State boundary unless the retail lending assessment area consists of counties in a multi-state MSA.

(c) Delineation of retail lending assessment areas. Subject to the geographic requirements in paragraph (b) of this section, a large bank must delineate, for a particular calendar year, a retail lending assessment area in any MSA or in the nonmetropolitan area of any State in which it originated:

(1) At least 150 closed-end home mortgage loans that are reported loans in each year of the prior two calendar years; or

(2) At least 400 small business loans that are reported loans in each year of the prior two calendar years.

(d) Use of retail lending assessment areas. The [Agency] uses the retail lending assessment areas delineated by a large bank in its evaluation of the bank's closed-end home mortgage lending and small business lending performance unless the [Agency] determines that the retail lending assessment areas do not comply with the requirements of this section.

___ .18 Outside retail lending areas

(a) In general.

(1) *Large banks.* The [Agency] evaluates a large bank's record of helping to meet the credit needs of its entire community in its outside retail lending area pursuant to § __.22. However, the [Agency] will not evaluate a large bank in its outside retail lending area if it did not originate or purchase loans in any product lines in the outside retail lending area during the evaluation period.

(2) *Intermediate or small banks.* The [Agency] evaluates the record of an intermediate bank, or a small bank that opts to be evaluated under the Retail Lending Test, of helping to meet the credit needs of its entire community in its outside retail lending area pursuant to § __.22, for a particular calendar year, if:

(i) The bank opts to have its major product lines evaluated in its outside retail lending area; or

(ii) In the prior two calendar years, the bank originated or purchased outside the bank's facility-based assessment areas more than 50 percent of the bank's home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans if automobile loans are a product line for the bank, as described in paragraph II.a.2 of appendix A of this part.

(b) Geographic requirements of outside retail lending areas.

(1) *In general.* A bank's outside retail lending area consists of the nationwide area, excluding:

(i) The bank's facility-based assessment areas and retail lending assessment areas; and

(ii) Any county in a nonmetropolitan area in which the bank did not originate or purchase any closed-end home mortgage loans, small business loans, small farm loans, or automobile loans if automobile loans are a product line for the bank.

(2) *Component geographic area.* The outside retail lending area is comprised of component geographic areas. A component geographic area is any MSA or the nonmetropolitan area of any State, or portion thereof, included within the outside retail lending area.

§__.19 Areas for eligible community development loans, community development investments, and community development services.

The [Agency] may consider a bank's community development loans, community development investments, and community development services provided outside of its facility-based assessment areas, as provided in this part.

Subpart C - Standards for Assessing Performance

§__.21 Evaluation of CRA performance in general.

(a) Application of performance tests and strategic plans.

(1) *Large banks.* To evaluate the performance of a large bank, the [Agency] applies the Retail Lending Test in § __.22, the Retail Services and Products Test in § __.23, the Community Development Financing Test in § __.24, and the Community Development Services Test in § __.25.

(2) *Intermediate banks.*

(i) In general. To evaluate the performance of an intermediate bank, the [Agency] applies the Retail Lending Test in § __.22 and either the Intermediate Bank Community Development Test in § __.30(a)(2) or, at the bank's option, the Community Development Financing Test in § __.24.

(ii) Intermediate banks evaluated under § __.24. If an intermediate bank opts to be evaluated pursuant to the Community Development Financing Test in § __.24, the [Agency] evaluates the intermediate bank for the evaluation period preceding the bank's next CRA examination pursuant to the Community Development Financing Test in § __.24 and continues evaluations pursuant to this performance test for subsequent evaluation periods until the bank opts out. If an intermediate bank opts out of the Community Development Financing Test in § __.24, the [Agency] reverts to evaluating the bank pursuant to the Intermediate Bank Community Development Test in § __.30(a)(2), starting with the evaluation period preceding the bank's next CRA examination.

(iii) Additional consideration. An intermediate bank may request additional consideration pursuant to § __.30(b).

(3) Small banks.

(i) In general. To evaluate the performance of a small bank, the [Agency] applies the Small Bank Lending Test in § __.29(a)(2), unless the bank opts to be evaluated pursuant to the Retail Lending Test in § __.22.

(ii) Small banks evaluated under the Retail Lending Test. If a small bank opts to be evaluated pursuant to the Retail Lending Test in § __.22, the following applies:

(A) The [Agency] evaluates the small bank using the same provisions used to evaluate intermediate banks pursuant to the Retail Lending Test in § __.22.

(B) The [Agency] evaluates the small bank for the evaluation period preceding the bank's next CRA examination pursuant to the Retail Lending Test in § __.22 and continues evaluations under this performance test for subsequent evaluation periods until the bank opts out. If a small bank opts out of the Retail Lending Test in § __.22, the [Agency] reverts to evaluating the bank pursuant to the Small Bank Lending Test in § __.29(a)(2), starting with the evaluation period preceding the bank's next CRA examination.

(iii) Additional consideration. A small bank may request additional consideration pursuant to § __.29(b).

(4) Limited purpose banks.

(i) In general. The [Agency] evaluates a limited purpose bank pursuant to the Community Development Financing Test for Limited Purpose Banks in § __.26.

(ii) Additional consideration. A limited purpose bank may request additional consideration pursuant to § __.26(b)(2).

(5) Military banks.

(i) In general. The [Agency] evaluates a military bank pursuant to the applicable performance tests described in paragraph (a) of this section.

(ii) Evaluation approach for military banks operating under § __.16(d). If a military bank delineates the entire United States and its territories as its sole facility-based assessment area pursuant to § __.16(d), the [Agency] evaluates the bank exclusively at the institution level based on its performance in its sole facility-based assessment area.

(6) Banks operating under a strategic plan. The [Agency] evaluates the performance of a bank that has an approved strategic plan pursuant to § __.27.

(b) Loans, investments, services, and products of [operations subsidiaries or operating subsidiaries] and other affiliates.

(1) *In general.* In the performance evaluation of a bank, the [Agency] considers the loans, investments, services, and products of a bank's [operations subsidiaries or operating subsidiaries] and other affiliates, as applicable, as provided in paragraphs (b)(2) and (b)(3) of this section, so long as no other depository institution claims the loan, investment, service, or product for purposes of 12 CFR part 25, 228, or 345.

(2) *Loans, investments, services, and products of [operations subsidiaries or operating subsidiaries].* The [Agency] considers the loans, investment, services, and products of a bank's [operations subsidiaries or operating subsidiaries] under this part, unless an [operations subsidiary or operating subsidiary] is independently subject to the CRA. The bank must collect, maintain, and report data on the loans, investments, services, and products of its [operations subsidiaries or operating subsidiaries] as provided in § __.42(c).

(3) *Loans, investments, services, and products of other affiliates.* The [Agency] considers the loans, investments, services, and products of affiliates of a bank that are not [operations subsidiaries or operating subsidiaries], at the bank's option, subject to the following:

(i) The affiliate is not independently subject to the CRA.

(ii) The bank collects, maintains, and reports data on the loans, investments, services, or products of the affiliate as provided in § __.42(d).

(iii) Pursuant to the Retail Lending Test in § __.22, if a bank opts to have the [Agency] consider the closed-end home mortgage loans, small business loans, small farm loans, or automobile loans that are originated or purchased by one or more of the bank's affiliates in a particular Retail Lending Test Area, the [Agency] will consider, subject to paragraphs (b)(3)(i) and (b)(3)(ii) of this section, all of the loans in that product line originated or purchased by all of the bank's affiliates in the particular Retail Lending Test Area.

(iv) Pursuant to the Retail Lending Test in § __.22, if a large bank opts to have the [Agency] consider the closed-end home mortgage loans or small business loans that are originated or purchased by any of the bank's affiliates in any Retail Lending Test Area, the [Agency] will consider, subject to paragraphs (b)(3)(i) and (b)(3)(ii) of this section, the closed-end home mortgage loans or small business loans originated by all of the bank's affiliates in the nationwide area when delineating retail lending assessment areas pursuant to § __.17(c).

(v) Pursuant to the Community Development Financing Test in § __.24, the Community Development Financing Test for Limited Purpose Banks in § __.26, the Intermediate Bank Community Development Test in § __.30(a)(2), or pursuant to an approved strategic plan in § __.27, the [Agency] will consider, at the bank's option, community development loans or community development investments that are originated, purchased, refinanced, or renewed by one or more of the bank's affiliates, subject to paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(c) Community development lending and community development investment by a consortium or a third party. If a bank invests in or participates in a consortium that originates, purchases, refinances, or renews community development loans or community development investments, or if a bank invests in a third party that originates, purchases, refinances, or renews community development loans or community development investments, the [Agency] may consider, at the bank's option, either those loans or investments, subject to the limitations in paragraphs (c)(1) through (c)(3) of this section, or the investment in the consortium or third party.

(1) The bank must collect, maintain, and report the data pertaining to the community development loans and community development investments as provided in § __.42(e), as applicable;

(2) If the participants or investors choose to allocate community development loans or community development investments among themselves for consideration under this section, no participant or investor may claim a loan origination, loan purchase, or investment for community development consideration if another participant or investor claims the same loan origination, loan purchase, or investment; and

(3) The bank may not claim community development loans or community development investments accounting for more than its percentage share (based on the level of its participation or investment) of the total loans or investments made by the consortium or third party.

(d) Performance context information considered. When applying performance tests and strategic plans pursuant to paragraph (a) of this section, and when determining whether to approve a strategic plan pursuant to § __.27(h), the [Agency] may consider the following performance context information to the extent that it is not considered as part of the performance tests as provided in paragraph (a) of this section:

(1) Any information regarding a bank's institutional capacity or constraints, including the size and financial condition of the bank, safety and soundness limitations, or any other bank specific factors that significantly affect the bank's ability to provide retail lending, retail banking services and retail banking products, community development loans, community development investments, or community development services;

- (2) Any information regarding the bank's past performance;
- (3) Demographic data on income levels and income distribution, nature of housing stock, housing costs, economic climate, or other relevant data;
- (4) Any information about retail banking and community development needs and opportunities provided by the bank or other relevant sources, including, but not limited to, members of the community, community organizations, State, local, and tribal governments, and economic development agencies;
- (5) Data and information provided by the bank regarding the bank's business strategy and product offerings;
- (6) The bank's public file, as provided in § __.43, including any written comments about the bank's CRA performance submitted to the bank or the [Agency] and the bank's responses to those comments; and
- (7) Any other information deemed relevant by the [Agency].

(e) Conclusions and ratings.

(1) *Conclusions.* The [Agency] assigns conclusions to a large bank's or limited purpose bank's performance on the applicable tests described in paragraph (a) of this section pursuant to § __.28 and appendix C of this part. The [Agency] assigns conclusions to a small bank's or intermediate bank's performance on the applicable tests described in paragraph (a) of this section pursuant to § __.28 and appendices C and E of this part. The [Agency] assigns conclusions to a bank that has an approved strategic plan pursuant to § __.28 and paragraph g of appendix C of this part.

(2) *Ratings.* The [Agency] assigns an overall CRA performance rating to a bank in each State or multistate MSA, as applicable, and for the institution pursuant to § __.28 and appendices D and E of this part.

(f) Safe and sound operations. The CRA and this part do not require a bank to originate or purchase loans or investments or to provide services that are inconsistent with safe and sound banking practices, including underwriting standards. Banks are permitted to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income individuals, small businesses or small farms, and low- or moderate-income census tracts, only if consistent with safe and sound operations.

§ __.22 Retail lending test.

(a) Retail Lending Test.

(1) *In general.* Pursuant to § __.21, the Retail Lending Test evaluates a bank's record of helping to meet the credit needs of its entire community through the bank's origination and purchase of home mortgage loans, multifamily loans, small business loans, and small farm loans.

(2) *Automobile loans.* The Retail Lending Test evaluates a bank's record of helping to meet the credit needs of its entire community through the bank's origination and purchase of automobile loans if the bank is a majority automobile lender. A bank that is not a majority automobile lender may opt to have automobile loans evaluated under this section.

(b) Methodology overview.

(1) *Retail Lending Volume Screen.* The [Agency] evaluates whether a bank meets or surpasses the Retail Lending Volume Threshold in each facility-based assessment area pursuant to the Retail Lending Volume Screen as provided in paragraph (c) of this section.

(2) *Retail lending distribution analysis.* Except as provided in paragraph (b)(5) of this section, the [Agency] evaluates the geographic and borrower distributions of each of a bank's major product lines in each Retail Lending Test Area, as provided in paragraphs (d) and (e) of this section.

(3) *Retail Lending Test recommended conclusions.* Except as provided in paragraph (b)(5) of this section, the [Agency] develops a Retail Lending Test recommended conclusion pursuant to paragraph (f) of this section for each Retail Lending Test Area.

(4) *Retail Lending Test conclusions.* The [Agency]'s determination of a bank's Retail Lending Test conclusion for a Retail Lending Test Area is informed by the bank's Retail Lending Test recommended conclusion for the Retail Lending Test Area, performance context factors provided in § __.21(d), and the additional factors provided in paragraph (g) of this section.

(5) *Exceptions.*

(i) No major product line. If a bank has no major product line in a facility-based assessment area, the [Agency] assigns the bank a Retail Lending Test conclusion for that facility-based assessment area based upon its performance on the Retail Lending Volume Screen pursuant to paragraph (c) of this section, performance context factors provided in § __.21(d), and the additional factors provided in paragraph (g) of this section.

(ii) Banks that lack an acceptable basis for not meeting the Retail Lending Volume Threshold. The [Agency] assigns a Retail Lending Test conclusion for a facility-based assessment area in which a bank lacks an acceptable basis for not

meeting the Retail Lending Volume Threshold as provided in paragraph (c)(3)(iii) of this section.

(c) Retail Lending Volume Screen.

(1) Retail Lending Volume Threshold. A bank meets or surpasses the Retail Lending Volume Threshold in a facility-based assessment area if the bank has a Bank Volume Metric of 30 percent or greater of the Market Volume Benchmark for that facility-based assessment area. The [Agency] calculates the Bank Volume Metric and the Market Volume Benchmark pursuant to section I of appendix A of this part.

(2) Banks that meet or surpass the Retail Lending Volume Threshold in a facility-based assessment area. If a bank meets or surpasses the Retail Lending Volume Threshold in a facility-based assessment area pursuant to paragraph (c)(1) of this section, the [Agency] develops a Retail Lending Test recommended conclusion for the facility-based assessment area pursuant to paragraphs (d) through (f) of this section.

(3) Banks that do not meet the Retail Lending Volume Threshold in a facility-based assessment area.

(i) Acceptable basis factors. If a bank does not meet the Retail Lending Volume Threshold in a facility-based assessment area pursuant to paragraph (c)(1) of this section, the [Agency] determines whether the bank has an acceptable basis for not meeting the Retail Lending Volume Threshold in the facility-based assessment area by considering:

(A) The bank's dollar volume of non-automobile consumer loans;

(B) The bank's institutional capacity and constraints, including the financial condition of the bank;

(C) The presence or lack of other lenders in the facility-based assessment area;

(D) Safety and soundness limitations;

(E) The bank's business strategy; and

(F) Any other factors that limit the bank's ability to lend in the facility-based assessment area.

(ii) Banks that have an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area. If, after reviewing the factors described in paragraph (c)(3)(i) of this section, the [Agency] determines that a bank has an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area, the [Agency] develops a Retail

Lending Test recommended conclusion for the facility-based assessment area in the same manner as for a bank that meets or surpasses the Retail Lending Volume Threshold under paragraph (c)(2) of this section.

(iii) Banks that lack an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area.

(A) Large banks. If, after reviewing the factors in paragraph (c)(3)(i) of this section, the [Agency] determines that a large bank lacks an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area, the [Agency] assigns the bank a Retail Lending Test conclusion of “Needs to Improve” or “Substantial Noncompliance” for that facility-based assessment area. In determining whether “Needs to Improve” or “Substantial Noncompliance” is the appropriate conclusion, the [Agency] considers:

- (1) The bank’s retail lending volume and the extent by which it did not meet the Retail Lending Volume Threshold;
- (2) The bank’s distribution analysis pursuant to paragraphs (d) through (f) of this section;
- (3) Performance context factors provided in § __.21(d); and
- (4) Additional factors provided in paragraph (g) of this section.

(B) Intermediate or small banks. If, after reviewing the factors in paragraph (c)(3)(i) of this section, the [Agency] determines that an intermediate bank, or a small bank that opts to be evaluated under the Retail Lending Test, lacks an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area, the [Agency] develops a Retail Lending Test recommended conclusion for the facility-based assessment area pursuant to paragraphs (d) through (f) of this section. The [Agency]’s determination of a bank’s Retail Lending Test conclusion for the facility-based assessment area is informed by:

- (1) The bank’s Retail Lending Test recommended conclusion for the facility-based assessment area;
- (2) The bank’s retail lending volume and the extent by which it did not meet the Retail Lending Volume Threshold;
- (3) Performance context factors provided in § __.21(d); and
- (4) Additional factors provided in paragraph (g) of this section.

(d) Scope of Retail Lending Test distribution analysis.

(1) Product lines evaluated in a Retail Lending Test Area. In each applicable Retail Lending Test Area, the [Agency] evaluates originated and purchased loans in each of the following product lines that is a major product line, as described in paragraph (d)(2) of this section:

- (i) Closed-end home mortgage loans in a bank's facility-based assessment areas and, as applicable, retail lending assessment areas and outside retail lending area;
- (ii) Small business loans in a bank's facility-based assessment areas and, as applicable, retail lending assessment areas and outside retail lending area;
- (iii) Small farm loans in a bank's facility-based assessment areas and, as applicable, outside retail lending area; and
- (iv) Automobile loans in a bank's facility-based assessment areas and, as applicable, outside retail lending area.

(2) Major product line standards.

(i) Major product line standard for facility-based assessment areas and outside retail lending areas. In a facility-based assessment area or outside retail lending area, a product line is a major product line if the bank's loans in that product line comprise 15 percent or more of the bank's loans across all of the bank's product lines in the facility-based assessment area or outside retail lending area, as determined pursuant to paragraph II.b.1 of appendix A of this part.

(ii) Major product line standards for retail lending assessment areas. In a retail lending assessment area:

(A) Closed-end home mortgage loans are a major product line in any calendar year in the evaluation period in which the bank delineates a retail lending assessment area based on its closed-end home mortgage loans as determined by the standard in § __.17(c)(1); and

(B) Small business loans are a major product line in any calendar year in the evaluation period in which the bank delineates a retail lending assessment area based on its small business loans as determined by the standard in § __.17(c)(2).

(1) Distribution analysis in general.

(i) Distribution analysis for closed-end home mortgage loans, small business loans, and small farm loans. For closed-end home mortgage loans, small

business loans, and small farm loans, respectively, the [Agency] compares a bank's geographic and borrower distributions to performance ranges based on the applicable market and community benchmarks, as provided in paragraph (f) of this section and section V of appendix A of this part.

(ii) Distribution analysis for automobile loans. For automobile loans, the [Agency] compares a bank's geographic and borrower distributions to the applicable community benchmarks, as provided in paragraph (f) of this section and section VI of appendix A of this part.

(2) Categories of lending evaluated.

(i) Geographic distributions. For each major product line in each Retail Lending Test Area, the [Agency] evaluates the geographic distributions separately for the following categories of census tracts:

(A) Low-income census tracts; and

(B) Moderate-income census tracts.

(ii) Borrower distributions. For each major product line in each Retail Lending Test Area, the [Agency] evaluates the borrower distributions separately for, as applicable, the following categories of borrowers:

(A) Low-income borrowers;

(B) Moderate-income borrowers;

(C) Businesses with gross annual revenues of \$250,000 or less;

(D) Businesses with gross annual revenues greater than \$250,000 but less than or equal to \$1 million;

(E) Farms with gross annual revenues of \$250,000 or less; and

(F) Farms with gross annual revenues greater than \$250,000 but less than or equal to \$1 million.

(3) Geographic distribution measures. To evaluate the geographic distributions in a Retail Lending Test Area, the [Agency] considers the following measures:

(i) Geographic Bank Metric. For each major product line, a Geographic Bank Metric, calculated pursuant to paragraph III.a of appendix A of this part;

(ii) Geographic Market Benchmark. For each major product line except automobile loans, a Geographic Market Benchmark, calculated pursuant to paragraph III.b of appendix A of this part for facility-based assessment areas and

retail lending assessment areas, and paragraph III.d of appendix A of this part for outside retail lending areas; and

(iii) Geographic Community Benchmark. For each major product line, a Geographic Community Benchmark, calculated pursuant to paragraph III.c of appendix A of this part for facility-based assessment areas and retail lending assessment areas, and paragraph III.e of appendix A of this part for outside retail lending areas.

(4) *Borrower distribution measures.* To evaluate the borrower distributions in a Retail Lending Test Area, the [Agency] considers the following measures:

(i) Borrower Bank Metric. For each major product line, a Borrower Bank Metric, calculated pursuant to paragraph IV.a of appendix A of this part;

(ii) Borrower Market Benchmark. For each major product line except automobile loans, a Borrower Market Benchmark, calculated pursuant to paragraph IV.b of appendix A of this part for facility-based assessment areas and retail lending assessment areas, and paragraph IV.d of appendix A of this part for outside retail lending areas; and

(iii) Borrower Community Benchmark. For each major product line, a Borrower Community Benchmark, calculated pursuant to paragraph IV.c of appendix A of this part for facility-based assessment areas and retail lending assessment areas, and paragraph IV.e of appendix A of this part for outside retail lending areas.

(f) Retail Lending Test recommended conclusions.

(1) *In general.* Except as described in paragraphs (b)(5)(i) and (c)(3)(iii)(A) of this section, the [Agency] develops a Retail Lending Test recommended conclusion for each of a bank's Retail Lending Test Areas based on the distribution analysis described in paragraph (e) of this section and using performance ranges, supporting conclusions, and product line scores as provided in sections V through VII of appendix A of this part. For each major product line, the [Agency] develops a separate supporting conclusion for each category of census tracts and each category of borrowers described in paragraphs V.a and VI.a of appendix A of this part.

(2) *Geographic distribution supporting conclusions.*

(i) Geographic distribution supporting conclusions for closed-end home mortgage loans, small business loans, and small farm loans. To develop supporting conclusions for geographic distributions of closed-end home mortgage loans, small business loans, and small farm loans, the [Agency] evaluates the bank's performance by comparing the Geographic Bank Metric to performance ranges,

based on the Geographic Market Benchmark, the Geographic Community Benchmark, and multipliers, as described in paragraphs V.b and V.c of appendix A of this part.

(ii) Geographic distribution supporting conclusions for automobile loans. To develop supporting conclusions for geographic distributions for automobile loans, the [Agency] evaluates the bank's performance by comparing the Geographic Bank Metric to the Geographic Community Benchmark, as described in paragraph VI.b of appendix A of this part.

(3) Borrower distribution supporting conclusions.

(i) Borrower distribution supporting conclusions for closed-end home mortgage loans, small business loans, and small farm loans. To develop supporting conclusions for borrower distributions of closed-end home mortgage loans, small business loans, and small farm loans, the [Agency] evaluates the bank's performance by comparing the Borrower Bank Metric to performance ranges, based on the Borrower Market Benchmark, Borrower Community Benchmark, and multipliers, as described in paragraphs V.d and V.e of appendix A of this part.

(ii) Borrower distribution supporting conclusions for automobile loans. To develop supporting conclusions for borrower distributions for automobile loans, the [Agency] evaluates the bank's performance by comparing the Borrower Bank Metric to the Borrower Community Benchmark, as described in paragraph VI.c of appendix A of this part.

(4) Development of Retail Lending Test recommended conclusions.

(i) Assignment of performance scores. For each supporting conclusion developed pursuant to paragraphs (f)(2) and (f)(3) of this section, the [Agency] assigns a corresponding performance score as described in sections V and VI of appendix A of this part.

(ii) Combination of performance scores. As described in section VII of appendix A of this part, for each Retail Lending Test Area, the [Agency]:

(iii) Retail Lending Test recommended conclusions. For each Retail Lending Test Area, the [Agency] develops the Retail Lending Test recommended conclusion that corresponds to the weighted average of product line scores developed pursuant to paragraph (f)(4)(ii)(B) of this section, as described in section VII of appendix A of this part.

(g) Additional factors considered when evaluating retail lending performance. The factors in paragraphs (g)(1) through (g)(7) of this section, as appropriate, inform the [Agency]'s determination of a bank's Retail Lending Test conclusion for a Retail Lending Test Area:

- (1) Information indicating that a bank purchased closed-end home mortgage loans, small business loans, small farm loans, or automobile loans for the sole or primary purpose of inappropriately enhancing its retail lending performance, including, but not limited to, information indicating subsequent resale of such loans or any indication that such loans have been considered in multiple depository institutions' CRA evaluations, in which case the [Agency] does not consider such loans in the bank's performance evaluation;
- (2) The dispersion of a bank's closed-end home mortgage lending, small business lending, small farm lending, or automobile lending within a facility-based assessment area to determine whether there are gaps in lending that are not explained by performance context;
- (3) The number of lenders whose home mortgage loans, multifamily loans, small business loans, and small farm loans and deposits data are used to establish the applicable Retail Lending Volume Threshold, geographic distribution market benchmarks, and borrower distribution market benchmarks;
- (4) Missing or faulty data that would be necessary to calculate the relevant metrics and benchmarks or any other factors that prevent the [Agency] from calculating a Retail Lending Test recommended conclusion. If unable to calculate a Retail Lending Test recommended conclusion, the [Agency] assigns a Retail Lending Test conclusion based on consideration of the relevant available data;
- (5) Whether the Retail Lending Test recommended conclusion does not accurately reflect the bank's performance in a Retail Lending Test Area in which one or more of the bank's major product lines consists of fewer than 30 loans;
- (6) A bank's closed-end home mortgage lending, small business lending, small farm lending, or automobile lending in distressed or underserved nonmetropolitan middle-income census tracts where a bank's nonmetropolitan facility-based assessment area or nonmetropolitan retail lending assessment area includes very few or no low- and moderate-income census tracts; and
- (7) Information indicating that the credit needs of the facility-based assessment area or retail lending assessment area are not being met by lenders in the aggregate, such that the relevant benchmarks do not adequately reflect community credit needs.

(h) Retail Lending Test performance conclusions and ratings.

(1) Conclusions.

- (i) In general. Pursuant to § __.28, section VIII of appendix A of this part, and appendix C of this part, the [Agency] assigns conclusions for a bank's Retail Lending Test performance in each Retail Lending Test Area, State, and multistate MSA, as applicable, and for the institution.

(ii) Retail Lending Test Area conclusions. The [Agency] assigns a Retail Lending Test conclusion for each Retail Lending Test Area based on the Retail Lending Test recommended conclusion, performance context factors provided in § __.21(d), and the additional factors provided in paragraph (g) of this section, except as provided below:

(A) Facility-based assessment areas with no major product line. The [Agency] assigns a Retail Lending Test conclusion for a facility-based assessment area in which a bank has no major product line based on the bank's performance on the Retail Lending Volume Screen pursuant to paragraph (c) of this section, performance context information provided in § __.21(d), and the additional factors provided in paragraph (g) of this section.

(B) Facility-based assessment areas in which a bank lacks an acceptable basis for not meeting the Retail Lending Volume Threshold. The [Agency] assigns a Retail Lending Test conclusion for a facility-based assessment area in which a bank lacks an acceptable basis for not meeting the Retail Lending Volume Threshold as provided in paragraph (c)(3)(iii) of this section.

(2) *Ratings.* Pursuant to § __.28 and appendix D of this part, the [Agency] incorporates a bank's Retail Lending Test conclusions into its State or multistate MSA ratings, as applicable, and its institution rating.

§ __.23 Retail services and products test

(a) Retail Services and Products Test.

(1) *In general.* Pursuant to § __.21, the Retail Services and Products Test evaluates the availability of a bank's retail banking services and retail banking products and the responsiveness of those services and products to the credit needs of the bank's entire community, including low- and moderate-income individuals, families, or households, low- and moderate-income census tracts, and small businesses and small farms. The [Agency] evaluates the bank's retail banking services, as described in paragraph (b) of this section, and the bank's retail banking products, as described in paragraph (c) of this section.

(2) *Main offices.* For purposes of this section, references to a branch also include a main office that is open to, and accepts deposits from, the general public.

(3) *Exclusion.* If the [Agency] considers services under the Community Development Services Test in § __.25, the [Agency] does not consider those services under the Retail Services and Products Test.

(b) Retail banking services.

(1) *Scope of evaluation.* To evaluate a bank's retail banking services, the [Agency] considers a bank's branch availability and services provided at branches, remote service facility availability, and digital delivery systems and other delivery systems, as follows:

(i) Branch availability and services. The [Agency] considers the branch availability and services provided at branches of banks that operate one or more branches pursuant to paragraph (b)(2) of this section.

(ii) Remote service facility availability. The [Agency] considers the remote service facility availability of banks that operate one or more remote service facilities pursuant to paragraph (b)(3) of this section.

(iii) Digital delivery systems and other delivery systems. The [Agency] considers the digital delivery systems and other delivery systems of banks pursuant to paragraph (b)(4) of this section, as follows:

(A) The [Agency] considers the digital delivery systems and other delivery systems of the following banks:

(1) Large banks that had assets greater than \$10 billion as of December 31 in both of the prior two calendar years; and

(2) Large banks that had assets less than or equal to \$10 billion as of December 31 in either of the prior two calendar years and that do not operate branches.

(B) For a large bank that had assets less than or equal \$10 billion as of December 31 in either of the prior two calendar years and that operates at least one branch, the [Agency] considers the bank's digital delivery systems and other delivery systems at the bank's option.

(2) *Branch availability and services.* The [Agency] evaluates a bank's branch availability and services in a facility-based assessment area based on the following:

(i) Branch distribution. The [Agency] considers a bank's branch distribution using the following:

(A) Branch distribution metrics. The [Agency] considers the number and percentage of the bank's branches within low-, moderate-, middle-, and upper-income census tracts.

(B) Benchmarks. The [Agency]'s consideration of the branch distribution metrics is informed by the following benchmarks:

(1) Percentage of census tracts in the facility-based assessment area that are low-, moderate-, middle-, and upper-income census tracts;

(2) Percentage of households in the facility-based assessment area that are in low-, moderate-, middle-, and upper-income census tracts;

(3) Percentage of total businesses in the facility-based assessment area that are in low-, moderate-, middle-, and upper-income census tracts; and

(4) Percentage of all full-service depository institution branches in the facility-based assessment area that are in low-, moderate-, middle-, and upper-income census tracts.

(C) Additional geographic considerations. The [Agency] considers the availability of branches in the following geographic areas:

(1) Middle- and upper-income census tracts in which a branch delivers services to low- and moderate-income individuals, families, or households to the extent that these individuals, families, or households use the services offered;

(2) Distressed or underserved nonmetropolitan middle-income census tracts; and

(3) Native Land Areas.

(ii) Branch openings and closings. The [Agency] considers a bank's record of opening and closing branches since the previous CRA examination to inform the degree of accessibility of services to low- and moderate-income individuals, families, or households, small businesses, and small farms, and low- and moderate-income census tracts.

(iii) Branch hours of operation and services. The [Agency] considers the following:

(A) The reasonableness of branch hours in low- and moderate-income census tracts compared to middle- and upper-income census tracts, including, but not limited to, whether branches offer extended and weekend hours.

(B) The range of services provided at branches in low-, moderate-, middle-, and upper-income census tracts, respectively, including, but not limited to:

- (1) Bilingual and translation services;
- (2) Free or low-cost check cashing services, including, but not limited to, check cashing services for government-issued and payroll checks;
- (3) Reasonably priced international remittance services; and
- (4) Electronic benefit transfers.

(C) The degree to which branch-provided retail banking services are responsive to the needs of low- and moderate-income individuals, families, or households in a bank's facility-based assessment areas.

(3) Remote service facility availability. The [Agency] evaluates a bank's remote service facility availability in a facility-based assessment area based on the following:

(i) Remote service facility distribution. The [Agency] considers a bank's remote service facility distribution using the following:

(A) Remote service facility distribution metrics. The [Agency] considers the number and percentage of the bank's remote service facilities within low-, moderate-, middle-, and upper-income census tracts.

(B) Benchmarks. The [Agency]'s consideration of the remote service facility distribution metrics is informed by the following benchmarks:

- (1) Percentage of census tracts in the facility-based assessment area that are low-, moderate-, middle-, and upper-income census tracts;
- (2) Percentage of households in the facility-based assessment area that are in low-, moderate-, middle-, and upper-income census tracts; and
- (3) Percentage of total businesses in the facility-based assessment area that are in low-, moderate-, middle-, and upper-income census tracts.

(C) Additional geographic considerations. The [Agency] considers the availability of remote service facilities in the following geographic areas:

(1) Middle- and upper-income census tracts in which a remote service facility delivers services to low- and moderate-income individuals, families, or households to the extent that these individuals, families, or households use the services offered;

(2) Distressed or underserved nonmetropolitan middle-income census tracts; and

(3) Native Land Areas.

(ii) Access to out-of-network ATMs. The [Agency] considers whether the bank offers customers fee-free access to out-of-network ATMs in low- and moderate-income census tracts.

(4) *Digital delivery systems and other delivery systems.* The [Agency] evaluates the availability and responsiveness of a bank's digital delivery systems and other delivery systems, including to low- and moderate-income individuals, families, or households at the institution level by considering:

(i) The range of retail banking services and retail banking products offered through digital delivery systems and other delivery systems;

(ii) The bank's strategy and initiatives to serve low- and moderate-income individuals, families, or households with digital delivery systems and other delivery systems as reflected by, for example, the costs, features, and marketing of the delivery systems; and

(iii) Digital delivery systems and other delivery systems activity by individuals, families or households in low-, moderate-, middle-, and upper-income census tracts as evidenced by:

(A) The number of checking and savings accounts opened each calendar year during the evaluation period digitally and through other delivery systems in low-, moderate-, middle-, and upper-income census tracts;

(B) The number of checking and savings accounts opened digitally and through other delivery systems and that are active at the end of each calendar year during the evaluation period in low-, moderate-, middle-, and upper-income census tracts; and

(C) Any other bank data that demonstrates digital delivery systems and other delivery systems are available to individuals and in census tracts of different income levels, including low- and moderate-income individuals, families, or households and low- and moderate-income census tracts.

(c) Retail banking products evaluation.

(1) Scope of evaluation. The [Agency] evaluates a bank's retail banking products offered in the bank's facility-based assessment areas and nationwide, as applicable, at the institution level as follows:

(i) Credit products and programs. The [Agency] evaluates a bank's credit products and programs pursuant to paragraph (c)(2) of this section.

(ii) Deposit products. The [Agency] evaluates a bank's deposit products pursuant to paragraph (c)(3) of this section as follows:

(A) For large banks that had assets greater than \$10 billion as of December 31 in both of the prior two calendar years; and

(B) For large banks that had assets less than or equal to \$10 billion as of December 31 in either of the prior two calendar years, the [Agency] considers a bank's deposit products only at the bank's option.

(2) Credit products and programs. The [Agency] evaluates whether a bank's credit products and programs are, consistent with safe and sound operations, responsive to the credit needs of the bank's entire community, including the needs of low- and moderate-income individuals, families, or households, residents of low- and moderate-income census tracts, small businesses, and small farms. Responsive credit products and programs may include, but are not limited to, credit products and programs that:

(i) Facilitate home mortgage and consumer lending targeted to low- or moderate-income borrowers;

(ii) Meet the needs of small businesses and small farms, including small businesses and small farms with gross annual revenues of \$250,000 or less;

(iii) Are conducted in cooperation with MDIs, WDIs, LICUs, or CDFIs;

(iv) Are low-cost education loans; or

(v) Are special purpose credit programs pursuant to 12 CFR 1002.8.

(3) Deposit products. The [Agency] evaluates the availability and usage of a bank's deposit products responsive to the needs of low- and moderate-income individuals, families, or households as follows:

(i) Availability of deposit products responsive to the needs of low- and moderate-income individuals, families, or households. The [Agency] considers the availability of deposit products responsive to the needs of low- and

moderate-income individuals, families, or households based on the extent to which a bank offers deposit products that, consistent with safe and sound operations, have features and cost characteristics responsive to the needs of low- and moderate-income individuals, families, or households. Deposit products responsive to the needs of low- and moderate-income individuals, families, or households include but are not limited to, deposit products with the following types of features:

(A) Low-cost features, including, but not limited to, deposit products with no overdraft or insufficient funds fees, no or low minimum opening balance, no or low monthly maintenance fees, or free or low-cost check-cashing and bill-pay services;

(B) Features facilitating broad functionality and accessibility, including, but not limited to, deposit products with in-network ATM access, debit cards for point-of-sale and bill payments, and immediate access to funds for customers cashing government, payroll, or bank-issued checks; or

(C) Features facilitating inclusivity of access by individuals without banking or credit histories or with adverse banking histories.

(ii) Usage of deposit products responsive to the needs of low- and moderate-income individuals. The [Agency] considers the usage of a bank's deposit products responsive to the needs of low- and moderate-income individuals, families, or households based on the following information:

(A) The number of responsive deposit accounts opened and closed during each year of the evaluation period in low-, moderate-, middle-, and upper-income census tracts;

(B) In connection with paragraph (c)(3)(ii)(A) of this section, the percentage of responsive deposit accounts compared to total deposit accounts for each year of the evaluation period;

(C) Marketing, partnerships, and other activities that the bank has undertaken to promote awareness and use of responsive deposit accounts by low- and moderate-income individuals, families, or households; and

(D) Optionally, any other information the bank provides that demonstrates usage of the bank's deposit products that have features and cost characteristics responsive to the needs of low- and moderate-income individuals, families, or households and low- and moderate-income census tracts.

(d) Retail Services and Products Test performance conclusions and ratings.

(1) *Conclusions.* Pursuant to § __.28 and appendix C of this part, the [Agency] assigns conclusions for a bank's Retail Services and Products Test performance in each facility-based assessment area, State and multistate MSA, as applicable, and for the institution. In assigning conclusions under this performance test, the [Agency] may consider performance context information as provided in § __.21(d). The evaluation of a bank's retail banking products under paragraph (c) of this section may only contribute positively to the bank's Retail Services and Products Test conclusion.

(2) *Ratings.* Pursuant to § __.28 and appendix D of this part, the [Agency] incorporates a bank's Retail Services and Products Test conclusions into its State or multistate MSA ratings, as applicable, and its institution rating.

§ __.24 Community development financing test

(a) Community Development Financing Test.

(1) *In general.* Pursuant to § __.21, the Community Development Financing Test evaluates the bank's record of helping to meet the credit needs of its entire community through community development loans and community development investments (i.e., the bank's community development financing performance).

(2) *Allocation.* The [Agency] considers community development loans and community development investments allocated pursuant to paragraph I.b of appendix B of this part.

(b) Facility-based assessment area evaluation. The [Agency] evaluates a bank's community development financing performance in a facility-based assessment area using the metric in paragraph (b)(1) of this section, benchmarks in paragraph (b)(2) of this section, and a review of the impact and responsiveness of the bank's community development loans and community development investments in paragraph (b)(3) of this section, and assigns a conclusion for a facility-based assessment area pursuant to paragraph d.1 of appendix C of this part.

(1) *Bank Assessment Area Community Development Financing Metric.* The Bank Assessment Area Community Development Financing Metric measures the dollar volume of a bank's community development loans and community development investments that benefit or serve a facility-based assessment area compared to deposits in the bank that are located in the facility-based assessment area, calculated pursuant to paragraph II.a of appendix B of this part.

(2) *Benchmarks.* The [Agency] compares the Bank Assessment Area Community Development Financing Metric to the following benchmarks:

(i) Assessment Area Community Development Financing Benchmark. For each of a bank's facility-based assessment areas, the Assessment Area Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments that benefit or serve the facility-based assessment area for all large depository institutions compared to deposits located in the facility-based assessment area for all large depository institutions, calculated pursuant to paragraph II.b of appendix B of this part.

(ii) MSA and Nonmetropolitan Nationwide Community Development Financing Benchmarks.

(A) For each of a bank's facility-based assessment areas within an MSA, the MSA Nationwide Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments that benefit or serve MSAs in the nationwide area for all large depository institutions compared to deposits located in the MSAs in the nationwide area for all large depository institutions.

(B) For each of a bank's facility-based assessment areas within a nonmetropolitan area, the Nonmetropolitan Nationwide Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments that benefit or serve nonmetropolitan areas in the nationwide area for all large depository institutions compared to deposits located in nonmetropolitan areas in the nationwide area for all large depository institutions.

(C) The [Agency] calculates the MSA and Nonmetropolitan Nationwide Community Development Financing Benchmarks pursuant to paragraph II.c of appendix B of this part.

(3) *Impact and responsiveness review.* The [Agency] reviews the impact and responsiveness of a bank's community development loans and community development investments that benefit or serve a facility-based assessment area, as provided in § __.15.

(c) State evaluation. The [Agency] evaluates a bank's community development financing performance in a State, pursuant to §§ __.19 and __.28(c), using the two components in paragraphs (c)(1) and (c)(2) of this section and assigns a conclusion for each State based on a weighted combination of those components pursuant to paragraph II.p of appendix B of this part.

(1) Component one – weighted average of facility-based assessment area performance conclusions in a State. The [Agency] considers the weighted average of a bank's Community Development Financing Test conclusions for its facility-based assessment areas within the State, pursuant to section IV of appendix B of this part.

(2) Component two – State performance. The [Agency] considers a bank's community development financing performance in a State using the metric and benchmarks in paragraph (c)(2)(i) and (c)(2)(ii) of this section and a review of the impact and responsiveness of the bank's community development loans and community development investments in paragraph (c)(2)(iii) of this section.

(i) Bank State Community Development Financing Metric. The Bank State Community Development Financing Metric measures the dollar volume of a bank's community development loans and community development investments that benefit or serve all or part of a State compared to deposits in the bank that are located in the State, calculated pursuant to paragraph II.d of appendix B of this part.

(ii) Benchmarks. The [Agency] compares the Bank State Community Development Financing Metric to the following benchmarks:

(A) State Community Development Financing Benchmark. The State Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments that benefit or serve all or part of a State for all large depository institutions compared to deposits located in the State for all large depository institutions, calculated pursuant to paragraph II.e of appendix B of this part.

(B) State Weighted Assessment Area Community Development Financing Benchmark. The State Weighted Assessment Area Community Development Financing Benchmark is the weighted average of the bank's Assessment Area Community Development Financing Benchmarks for each facility-based assessment area within the State, calculated pursuant to paragraph II.f of appendix B of this part.

(iii) Impact and responsiveness review. The [Agency] reviews the impact and responsiveness of the bank's community development loans and community development investments that benefit or serve a State, as provided in § __.15.

(d) Multistate MSA evaluation. The [Agency] evaluates a bank's community development financing performance in a multi-state MSA, pursuant to §§ __.19 and __.28(c), using the two components in paragraphs (d)(1) and (d)(2) of this section and assigns a conclusion in each

multi-state MSA based on a weighted combination of those components pursuant to paragraph II.p of appendix B of this part.

(1) Component one – weighted average of facility-based assessment area performance in a multistate MSA. The [Agency] considers the weighted average of the performance scores corresponding to the bank's Community Development Financing Test conclusions for its facility-based assessment areas within the multistate MSA, calculated pursuant to section IV of appendix B of this part.

(2) Component two –multistate MSA performance. The [Agency] considers a bank's community development financing performance in a multistate MSA using the metric and benchmarks in paragraph (d)(2)(i) and (d)(2)(ii) of this section and a review of the impact and responsiveness of the bank's community development loans and community development investments in paragraph (d)(2)(iii) of this section.

(i) Bank Multistate MSA Community Development Financing Metric. The Bank Multistate MSA Community Development Financing Metric measures the dollar volume of a bank's community development loans and community development investments that benefit or serve a multistate MSA compared to deposits in the bank located in the multistate MSA, calculated pursuant to paragraph II.g of appendix B of this part.

(ii) Benchmarks. The [Agency] compares the Bank Multistate MSA Community Development Financing Metric to the following benchmarks:

(A) Multistate MSA Community Development Financing Benchmark. The Multistate MSA Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments that benefit or serve a multistate MSA for all large depository institutions compared to deposits located in the multistate MSA for all large depository institutions, calculated pursuant to paragraph II.h of appendix B of this part.

(B) Multistate MSA Weighted Assessment Area Community Development Financing Benchmark. The Multistate MSA Weighted Assessment Area Community Development Financing Benchmark is the weighted average of the bank's Assessment Area Community Development Financing Benchmarks for each facility-based assessment area within the multistate MSA, calculated pursuant to paragraph II.i of appendix B of this part.

(iii) Impact and responsiveness review. The [Agency] reviews the impact and responsiveness of the bank's community development loans and community development investments that benefit or serve a multistate MSA, as provided in § __.15.

(e) Nationwide area evaluation. The [Agency] evaluates a bank's community development financing performance in the nationwide area, pursuant to § __.19, using the two components in paragraphs (e)(1) and (e)(2) of this section and assigns a conclusion for the institution based on a weighted combination of those components pursuant to paragraph II.p of appendix B of this part.

(1) Component one – weighted average of facility-based assessment area performance in the nationwide area. The [Agency] considers the weighted average of the performance scores corresponding to the bank's conclusions for the Community Development Financing Test for its facility-based assessment areas within the nationwide area, calculated pursuant to section IV of appendix B of this part.

(2) Component two – nationwide area performance. The [Agency] considers a bank's community development financing performance in the nationwide area using the metrics and benchmarks in paragraphs (e)(2)(i) through (e)(2)(iv) of this section and a review of the impact and responsiveness of the bank's community development loans and community development investments in paragraph (e)(v) of this section.

(i) Bank Nationwide Community Development Financing Metric. The Bank Nationwide Community Development Financing Metric measures the dollar volume of the bank's community development loans and community development investments that benefit or serve all or part of the nationwide area compared to deposits in the bank located in the nationwide area, calculated pursuant to paragraph II.j of appendix B of this part.

(ii) Community Development Financing Benchmarks. The [Agency] compares the Bank Nationwide Community Development Financing Metric to the following benchmarks:

(A) Nationwide Community Development Financing Benchmark. The Nationwide Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments that benefit or serve all or part of the nationwide area for all large depository institutions compared to the deposits located in the nationwide area for all large depository institutions, calculated pursuant to paragraph II.k of appendix B of this part.

(B) Nationwide Weighted Assessment Area Community Development Financing Benchmark. The Nationwide Weighted Assessment Area Community Development Financing Benchmark is the weighted average of the bank's Assessment Area Community Development Financing Benchmarks for each facility-based assessment area within the nationwide area, calculated pursuant to paragraph II.l of appendix B of this part.

(iii) Bank Nationwide Community Development Investment Metric. For a large bank that had assets greater than \$10 billion as of December 31 in both of the prior two calendar years, the Bank Nationwide Community Development Investment Metric measures the dollar volume of the bank's community development investments that benefit or serve all or part of the nationwide area, excluding mortgage-backed securities, compared to the deposits in the bank located in the nationwide area, calculated pursuant to paragraph II.m of appendix B of this part.

(iv) Nationwide Community Development Investment Benchmark.

(A) For a large bank that had assets greater than \$10 billion as of December 31 in both of the prior two calendar years, the [Agency] compares the Bank Nationwide Community Development Investment Metric to the Nationwide Community Development Investment Benchmark. This comparison may only contribute positively to the bank's Community Development Financing Test conclusion for the institution.

(B) The Nationwide Community Development Investment Benchmark measures the dollar volume of community development investments that benefit or serve all or part of the nationwide area, excluding mortgage-backed securities, of all large depository institutions that had assets greater than \$10 billion as of December 31 in both of the prior two calendar years compared to deposits located in the nationwide area for those depository institutions, calculated pursuant to paragraph II.n of appendix B of this part.

(v) Impact and responsiveness review. The [Agency] reviews the impact and responsiveness of the bank's community development loans and community development investments that benefit or serve the nationwide area, as provided in § __.15.

(f) Community Development Financing Test performance conclusions and ratings.

(1) *Conclusions.* Pursuant to § __.28 and appendix C of this part, the [Agency] assigns conclusions for a bank's Community Development Financing Test performance in each facility-based assessment area, each State or multistate MSA, as applicable, and for the institution. In assigning conclusions under this performance test, the [Agency] may consider performance context information as provided in § __.21(d).

(2) *Ratings.* Pursuant to § __.28 and appendix D of this part, the [Agency] incorporates a bank's Community Development Financing Test conclusions into its State or multistate MSA ratings, as applicable, and its institution rating.

§ __.25 Community development services test

(a) Community Development Services Test.

(1) *In general.* Pursuant to § __.21, the Community Development Services Test evaluates a bank's record of helping to meet the community development services needs of its entire community.

(2) *Allocation.* The [Agency] considers information provided by the bank and may consider publicly available information and information provided by government or community sources that demonstrates that a community development service benefits or serves a facility-based assessment area, State, or multistate MSA, or the nationwide area.

(b) Facility-based assessment area evaluation. The [Agency] evaluates a bank's community development services performance in a facility-based assessment area and assigns a conclusion for a facility-based assessment area, by considering one or more of the following:

(1) The number of community development services attributable to each type of community development described in § __.13(b) through (l);

(2) The capacities in which a bank's or its affiliate's board members or employees serve (e.g., board member of a nonprofit organization, technical assistance, financial education, general volunteer);

(3) Total hours of community development services performed by the bank;

(4) Any other evidence demonstrating that the bank's community development services are responsive to community development needs, such as the number of low- and moderate-income individuals that are participants, or number of organizations served; and

(5) The impact and responsiveness of the bank's community development services that benefit or serve the facility-based assessment area, as provided in § __.15.

(c) State, multistate MSA, or nationwide area evaluation. The [Agency] evaluates a bank's community development services performance in a State or multistate MSA, as applicable, or nationwide area, and assigns a conclusion for those areas, based on the following two components:

(1) *Component one – weighted average of facility-based assessment area performance in a State, multistate MSA, or nationwide area.* The [Agency] considers the weighted average of the performance scores corresponding to the bank's Community Development Services Test conclusions for its facility-based assessment areas within a State, multistate MSA, or the institution pursuant to section IV of appendix B of this part.

(2) *Component two – evaluation of community development services outside of facility-based assessment areas.* The [Agency] may adjust upwards the conclusion based on the weighted average derived under paragraph (c)(1) of this section and an evaluation of the bank's community development services performed outside of its facility-based assessment areas pursuant to § __.19, which may consider one or more of the factors in paragraphs (b)(1) through (b)(5) of this section.

(d) Community Development Services Test performance conclusions and ratings.

(1) *Conclusions.* Pursuant to § __.28 and appendix C of this part, the [Agency] assigns conclusions for a bank's Community Development Services Test performance in each facility-based assessment area, each State or multistate MSA, as applicable, and for the institution. In assigning conclusions under this performance test, the [Agency] may consider performance context information as provided in § __.21(d).

(2) *Ratings.* Pursuant to § __.28 and appendix D of this part, the [Agency] incorporates a bank's Community Development Services Test conclusions into its State or multistate MSA ratings, as applicable, and its institution rating.

§__.26 Limited purpose banks.

(a) Bank request for designation as a limited purpose bank. To receive a designation as a limited purpose bank, a bank must file a written request with the [Agency] at least 90 days prior to the proposed effective date of the designation. If the [Agency] approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the [Agency] notifies a limited purpose bank that the [Agency] has revoked the designation on the [Agency]'s own initiative.

(b) Performance evaluation.

(1) *In general.* To evaluate a limited purpose bank, the [Agency] applies the Community Development Financing Test for Limited Purpose Banks as described in paragraphs (c) through (f) of this section.

(2) *Additional consideration.*

(i) *Community development services.* The [Agency] may adjust a limited purpose bank's institution rating from "Satisfactory" to "Outstanding" where a bank requests and receives additional consideration for services that would qualify under the Community Development Services Test in § __.25.

(ii) *Additional consideration for low-cost education loans.* A limited purpose bank may request and receive additional consideration at the institution level for

providing low-cost education loans to low-income borrowers pursuant to 12 U.S.C. 2903(d), regardless of the limited purpose bank's overall institution rating.

(c) Community Development Financing Test for Limited Purpose Banks.

(1) In general. Pursuant to § __.21, the Community Development Financing Test for Limited Purpose Banks evaluates a limited purpose bank's record of helping to meet the credit needs of its entire community through community development loans and community development investments (i.e., the bank's community development financing performance).

(2) Allocation. The [Agency] considers community development loans and community development investments allocated pursuant to paragraph I.b of appendix B of this part.

(d) Facility-based assessment area evaluation. The [Agency] evaluates a limited purpose bank's community development financing performance in a facility-based assessment area and assigns a conclusion in the facility-based assessment area based on the [Agency]'s:

(1) Consideration of the dollar volume of the limited purpose bank's community development loans and community development investments that benefit or serve the facility-based assessment area; and

(2) A review of the impact and responsiveness of the limited purpose bank's community development loans and community development investments that benefit or serve a facility-based assessment area, as provided in § __.15.

(e) State or multistate MSA evaluation. The [Agency] evaluates a limited purpose bank's community development financing performance in each State or multistate MSA, as applicable pursuant to §§ __.19 and __.28(c), and assigns a conclusion for the bank's performance in the State or multistate MSA based on the [Agency]'s consideration of the following two components:

(1) *Component one – facility-based assessment area performance conclusions in a State or multistate MSA.* A limited purpose bank's community development financing performance in its facility-based assessment areas in the State or multistate MSA; and

(2) *Component two – State or multistate MSA performance.* The dollar volume of the limited purpose bank's community development loans and community development investments that benefit or serve the State or multistate MSA and a review of the impact and responsiveness of those loans and investments, as provided in § __.15.

(f) Nationwide area evaluation. The [Agency] evaluates a limited purpose bank's community development financing performance in the nationwide area, pursuant to § __.19, and assigns a conclusion for the institution based on the [Agency]'s consideration of the following two components:

(1) *Component one – facility-based assessment area performance.* The limited purpose bank's community development financing performance in all of its facility-based assessment areas; and

(2) *Component two – nationwide area performance.* The limited purpose bank's community development financing performance in the nationwide area based on the following metrics and benchmarks in paragraphs (f)(2)(i) through (f)(2)(iv) of this section and a review of the impact and responsiveness of the bank's community development loans and community development investments in paragraph (f)(2)(v) of this section.

(i) Limited Purpose Bank Community Development Financing Metric. The Limited Purpose Bank Community Development Financing Metric measures the dollar volume of a bank's community development loans and community development investments that benefit or serve all or part of the nationwide area compared to the bank's assets calculated pursuant to paragraph III.a of appendix B of this part.

(ii) Community Development Financing Benchmarks. The [Agency] compares the Limited Purpose Bank Community Development Financing Metric to the following benchmarks:

(A) Nationwide Limited Purpose Bank Community Development Financing Benchmark. The Nationwide Limited Purpose Bank Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments of depository institutions designated as limited purpose banks or savings associations pursuant to 12 CFR 25.26(a) or designated as limited purpose banks pursuant to 12 CFR 228.26(a) or 345.26(a) reported pursuant to 12 CFR 25.42(b), 228(b), or 345(b) that benefit and serve all or part of the nationwide area compared to assets for those depository institutions, calculated pursuant to paragraph III.b of appendix B of this part; and

(B) Nationwide Asset-Based Community Development Financing Benchmark. The Nationwide Asset-Based Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments that benefit or serve all or part of the nationwide area of all depository institutions that reported pursuant to 12 CFR 25.42(b), 228.42(b), or 345.42(b) compared to assets for those depository institutions, calculated pursuant to paragraph III.c of appendix B of this part.

(iii) Limited Purpose Bank Community Development Investment Metric. For a limited purpose bank that had assets greater than \$10 billion as of December 31

in both of the prior two calendar years, the Limited Purpose Bank Community Development Investment Metric measures the dollar volume of the bank's community development investments that benefit or serve all or part of the nationwide area, excluding mortgage-backed securities, compared to the bank's assets, calculated pursuant to paragraph III.d of appendix B of this part.

(iv) Nationwide Asset-Based Community Development Investment Benchmark.

(A) For a limited purpose bank that had assets greater than \$10 billion as of December 31 in both of the prior two calendar years, the [Agency] compares the Limited Purpose Bank Community Development Investment Metric to the Nationwide Asset-Based Community Development Investment Benchmark. This comparison may only contribute positively to the bank's Community Development Financing Test for Limited Purpose Banks conclusion for the institution.

(B) The Nationwide Asset-Based Community Development Investment Benchmark measures the dollar volume of community development investments that benefit or serve all or part of the nationwide area, excluding mortgage-backed securities, of all depository institutions that had assets greater than \$10 billion as of December 31 in both of the prior two calendar years, compared to assets for those depository institutions, calculated pursuant to paragraph III.e of appendix B of this part.

(v) Impact and responsiveness review. The [Agency] reviews the impact and responsiveness of the bank's community development loans and community development investments that benefit or serve the nationwide area, as provided in § __.15.

(g) Community Development Financing Test for Limited Purpose Banks performance conclusions and ratings.

(1) *Conclusions.* Pursuant to § __.28 and appendix C of this part, the [Agency] assigns conclusions for a limited purpose bank's Community Development Financing Test for Limited Purpose Banks performance in each facility-based assessment area, each State or multistate MSA, as applicable, and for the institution. In assigning conclusions under this performance test, the [Agency] may consider performance context information as provided in § __.21(d).

(2) *Ratings.* Pursuant to § __.28 and appendix D of this part, the [Agency] incorporates a limited purpose bank's Community Development Financing Test for Limited Purpose Banks conclusions into its State or multistate MSA ratings, as applicable, and its institution rating.

§ __.27 Strategic plan

(a) Alternative election. Pursuant to § __.21, the [Agency] evaluates a bank's record of helping to meet the credit needs of its entire community under a strategic plan, if:

- (1) The [Agency] has approved the plan pursuant to this section;
- (2) The plan is in effect; and
- (3) The bank has been operating under an approved plan for at least one year.

(b) Data requirements. The [Agency]'s approval of a plan does not affect the bank's obligation, if any, to collect, maintain, and report data as required by § __.42.

(c) Plans in general.

(1) *Term.* A plan may have a term of not more than five years.

(2) *Performance tests in plan.*

(i) A bank's plan must include the same performance tests that would apply in the absence of an approved plan, except as provided in paragraph (g)(1) of this section.

(ii) Consistent with paragraph (g) of this section, a bank's plan may include optional evaluation components or eligible modifications and additions to the performance tests that would apply in the absence of an approved plan.

(3) *Assessment areas and other geographic areas.*

(i) Multiple geographic areas. A bank may prepare a single plan or separate plans for its facility-based assessment areas, retail lending assessment areas, outside retail lending area, or other geographic areas that would be evaluated in the absence of an approved plan.

(ii) Geographic areas not included in a plan. Any facility-based assessment area, retail lending assessment area, outside retail lending area, or other geographic area that would be evaluated in the absence of an approved plan, but is not included in an approved plan, will be evaluated pursuant to the performance tests that would apply in the absence of an approved plan.

(4) *[Operations subsidiaries or operating subsidiaries] and affiliates.*

(i) [Operations subsidiaries or operating subsidiaries]. The loans, investments, services, and products of a bank's [operations subsidiary or operating subsidiary]

must be included in the bank's plan, unless the [operations subsidiary or operating subsidiary] is independently subject to CRA requirements.

(ii) Affiliates.

(A) Optional inclusion of other affiliates' loans, investments, services and products. Consistent with § __.21(b)(3), a bank may include loans, investments, services, and products of affiliates of a bank that are not [operations subsidiaries or operating subsidiaries] in a plan, if those loans, investments, services, and products are not included in the CRA performance evaluation of any other depository institution.

(B) Joint plans. Affiliated depository institutions supervised by the same Federal financial supervisory agency may prepare a joint plan, provided that the plan includes, for each bank, the applicable performance tests that would apply in the absence of an approved plan. The joint plan may include optional evaluation components or eligible modifications and additions to the performance tests that would apply in the absence of an approved plan.

(C) Allocation. The inclusion of an affiliate's loans, investments, services, and products in a bank's plan, or in a joint plan of affiliated depository institutions, is subject to the following:

(1) The loans, investments, services, and products may not be included in the CRA performance evaluation of another depository institution; and

(2) The allocation of loans, investments, services, and products to a bank, or among affiliated banks, must reflect a reasonable basis for the allocation and may not be for the sole or primary purpose of inappropriately enhancing any bank's CRA evaluation.

(d) Justification and appropriateness of plan election.

(1) *Justification requirements.* A bank's plan must provide a justification that demonstrates the need for the following aspects of a plan due to the bank's business model (e.g., its retail banking services and retail banking products):

(i) Optional evaluation components pursuant to paragraph (g)(1) of this section;

(ii) Eligible modifications or additions to the applicable performance tests pursuant to paragraph (g)(2) of this section;

(iii) Additional geographic areas pursuant to paragraph (g)(3) of this section; and

(iv) The conclusions and ratings methodology pursuant to paragraph (g)(6) of this section.

(2) *Justification elements.* Each justification must specify the following:

(i) Why the bank's business model is outside the scope of, or inconsistent with, one or more aspects of the performance tests that would apply in the absence of an approved plan;

(ii) Why an evaluation of the bank pursuant to any aspect of a plan in paragraph (d)(1) of this section would more meaningfully reflect a bank's record of helping to meet the credit needs of its community than if it were evaluated under the performance tests that would apply in the absence of an approved plan; and

(iii) Why the optional performance components and eligible modifications or additions meet the standards of paragraphs (g)(1) and (g)(2) of this section, as applicable.

(e) Public participation in initial draft plan development.

(1) *In general.* Before submitting a draft plan to the [Agency] for approval pursuant to paragraph (h) of this section, a bank must:

(i) Informally seek suggestions from members of the public while developing the plan;

(ii) Once the bank has developed its initial draft plan, formally solicit public comment on the initial draft plan for at least 60 days by:

(A) Submitting the initial draft plan for publication on the [Agency]'s website and by publishing the initial draft plan on the bank's website, if the bank maintains one; and

(B) Publishing notice in at least one print newspaper of general circulation (if available, otherwise a digital publication) in each facility-based assessment area covered by the plan;

(C) Notwithstanding paragraph (e)(1)(ii)(B) of this section, for a military bank, publish notice in at least one print newspaper of general circulation targeted to members of the military, if available, otherwise a digital publication targeted to members of the military; and

(iii) Include in the notice required under paragraph (e)(1)(ii) of this section a means by which members of the public can electronically submit and mail comments to the bank on its initial draft plan.

(2) *Availability of initial draft plan.* During the period when the bank is formally soliciting public comment on its initial draft plan, the bank must make copies of the initial draft plan available for review at no cost at all offices of the bank in any facility-based assessment area covered by the plan and provide copies of the initial draft plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(f) Submission of a draft plan. The bank must submit its draft plan to the [Agency] at least 90 days prior to the proposed effective date of the plan. The bank must also submit with its draft plan:

(1) Proof of notice publication and a description of its efforts to seek input from members of the public, including individuals and organizations the bank contacted and how the bank gathered information;

(2) Any written comments or other public input received;

(3) If the bank revised the initial draft plan in response to the public input received, the initial draft plan as released for public comment with an explanation of the relevant changes; and

(4) If the bank did not revise the initial draft plan in response to suggestions or concerns from public input received, an explanation for why any suggestion or concern was not addressed in the draft plan.

(g) Plan content. In addition to meeting the requirements in paragraph (c) and (d) of this section, the plan must meet the following requirements:

(1) *Applicable performance tests and optional evaluation components.* A bank must include in its plan a focus on the credit needs of its entire community, including low- and moderate-income individuals, families, or households, low- and moderate-income census tracts, and small businesses and small farms. The bank must describe how its plan is responsive to the characteristics and credit needs of its facility-based assessment areas, retail lending assessment areas, outside retail lending area or other geographic areas served by the bank, considering public comment and the bank's capacity and constraints, product offerings, and business strategy. As applicable, a bank must specify components in its plan for helping to meet:

(i) The retail lending needs of its facility-based assessment areas, retail lending assessment areas, and outside retail lending area that are covered by the plan. A bank that originates or purchases loans in a product line evaluated pursuant to the Retail Lending Test in § __.22 or originates or purchases loans evaluated pursuant to the Small Bank Lending Test in § __.29(a)(2) must include the applicable test in its plan, subject to eligible modifications or additions specified in paragraph (g)(2) of this section.

(ii) The retail banking services and retail banking products needs of its facility-based assessment areas and at the institution level that are covered by the plan.

(A) A large bank that maintains delivery systems evaluated pursuant to the Retail Services and Products Test in § __.23(b) must include this component of the test in its plan, subject to eligible modifications or additions specified in paragraph (g)(2) of this section.

(B) A large bank that does not maintain delivery systems evaluated pursuant to the Retail Services and Products Test in § __.23(b) may include retail banking products components in § __.23(c) and accompanying annual measurable goals in its plan.

(C) A bank other than a large bank may include components of retail banking services or retail banking products and accompanying annual measurable goals in its plan.

(iii) The community development loan and community development investment needs of its facility-based assessment areas, States, or multistate MSAs, as applicable, and the nationwide area that are covered by the plan. Subject to eligible modifications or additions as provided in paragraph (g)(2) of this section:

(A) A large bank must include the Community Development Financing Test in § __.24 in its plan.

(B) An intermediate bank must include either the Community Development Financing Test in § __.24 or the Intermediate Bank Community Development Test in § __.30(a)(2) in its plan.

(C) A limited purpose bank must include the Community Development Financing Test for Limited Purpose Banks in § __.26 in its plan.

(D) A small bank may include a community development loan or community development investment component and accompanying annual measurable goals in its plan.

(iv) The community development services needs of its facility-based assessment areas served by the bank that are covered by the plan.

(A) A large bank must include the Community Development Services Test in § __.25 in its plan, subject to eligible modifications or additions as provided in paragraph (g)(2) of this section, for each facility-based assessment area where the bank has employees.

(B) A bank other than a large bank may include a community development services component and accompanying annual measurable goals in its plan.

(2) Eligible modifications or additions to applicable performance tests.

(i) Retail lending.

(A) For a bank that the [Agency] would otherwise evaluate pursuant to the Small Bank Lending Test in § __.29(a)(2):

(1) A bank may omit, as applicable, the evaluation of performance criteria related to the loan-to-deposit ratio or the percentage of loans located in the bank's facility-based assessment area(s).

(2) A bank may add annual measurable goals for any aspect of the bank's retail lending.

(B) For a bank the [Agency] would otherwise evaluate pursuant to the Retail Lending Test in § __.22:

(1) A bank may add additional loan products, such as non-automobile consumer loans or open-end home mortgage loans, or additional goals for major product lines, such as closed-end home mortgage loans to first-time homebuyers, with accompanying annual measurable goals.

(2) Where annual measurable goals for additional loan products or additional goals for major product lines have been added pursuant to paragraph (g)(2)(i)(B)(1) of this section, a bank may provide different weights for averaging together the performance across these loan products or may include those loan products in the numerator of the Bank Volume Metric.

(3) A bank may use alternative weights for combining the borrower and geographic distribution analyses for major product line(s) or other loan products.

(ii) Retail banking services and retail banking products.

(A) A large bank may add annual measurable goals for any component of the Retail Services and Products Test in § __.23.

(B) A large bank may modify the Retail Services and Products Test by removing a component of the test.

(C) A large bank may assign specific weights to applicable components in paragraph (g)(3)(ii)(A) of this section in reaching a Retail Services and Products Test conclusion.

(D) A bank other than a large bank may include retail banking services or retail banking products component(s) and accompanying annual measurable goals in its plan.

(iii) Community development loans and community development investments.

(A) A bank may specify annual measurable goals for community development loans, community development investments, or both. The bank must base any annual measurable goals as a percentage or ratio of the bank's community development loans and community development investments for all or certain types of community development described in § __.13 (b) through (l), presented either on a combined or separate basis, relative to the bank's capacity and should account for community development needs and opportunities.

(B) A bank may specify using assets as an alternative denominator for a community development financing metric if it better measures a bank's capacity.

(C) A bank may specify additional benchmarks to evaluate a community development financing metric.

(D) A small bank may include community development loans, community development investments, or both, and accompanying annual measurable goals in its plan.

(iv) Community development services.

(A) A bank may specify annual measurable goals for community development services activity, by number of activity hours, number of hours per full-time equivalent employee, or some other measure.

(B) A bank other than a large bank may include a community development services component and accompanying annual measurable goals in its plan.

(v) Weights for assessing performance across geographic areas. A bank may specify alternative weights for averaging test performance across assessment areas or other geographic areas. These alternative weights must be based on the bank's capacity and community needs and opportunities in specific geographic areas.

(vi) Test weights. For ratings at the State, multistate MSA, and institution levels pursuant to § __.28(b) and paragraph g.2 of appendix D of this part, as applicable:

(A) A bank may request an alternate weighting method for combining performance under the applicable performance tests and optional evaluation components. In specifying alternative test weights for each applicable test, a bank must emphasize retail lending, community development financing, or both. Alternative weights must be responsive to the characteristics and credit needs of a bank's assessment areas and public comments and must be based on the bank's capacity and constraints, product offerings, and business strategy.

(B) A bank that requests an alternate weighting method pursuant to paragraph (g)(2)(vi)(A) of this section must compensate for decreasing the weight under one test by committing to enhance its efforts to help meet the credit needs of its community under another performance test.

(3) Geographic coverage of plan.

(i) A bank may incorporate performance evaluation components and accompanying annual measurable goals for additional geographic areas but may not eliminate the evaluation of its performance in any geographic area that would be included in its performance evaluation in the absence of an approved plan.

(ii) If a large bank is no longer required to delineate a retail lending assessment area previously identified in the plan as a result of not meeting the required retail lending assessment area thresholds pursuant to § __.17, the [Agency] will not evaluate the bank for its performance in that area for the applicable years of the plan in which the area is no longer a retail lending assessment area.

(iii) A bank that includes additional performance evaluation components with accompanying annual measurable goals in its plan must specify the geographic areas where those components and goals apply.

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

(5) "Satisfactory" and "Outstanding" performance goals. A bank that includes modified or additional performance evaluation components with accompanying annual measurable goals in its plan must specify in its plan annual measurable goals that constitute "Satisfactory" performance and may specify annual measurable goals that constitute "Outstanding" performance.

(6) *Conclusions and rating methodology.* A bank must specify in its plan how all elements of a plan covered in paragraphs (g)(1) through (g)(5) of this section, in conjunction with any other applicable performance tests not included in an approved strategic plan, should be considered to assign:

(i) *Conclusions.* Pursuant to § __.28 and appendix C of this part, the [Agency] assigns conclusions for each facility-based assessment area, retail lending assessment area, outside retail lending area, State, and multistate MSA, as applicable, and the institution. In assigning conclusions under a strategic plan, the [Agency] may consider performance context information as provided in § __.21(d).

(ii) *Ratings.* Pursuant to § __.28 and paragraph f of appendix D of this part, the [Agency] incorporates the conclusions of a bank evaluated under an approved plan into its State or multistate MSA ratings, as applicable, and its institution rating, accounting for paragraph g.2 of appendix D of this part, as applicable.

(h) Draft plan evaluation.

(1) *Timing.* The [Agency] seeks to act upon a draft plan within 90 calendar days after the [Agency] receives the complete draft plan and other materials required pursuant to paragraph (f) of this section. If the [Agency] does not act within this time period, the [Agency] will communicate to the bank the rationale for the delay and an expected timeframe for a decision on the draft plan.

(2) *Public participation.* In evaluating the draft plan, the [Agency] considers:

(i) The public's involvement in formulating the draft plan, including specific information regarding the members of the public and organizations the bank contacted and how the bank collected information relevant to the draft plan;

(ii) Written public comments and other public input on the draft plan;

(iii) Any response by the bank to public input on the draft plan; and

(iv) Whether to solicit additional public input or require the bank to provide any additional response to public input already received.

(3) *Criteria for evaluating plan for approval.*

(i) The [Agency] evaluates all plans using the following criteria:

(A) The extent to which the plan meets the standards set forth in this section; and

(B) The extent to which the plan has adequately justified the need for a plan and each aspect of the plan as required in paragraph (d) of this section.

(ii) The [Agency] evaluates a plan under the following criteria, as applicable, considering performance context information pursuant to § __.21(d):

(A) The extent and breadth of retail lending or retail lending-related activities to address credit needs, including the distribution of loans among census tracts of different income levels, businesses and farms of different sizes, and individuals of different income levels, pursuant to §§ __.22, and __.29, as applicable;

(B) The effectiveness of the bank's systems for delivering retail banking services and the availability and responsiveness of the bank's retail banking products, pursuant to § __.23, as applicable;

(C) The extent, breadth, impact, and responsiveness of the bank's community development loans and community development investments, pursuant to §§ __.24, __.26, and __.30, as applicable; and

(D) The number, hours, and types of community development services performed and the extent to which the bank's community development services are impactful and responsive, pursuant to §§ __.25 and __.30, as applicable.

(4) Plan decisions.

(i) Approval. The [Agency] may approve a plan after considering the criteria in paragraph (h)(3) of this section and if it determines that the bank has provided adequate justification for the plan and each aspect of the plan as required in paragraph (d) of this section.

(ii) Denial. The [Agency] may deny a bank's request to be evaluated under a plan for any of the following reasons:

(A) The Agency determines that the bank has not provided adequate justification for the plan and each aspect of the plan as required pursuant to paragraph (d) of this section;

(B) The [Agency] determines that evaluation under the plan would not provide a more meaningful reflection of the bank's record of helping to meet the credit needs of the bank's community;

(C) The plan is not responsive to public comment received pursuant to paragraph (e) of this section;

(D) The [Agency] determines that the plan otherwise fails to meet the requirements of this section; or

(E) The bank fails to provide information requested by the [Agency] that is necessary for the [Agency] to make an informed decision.

(5) *Publication of approved plan.* The [Agency] will publish an approved plan on the [Agency]'s website.

(i) Plan amendment.

(1) *Mandatory plan amendment.* During the term of a plan, a bank must submit to the [Agency] for approval an amendment to its plan if a material change in circumstances:

(i) Impedes its ability to perform at a satisfactory level under the plan, such as financial constraints caused by significant events that impact the local or national economy; or

(ii) Significantly increases its financial capacity and ability to engage in retail lending, retail banking services, retail banking products, community development loans, community development investments, or community development services referenced in an approved plan, such as a merger or consolidation.

(2) *Elective plan amendment.* During the term of a plan, a bank may request the [Agency] to approve an amendment to the plan in the absence of a material change in circumstances.

(3) *Requirements for plan amendments.*

(i) Amendment explanation. When submitting a plan amendment for approval, a bank must explain:

(A) The material change in circumstances necessitating the amendment;
or

(B) Why it is necessary and appropriate to amend its plan in the absence of a material change in circumstances.

(ii) Compliance requirement. An amendment to a plan must comply with all relevant requirements of this section, unless the [Agency] waives a requirement as not applicable.

(j) Performance evaluation under a plan.

(1) *In general.* The [Agency] evaluates a bank's performance under an approved plan based on the performance tests that would apply in the absence of an approved plan and any optional evaluation components or eligible modifications and additions to the applicable performance tests set forth in the bank's approved plan.

(2) *Goal considerations.* If a bank established annual measurable goals and does not meet one or more of its satisfactory goals, the [Agency] will consider the following factors to determine the effect on a bank's CRA performance evaluation:

- (i) The degree to which the goal was not met;
- (ii) The importance of the unmet goals to the plan as a whole; and
- (iii) Any circumstances beyond the control of the bank, such as economic conditions or other market factors or events, that have adversely impacted the bank's ability to perform.

(3) *Ratings.* The [Agency] rates the performance of a bank under this section pursuant to appendix D of this part.

§ __.28 Assigned conclusions and ratings.

(a) Conclusions.

(1) *State, multistate MSA, and institution test conclusions and performance scores.*

(i) In general. For each of the applicable performance tests pursuant to §§ __.22 through __.26, and § __.30, the [Agency] assigns conclusions and associated test performance scores of "Outstanding," "High Satisfactory," "Low Satisfactory," "Needs to Improve," or "Substantial Noncompliance" for the performance of a bank in each State and multistate MSA, as applicable pursuant to paragraph (c) of this section, and for the institution.

(ii) Small banks. The [Agency] assigns conclusions of "Outstanding," "Satisfactory," "Needs to Improve," or "Substantial Noncompliance" for the performance of a small bank evaluated under the Small Bank Lending Test in § __.29(a)(2) in each State and multistate MSA, as applicable pursuant to paragraph (c) of this section, and for the institution pursuant to § __.29 and appendix E of this part.

(iii) Banks operating under a strategic plan. The [Agency] assigns conclusions for the performance of a bank operating under a strategic plan pursuant to § __.27 in each State and multistate MSA, as applicable pursuant to paragraph (c) of this

section, and for the institution in accordance with the methodology of the plan and appendix C of this part.

(2) Bank performance in metropolitan and nonmetropolitan areas. Pursuant to 12 U.S.C. 2906, the [Agency] provides conclusions derived under this part separately for metropolitan areas in which a bank maintains one or more domestic branch offices and for the nonmetropolitan area of a State if a bank maintains one or more domestic branch offices in such nonmetropolitan area.

(b) Ratings.

(1) In general. The [Agency] assigns a rating for a bank's overall CRA performance of "Outstanding," "Satisfactory," "Needs to Improve," or "Substantial Noncompliance" in each State and multistate MSA, as applicable pursuant to paragraph (c) of this section, and for the institution, as provided in this section and appendices D and E of this part. The ratings assigned by the [Agency] reflect the bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

(2) State, multistate MSA, and institution ratings and overall performance scores.

(i) For large banks, intermediate banks, small banks that opt into the Retail Lending Test in § __.22, and limited purpose banks, the [Agency] calculates and discloses the bank's overall performance score for each State and multistate MSA, as applicable, and for the institution. The [Agency] uses a bank's overall performance scores described in this section to assign a rating for the bank's overall performance in each State and multistate MSA, as applicable, and for the institution, subject to paragraphs (d) and (e) of this section.

(ii) Overall performance scores are based on the bank's performance score for each applicable performance test and derived as provided paragraph (b)(3) of this section, as applicable, and appendix D of this part.

(3) Weighting of performance scores. In calculating a large bank's or intermediate bank's overall performance score for each State and multistate MSA, as applicable, and the institution, the [Agency] weights the performance scores for the bank for each applicable performance test as provided below.

(i) Large bank performance test weights. The [Agency] weights the bank's performance score for the performance tests applicable to a large bank as follows:

(A) Retail Lending Test, 40 percent;

(B) Retail Services and Products Test, 10 percent;

(C) Community Development Financing Test, 40 percent; and

(D) Community Development Services Test, 10 percent.

(ii) Intermediate bank performance test weights. The [Agency] weights the bank's performance score for the performance tests applicable to an intermediate bank as follows:

(A) Retail Lending Test, 50 percent, and

(B) Intermediate Bank Community Development Test or Community Development Financing Test, as applicable, 50 percent.

(4) Minimum conclusion requirements.

(i) Retail Lending Test minimum conclusion. An intermediate bank or a large bank must receive at least a "Low Satisfactory" Retail Lending Test conclusion for the State, multistate MSA, or institution to receive, respectively, a State, multistate MSA, or institution rating of "Satisfactory" or "Outstanding."

(ii) Minimum of "Low Satisfactory" overall facility-based assessment area and retail lending assessment area conclusion.

(A) For purposes of this paragraph, the [Agency] assigns a large bank an overall conclusion for each facility-based assessment area and, as applicable, each retail lending assessment area, as provided in paragraph g.2.ii of appendix D of this part.

(B) Except as provided in § __.51(e), a large bank with a combined total of 10 or more facility-based assessment areas and retail lending assessment areas in any State or multistate MSA, as applicable, or for the institution may not receive a rating of "Satisfactory" or "Outstanding" in that State or multistate MSA, as applicable, or for the institution, unless the bank receives an overall conclusion of at least "Low Satisfactory" in 60 percent or more of the total number of its facility-based assessment areas and retail lending assessment areas in that State or multistate MSA, as applicable, or for the institution.

(c) Conclusions and ratings for States and multistate MSAs.

(1) States.

(i) In general. Except as provided in paragraph (c)(1)(ii) of this section, the [Agency] evaluates a bank and assigns conclusions and ratings for any State in

which the bank maintains a main office, branch, or deposit-taking remote service facility.

(ii) States with rated multistate MSAs. The [Agency] evaluates a bank and assigns conclusions and ratings for a State only if the bank maintains a main office, branch, or deposit-taking remote service facility outside the portion of the State comprising any multistate MSA identified in paragraph (c)(2) of this section. In evaluating a bank and assigning conclusions and ratings for a State, the [Agency] does not consider activities to be in the State if those activities take place in the portion of the State comprising any multistate MSA identified in paragraph (c)(2) of this section.

(iii) States with non-rated multistate MSAs. If a facility-based assessment area of a bank comprises a geographic area spanning two or more States within a multistate MSA that is not identified in paragraph (c)(2) of this section, the [Agency] considers activities in the entire facility-based assessment area to be in the State in which the bank maintains, within the multistate MSA, a main office, branch, or deposit-taking remote service facility. In evaluating a bank and assigning conclusions and ratings for a State, the [Agency] does not consider activities to be in the State if those activities take place in any facility-based assessment area that is considered to be in another State pursuant to this paragraph.

(iv) States with multistate retail lending assessment areas. In assigning Retail Lending Test conclusions for a State pursuant to § __.22(h), the [Agency] does not consider a bank's activities to be in the State if those activities take place in a retail lending assessment area consisting of counties in more than one State.

(2) *Rated multistate MSAs.* The [Agency] evaluates a bank and assigns conclusions and ratings under this part in any multistate MSA in which the bank maintains a main office, a branch, or a deposit-taking remote service facility in two or more States within that multistate MSA.

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

(1) *Scope.* For each State and multistate MSA, as applicable, and the institution, the [Agency]'s evaluation of a bank's performance under this part is adversely affected by evidence of discriminatory or other illegal credit practices, as provided in paragraph (d)(2) of this section. The [Agency] considers evidence of discriminatory or other illegal credit practices described in this section by:

(i) The bank, including by an [operations subsidiary or operating subsidiary] of the bank; or

(ii) Any other affiliate related to any activities considered in the evaluation of the bank.

(2) *Discriminatory or other illegal credit practices.* For purposes of paragraph (d)(1) of this section, discriminatory or other illegal credit practices consist of the following:

(i) Discrimination on a prohibited basis, including in violation of the Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.) or the Fair Housing Act (42 U.S.C. § 3601 et seq.);

(ii) Violations of the Home Ownership and Equity Protection Act (15 U.S.C. 1639);

(iii) Violations of section 5 of the Federal Trade Commission Act (15 U.S.C. 45);

(iv) Violations of section 1031 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5531, 5536);

(v) Violations of section 8 of the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.);

(vi) Violations of the Truth in Lending Act (15 U.S.C. 1601 et seq.);

(vii) Violations of the Military Lending Act (10 U.S.C. 987);

(viii) Violations of the Servicemembers Civil Relief Act (50 U.S.C. 3901 et seq.);
and

(ix) Any other violation of a law, rule, or regulation consistent with the types of violations in paragraphs (d)(2)(i) through (d)(2)(viii) of this section, as determined by the [Agency].

(3) *Agency considerations.* In determining the effect of evidence of discriminatory or other illegal credit practices described in paragraph (d)(1) of this section on the bank's assigned State, multistate MSA, and institution ratings, the [Agency] will consider:

(i) The root cause or causes of any such violations of law, rule, or regulation;

(ii) The severity of any harm to any communities, individuals, small businesses, and small farms resulting from such violations;

(iii) The duration of time over which the violations occurred;

(iv) The pervasiveness of the violations;

(v) The degree to which the bank, [operations subsidiary or operating subsidiary], or affiliate, as applicable, has established an effective compliance management

system across the institution to self-identify risks and to take the necessary actions to reduce the risk of non-compliance and harm to communities, individuals, small businesses, and small farms; and

(vi) Any other relevant information.

(e) Consideration of past performance. When assigning ratings, the [Agency] considers a bank's past performance. If a bank's prior rating was "Needs to Improve," the [Agency] may determine that a "Substantial Noncompliance" rating is appropriate where the bank failed to improve its performance since the previous evaluation period, with no acceptable basis for such failure.

§ __.29 Small bank performance evaluation.

(a) Small bank performance evaluation.

(1) In general. The [Agency] evaluates a small bank's record of helping to meet the credit needs of its entire community pursuant to the Small Bank Lending Test as provided in paragraph (a)(2) of this section, unless the small bank opts to be evaluated pursuant to the Retail Lending Test in § __.22.

(2) Small Bank Lending Test. A small bank's retail lending performance is evaluated pursuant to the following criteria:

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

(ii) The percentage of loans and, as appropriate, other retail and community development lending-related activities located in the bank's facility-based assessment areas;

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

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

(v) 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 facility-based assessment areas.

(b) Additional consideration.

(1) *Small banks evaluated pursuant to the Small Bank Lending Test.* The [Agency] may adjust a small bank rating from “Satisfactory” to “Outstanding” at the institution level where the bank requests and receives additional consideration for the following activities, without regard to whether the activity is in one or more of the bank’s facility-based assessment areas, as applicable:

(i) Making community development investments;

(ii) Providing community development services; and

(iii) Providing branches and other services, digital delivery systems and other delivery systems, and deposit products responsive to the needs of low- and moderate-income individuals, families, or households, residents of low- and moderate-income census tracts, small businesses, and small farms.

(2) *Small banks that opt to be evaluated pursuant to the Retail Lending Test in § __.22.* The [Agency] may adjust a small bank rating from “Satisfactory” to “Outstanding” at the institution level where the bank requests and receives additional consideration for activities that would qualify pursuant to the Retail Services and Products Test in § __.23, the Community Development Financing Test in § __.24, or the Community Development Services Test in § __.25.

(3) *Additional consideration for activities with MDIs, WDIs, and LICUs, and for providing low-cost education loans.* Notwithstanding paragraphs (b)(1) and (b)(2) of this section, a small bank may request and receive additional consideration at the institution level for activities with MDIs, WDIs, and LICUs pursuant to 12 U.S.C. 2903(b) and 2907(a) and for providing low-cost education loans to low-income borrowers pursuant to 12 U.S.C. 2903(d), regardless of the small bank’s overall institution rating.

(c) Small bank performance conclusions and ratings.

(1) *Conclusions.* Except for a small bank that opts to be evaluated pursuant to the Retail Lending Test in § __.22, the [Agency] assigns conclusions for the performance of a small bank evaluated under this section as provided in appendix E of this part. If a bank opts to be evaluated pursuant to the Retail Lending Test, the [Agency] assigns conclusions for the bank’s Retail Lending Test performance as provided in appendix C of this part. In assigning conclusions for a small bank, the [Agency] may consider performance context information as provided in § __.21(d).

(2) *Ratings.* For a small bank evaluated under the Small Bank Lending Test, the [Agency] rates the bank’s performance under this section as provided in appendix E of this part. If a small bank opts to be evaluated under the Retail Lending Test in § __.22, the [Agency] rates the performance of a small bank as provided by appendix D of this part.

§ __.30 Intermediate bank performance evaluation.

(a) Intermediate bank performance evaluation.

(1) *In general.* The [Agency] evaluates an intermediate bank's record of helping to meet the credit needs of its entire community pursuant to the Retail Lending Test in § __.22 and the Intermediate Bank Community Development Test as provided in paragraph (a)(2) of this section, unless an intermediate bank opts to be evaluated pursuant to the Community Development Financing Test in § __.24.

(2) *Intermediate Bank Community Development Test.*

(i) An intermediate bank's community development performance is evaluated pursuant to the following criteria:

(A) The number and dollar amount of community development loans;

(B) The number and dollar amount of community development investments;

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

(D) The bank's responsiveness through such community development loans, community development investments, and community development services to community development needs. The [Agency]'s evaluation of the responsiveness of the bank's activities is informed by information provided by the bank, and may be informed by the impact and responsiveness review factors described in § __.15(b).

(ii) The [Agency] considers an intermediate bank's community development loans, community development investments, and community development services without regard to whether the activity is made in one or more of the bank's facility-based assessment areas. The extent of the [Agency]'s consideration of community development loans, community development investments, and community development services outside of the bank's facility-based assessment areas will depend on the adequacy of the bank's responsiveness to community development needs and opportunities within the bank's facility-based assessment areas and applicable performance context information.

(b) Additional consideration.

(1) *Intermediate banks evaluated pursuant to the Intermediate Bank Community Development Test.* The [Agency] may adjust the rating of an intermediate bank evaluated as provided in paragraph (a)(2) of this section from “Satisfactory” to “Outstanding” at the institution level where the bank requests and receives additional consideration for activities that would qualify pursuant to the Retail Services and Products Test in § __.23.

(2) *Intermediate banks evaluated pursuant to the Community Development Financing Test.* The [Agency] may adjust the rating of an intermediate bank that opts to be evaluated pursuant to the Community Development Financing Test in § __.24 from “Satisfactory” to “Outstanding” at the institution level where the bank requests and receives additional consideration for activities that would qualify pursuant to the Retail Services and Products Test in § __.23, the Community Development Services Test in § __.25, or both.

(3) *Additional consideration for low-cost education loans.* Notwithstanding paragraphs (b)(1) and (b)(2) of this section, an intermediate bank may request and receive additional consideration at the institution level for providing low-cost education loans to low-income borrowers pursuant to 12 U.S.C. 2903(d), regardless of the intermediate bank’s overall institution rating

(c) Intermediate bank performance conclusions and ratings.

(1) *Conclusions.* The [Agency] assigns a conclusion for the performance of an intermediate bank evaluated pursuant to this section as provided in appendices C and E of this part. In assigning conclusions for an intermediate bank, the [Agency] may consider performance context information as provided in § __.21(d).

(2) *Ratings.* The [Agency] rates the performance of an intermediate bank evaluated under this section as provided in appendix D of this part.

Subpart D—Records, Reporting, Disclosure, and Public Engagement Requirements

§__.43 Content and availability of public file.

(a) Information available to the public. A bank must maintain a public file, in either paper or digital format, that includes the following information:

(1) All written comments received from the public for the current year (updated on a quarterly basis for the prior quarter by March 31, June 30, September 30, and December

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

(2) A copy of the public section of the bank's most recent CRA performance evaluation prepared by the [Agency]. The bank must include this copy in the public file within 30 business days after its receipt from the [Agency];

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

(4) A list of branches opened or closed by the bank during the current year (updated on a quarterly basis for the prior quarter by March 31, June 30, September 30, and December 31) and each of the prior two calendar years, their street addresses, and census tracts;

(5) A list of retail banking services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. A bank may elect to include information regarding the availability of other systems for delivering retail banking services (for example, mobile or online banking, loan production offices, and bank-at-work or mobile branch programs);

(6) A map of each facility-based assessment area and, as applicable, each retail lending assessment area showing the boundaries of the area and identifying the census tracts contained in the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) Additional information available to the public—

(1) *Banks subject to data reporting requirements pursuant to § __.42.* A bank subject to data reporting requirements pursuant to § __.42 must include in its public file a written notice that the CRA Disclosure Statement pertaining to the bank, its [operations subsidiaries or operating subsidiaries], and its other affiliates, if applicable, may be obtained on the FFIEC's website at: <https://www.ffiec.gov>. The bank must include the written notice in the public file within three business days after receiving notification from the FFIEC of the availability of the disclosure statement.

(2) *Banks required to report HMDA data.*

(i) HMDA Disclosure Statement. A bank required to report home mortgage loan data pursuant to 12 CFR part 1003 must include in its public file a written notice that the bank's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (CFPB's) website at:

<https://www.consumerfinance.gov/hmda>. In addition, if the [Agency] considered the home mortgage lending of a bank's [operations subsidiaries or operating subsidiaries] or, at a bank's election, the [Agency] considered the home mortgage lending of other bank affiliates, the bank must include in its public file the names of the [operations subsidiaries or operating subsidiaries] and the names of the affiliates and a written notice that the [operations subsidiaries' or operating subsidiaries'] and other affiliates' HMDA Disclosure Statements may be obtained at the CFPB's website. The bank must include the written notices in the public file within three business days after receiving notification from the FFIEC of the availability of the disclosure statements.

(ii) Availability of bank HMDA data. A large bank required to report home mortgage loan data pursuant to 12 CFR part 1003 must include in its public file a written notice that the home mortgage loan data published by the [Agency] under § __.42(j) are available at the [Agency]'s website.

(3) *Small banks.* A small bank, or a bank that was a small bank during the prior calendar year, must include in its public file the bank's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio.

(4) *Banks with strategic plans.* A bank that has been approved to be evaluated under a strategic plan must include in its public file a copy of that plan while it is in effect. A bank need not include information submitted to the [Agency] on a confidential basis in conjunction with the plan.

(5) *Banks with less than "Satisfactory" ratings.* A bank that received a less than "Satisfactory" institution rating during its most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank must update the description quarterly by March 31, June 30, September 30, and December 31, respectively.

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

(1) For banks that maintain a website, all information required for the bank's public file under this section must be maintained on the bank's website.

(2) For banks that do not maintain a website:

(i) All the information required for the bank's public file must be maintained at the main office and, if an interstate bank, at one branch office in each State; and

(ii) At each branch, the following must be maintained:

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

(B) Within five calendar days of the request, all the information that the bank is required to maintain under this section in the public file relating to the facility-based assessment area in which the branch is located.

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

(e) Timing requirements. Except as otherwise provided in this section, a bank must ensure that its public file contains the information required by this section for each of the previous three calendar years, with the most recent calendar year included in its file annually by April 1 of the current calendar year.

§__.44 Public notice by banks.

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

§__.45 Publication of planned examination schedule.

The [Agency] publishes on its public website, at least 30 days in advance of the beginning of each calendar quarter, a list of banks scheduled for CRA examinations for the next two quarters.

§__.46 Public engagement.

(a) In general. The [Agency] encourages communication between members of the public and banks, including through members of the public submitting written public comments regarding community credit needs and opportunities as well as a bank's record of helping to meet community credit needs. The [Agency] will take these comments into account in connection with the bank's next scheduled CRA examination.

(b) Submission of public comments. Members of the public may submit public comments regarding community credit needs and a bank's CRA performance by submitting comments to the [Agency] at [Agency contact information].

(c) Timing of public comments. If the [Agency] receives a public comment before the close date of a bank's CRA examination, the public comment will be considered in connection with that CRA examination. If the [Agency] receives a public comment after the close date of a bank's CRA examination, it will be considered in connection with the bank's subsequent CRA examination.

(d) Distribution of public comments. The [Agency] will forward all public comments received regarding a bank's CRA performance to the bank.

Subpart E—Transition Rules

§ __.51 Applicability dates and transition provisions.

(a) Applicability dates.

(1) *In general.* Except as provided in paragraphs (a)(2), (b), and (d) of this section, this part is applicable, beginning on April 1, 2024.

(2) *Specific applicability dates.* The following sections are applicable as follows:

(i) On January 1, 2026, §§ __.12 through __.15; __.17 through __.30; __.42(a); the data collection and maintenance requirements in § __.42(c), (d), (e), and (f); and appendices A through F of this part become applicable.

(ii) On January 1, 2027, § __.42(b), (g), (h), and (i) and the reporting requirements in § __.42(c), (d), (e), and (f) become applicable.

(iii) Rules during transition period. Prior to the applicability dates in paragraphs (a)(2)(i) and (ii) of this section, banks must comply with the relevant provisions of this part in effect on March 31, 2024, as set forth in appendix G of this part. The relevant provisions set forth in appendix G of this part are applicable to CRA performance evaluations pursuant to 12 U.S.C. 2903(a)(1) that assess activities that a bank conducted prior to the dates set forth in paragraphs (a)(2)(i) and (ii) of this section, as applicable, except as provided in paragraphs (c) and (d) of this section.

(b) HMDA data disclosures. The [Agency] will publish the data pursuant to § __.42(j) beginning January 1, 2027.

(c) Consideration of Bank Activities.

(1) In assessing a bank's CRA performance, the [Agency] will consider any loan, investment, service, or product that was eligible for CRA consideration at the time the bank conducted the activity.

(2) Notwithstanding paragraph (c)(1) of this section, in assessing a bank's CRA performance, the [Agency] will consider any loan or investment that was eligible for CRA consideration at the time that the bank entered into a legally binding commitment to make the loan or investment.

(d) Strategic Plans.

(1) *New and replaced strategic plans.* The CRA regulatory requirements in effect on [INSERT DATE THAT IS ONE DAY BEFORE DATE OF PUBLICATION IN THE FEDERAL REGISTER], as set forth in appendix G of this part, apply to any new strategic plan, including a plan that replaces an expired strategic plan, submitted to the [Agency] for approval on or after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] but before November 1, 2025, and that the agency has determined is a complete plan consistent with the requirements under 12 CFR __.27 of the rule in effect on [INSERT DATE THAT IS ONE DAY BEFORE DATE OF PUBLICATION IN THE FEDERAL REGISTER], as set forth in appendix G of this part. Strategic plans approved under this paragraph remain in effect until the expiration date of the plan. The [Agency] will not accept any strategic plan submitted on or after November 1, 2025, and before January 1, 2026.

(2) *Existing strategic plans.* A strategic plan in effect as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] remains in effect until the expiration date of the plan.

(e) First evaluation under amended [part X]. In its first performance evaluation under this part as amended by the final rule published on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], a large bank that has a total of 10 or more facility-based assessment areas in any State or multistate MSA, or nationwide, as applicable, and that was subject to evaluation under this part, [other Agencies' regulations] prior to [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], may not receive a rating of "Satisfactory" or "Outstanding" in that State or multistate MSA, or for the institution unless the bank received an overall facility-based assessment area conclusion, calculated as described in paragraph g.2.ii of appendix D of this part, of at least "Low Satisfactory" in 60 percent or more of the total number of its facility-based assessment areas in that State or multistate MSA, or nationwide, as applicable.

