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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 04–06]

RIN 1557–AB98

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1181]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AC50

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[No. 2004–04]

RIN 1550–AB48

Community Reinvestment Act Regulations

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

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, and OTS (collectively, ''we'' or ''the agencies'') have conducted a joint review of the CRA regulations, fulfilling the commitment we made when we adopted the current Community Reinvestment Act (CRA or ''the Act'') regulations in 1995. *See* 60 FR 22156, 22177 (May 4, 1995). As part of our review, we published an advance notice of proposed rulemaking (ANPR) on July 19, 2001, seeking public comment on a wide range of questions. 66 FR 37602 (July 19, 2001).

This proposal was developed following the agencies' review of the CRA regulations, which included an analysis of about four hundred comments received on the ANPR. The comments reflected a general consensus that fundamental elements of the regulations are sound, but indicated a profound split over the need for, and appropriate direction of, change. Community organizations advocated ''updating'' the regulations with expanded requirements to match developments in the industry and marketplace; financial institutions were concerned principally with reducing burden consistent with maintaining or improving the regulations' effectiveness.

The agencies believe the regulations are essentially sound, but are in need of some updating to keep pace with changes in the financial services industry. Therefore, we are proposing amendments to the regulations in two areas. First, to reduce unwarranted burden consistent with the agencies' ongoing efforts to identify and reduce regulatory burden where appropriate and feasible, we are proposing to amend the definition of ''small institution'' to mean an institution with total assets of less than $500 million, without regard to any holding company assets. This change would take into account substantial institutional asset growth and consolidation in the banking and thrift industries since the definition was adopted. It also reflects the fact that small institutions with a sizable holding company do not appear to find addressing their CRA responsibilities any less burdensome than a similarly-sized institution without a sizable holding company. As described below, this proposal would increase the number of institutions that are eligible for evaluation under the small institution performance standards, while only slightly reducing the portion of the nation's bank and thrift assets subject to evaluation under the large retail institution performance standards. It would better align the definition of small institution with agency expectations when revising the regulations in 1995 about the scope of coverage for small institutions.

Second, to better address abusive lending practices [1] in CRA evaluations, we are proposing to amend our regulations specifically to provide that evidence that an institution, or any of an institution's affiliates, the loans of which have been considered pursuant to § ____.22(c), has engaged in specified discriminatory, illegal, or abusive credit practices in connection with certain loans adversely affects the evaluation of the institution's CRA performance.

Finally, as described below, we expect to address certain other issues raised in connection with the ANPR through additional interpretations, guidance, and examiner training. We also propose several enhancements to the data disclosed in CRA public evaluations and CRA disclosure statements relating to providing information on loan originations and purchases, loans covered under the Home Ownership and Equity Protection Act (HOEPA) and other high-cost loans, and affiliate loans.

We encourage comments from the public and regulated financial institutions on all aspects of this joint notice of proposed rulemaking, in order to ensure a full discussion of the issues.

DATES: Comments must be received by April 6, 2004.

ADDRESSES: *OCC:* Please direct your comments to: Docket No. 04–06, Communications Division, Public Information Room, Mailstop 1–5, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. However, because paper mail in the Washington, DC, area and at the OCC is subject to delay, please consider submitting your comments by e-mail to *regs.comments@occ.treas.gov,* or by fax to (202) 874–4448. You can make an appointment to inspect and photocopy all comments by calling (202) 874–5043.

Board: Comments should refer to Docket No. R–1181 and may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Please consider submitting your comments through the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm,* by e-mail to *regs.comments@federalreserve.gov,* or

[1] The terms ''abusive'' and ''predatory'' lending practices are used interchangeably.

by fax to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Rules proposed by the Board and other Federal agencies may also be viewed and commented on at *http://www.regulations.gov.*

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (C and 20th Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Mail: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Facsimile: Send facsimile transmissions to fax number (202) 898–3838.

E-mail: You may also electronically mail comments to *comments@fdic.gov.*

Public Inspection: Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

OTS: Mail: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2004–04.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2004–04.

Facsimiles: Send facsimile transmissions to fax number (202) 906–6518, Attention: No. 2004–04.

E-Mail: Send e-mails to *regs.comments@ots.treas.gov,* Attention: No. 2004–04 and include your name and telephone number.

Public Inspection: Comments and the related index will be posted on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the material you will be requesting will assist us in serving you.) Appointments will be scheduled on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date a request is received.

FOR FURTHER INFORMATION CONTACT:
OCC: Michael Bylsma, Director, or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750; or Karen Tucker, National Bank Examiner, Compliance Division, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Dan S. Sokolov, Senior Attorney, (202) 452–2412; Kathleen C. Ryan, Counsel, (202) 452–3667; Catherine M.J. Gates, Oversight Team Leader, (202) 452–3946; or William T. Coffey, Senior Review Examiner, (202) 452–3946, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Robert Mooney, Assistant Director, (202) 898–3911, Division of Compliance and Consumer Affairs; Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424 or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Celeste Anderson, Project Manager, Compliance Policy, (202) 906–7990; Theresa A. Stark, Program Manager, Compliance Policy, (202) 906–7054; or Richard Bennett, Counsel (Banking and Finance), Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Introduction

After considering the comments on the ANPR published on July 19, 2001 (66 FR 37602), the agencies are jointly proposing revisions to their regulations implementing the CRA (12 U.S.C. 2901 *et seq.*). The proposed regulations would revise the definition of ''small institution'' and expand and clarify the provisions relating to the effect of evidence of discriminatory, other illegal, and abusive credit practices on the assignment of CRA ratings.

Background

In 1977, Congress enacted the CRA to encourage insured banks and thrifts to help meet the credit needs of their entire communities, including low- and moderate-income communities, consistent with safe and sound lending practices. In the CRA, Congress found that regulated financial institutions are required to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business, and that the convenience and needs of communities include the need for credit as well as deposit services. The CRA has come to play an important role in improving access to credit among under-served rural and urban communities.

In 1995, when we adopted major amendments to regulations implementing the Community Reinvestment Act, the agencies committed to reviewing the amended regulations in 2002 for their effectiveness in placing performance over process, promoting consistency in evaluations, and eliminating unnecessary burden. 60 FR 22156, 22177 (May 4, 1995). The review was initiated in July 2001 with the publication in the **Federal Register** of an advance notice of proposed rulemaking (66 FR 37602 (July 19, 2001)). We indicated that we would determine whether and, if so, how the regulations should be amended to better evaluate financial institutions' performance under CRA, consistent with the Act's authority, mandate, and intent. We solicited comment on the fundamental issue of whether any change to the regulations would be beneficial or warranted, and on eight discrete aspects of the regulations. About 400 comment letters were received, most from banks and thrifts of varying sizes and their trade associations (''financial institutions'') and local and national nonprofit community advocacy and community development organizations (''community organizations'').

The comments reflected a general consensus that fundamental elements of the regulations are sound, but demonstrated a disagreement over the need and reasons for change. Community organizations advocated ''updating'' the regulations with expanded requirements to match developments in the industry and marketplace; financial institutions were concerned principally with reducing burden consistent with maintaining or improving the regulations' effectiveness. In reviewing these comments, the agencies were particularly mindful of the need to balance the desire to make changes that ''fine tune'' and improve the regulations, with the need to avoid unnecessary and costly disruption to reasonable CRA policies and procedures that the industry has had to put into place under the current rules.

We believe the regulations are essentially sound, but susceptible to improvement. Thus, we are proposing limited amendments. First, to reduce unwarranted burden, we propose to amend the definition of ''small institution'' to mean an institution with total assets of less than $500 million, regardless of the size of its holding company. This would take into account significant changes in the marketplace since 1995, including substantial asset growth and consolidation. As described below, this proposal will expand the number of institutions that are eligible for evaluation under the streamlined small institution test while only slightly reducing the portion of industry assets subject to the large retail institution test. Second, to better address abusive lending practices in CRA evaluations, we propose to amend the regulations specifically to provide that the agencies will take into account, in assessing an institution's overall rating, evidence that the institution, or any affiliate the loans of which have been included in the institution's performance evaluation, has engaged in illegal credit practices, including unfair or deceptive practices, or a pattern or practice of secured lending based predominantly on the liquidation or foreclosure value of the collateral, where the borrower cannot be expected to be able to make the payments required under the terms of the loan. Evidence of such practices adversely affects the agency's evaluation of the institution's CRA performance.

Review of Issues Raised in Connection With the ANPR

We commenced our review of the regulations in July 2001 with an ANPR soliciting comment on whether the regulations might more effectively place performance over process, promote consistency in evaluations, and avoid unnecessary burden. We solicited comment on the fundamental issue of whether any change to the regulations would be beneficial or warranted, and on eight discrete aspects of the regulations.

The comments we received suggest that financial institutions and community organizations agree that the 1995 amendments have succeeded, at least in part, in shifting the emphasis of CRA evaluations from process to performance. The comments also appear to suggest general agreement that:

- Lending is the most critical CRA-covered activity, although investments and services should be considered in some form and to some extent;
- Evaluation procedures and criteria should vary with an institution's size and type;
- An institution's performance should be evaluated in the area constituting its community;
- Quantitative performance measures are valuable, though they should be interpreted in light of qualitative considerations;
- Careful consideration of performance context is critical; and
- Activities that promote community development, however defined, should be evaluated as a distinct class.

The overall content of the comments reflects support for the general structure and features of the regulations, which we interpret as implying a general consensus that the regulations are essentially sound. To be sure, many comments recommended changes in the regulations. Community organization commenters uniformly contended that the regulations needed to be ''updated'' and ''strengthened'' to reflect intervening changes in the marketplace that affected financial institutions' relationships to their communities.

Specifically, community organizations sought to extend CRA performance measurement to include (1) evaluation of the appropriateness of credit terms and practices; (2) scrutiny of the performance of nondepository affiliates of depository institutions; and (3) assessment of institutions' performance everywhere they do business, including areas without deposit-taking facilities.

Financial institutions, however, opposed those recommendations, counseled generally against major change to the regulations, asked that reforms be accomplished largely through other means (for example, examiner training), and recommended that any change to the regulations take into account both process costs and benefits of change. One financial institution trade association expressed the opinion of most financial institution commenters that no major changes should be made: ''There is general agreement among our members that we do not want to embark on another major CRA reform process. We do not believe this would be in the best interest of the communities or the financial institutions, as it would entail a major and protracted distraction from the business of serving community needs.''

Financial institutions generally favored only those amendments designed to reduce compliance burden, especially for large retail institutions, while maintaining or improving the effectiveness of the regulations. Institutions near in asset size to the small/large institution threshold of $250 million requested that we raise the threshold markedly to make them eligible for examination under the small institution performance standards, and to relieve them of burdens imposed only on large institutions, such as data reporting and the investment test. Large institutions consistently urged the agencies to be more flexible in the evaluation of community development investments (called ''qualified investments'' by the regulations), including by making qualified investments optional to one degree or another and by treating more types of investments as ''qualified investments.'' Community organizations, however, contended that reducing the burdens associated with the investment test and data collection and reporting would come at the expense of meeting community credit needs.

Large Retail Institutions: Lending, Investment, and Service Tests

An institution is deemed ''large'' in a given year if, at the end of either of the previous two years, it had assets of $250 million or more or if it is affiliated with a holding company with total bank or thrift assets of $1 billion or more. An institution that meets that definition, unless it has been designated ''limited purpose'' or ''wholesale,'' or has opted to be evaluated under an approved strategic plan, is evaluated under a three-part large retail institution test. The large retail institution test is comprised of the lending, investment, and service tests. The most heavily weighted part of that test is the lending test, under which the agencies consider the number and amount of loans originated or purchased by the institution in its assessment area; the geographic distribution of its lending; characteristics, such as income level, of its borrowers; its community development lending; and its use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies in a safe and sound manner. To facilitate the evaluation, institutions must collect and report data on small business loans, small farm loans, and community development loans, and may, on an optional basis, collect data on consumer loans.

Under the investment test, the agencies consider the dollar amount of qualified investments, their innovativeness or complexity, their responsiveness to credit and community development needs, and the degree to which they are not routinely provided by private investors.

Under the service test, the agencies consider an institution's branch distribution among geographies of different income levels; its record of opening and closing branches, particularly in low- and moderate-income geographies; the availability and effectiveness of alternative systems for delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals; and the range of services provided in geographies of different income levels, as well as the extent to which those services are tailored to meet the needs of those geographies. The agencies also consider the extent to which the institution provides community development services and the innovativeness and responsiveness of those services.

The lending, investment, and service tests each include an evaluation of community development activities. A community development loan, community development service, or ''qualified investment'' has a primary purpose of benefiting low- or moderate-income people with affordable housing or community services; promoting economic development by financing small businesses or small farms; or revitalizing or stabilizing low- or moderate-income areas.

The ANPR asked whether the three-part test as a whole, each of its component tests (lending, investment, services), and its community development component are effective in assessing large institutions' responsiveness to community credit needs; whether the test is appropriately balanced between lending, investments, and services; and whether it is appropriately balanced between quantitative and qualitative measures.

Balance Among Lending, Investments, and Services

The three-part test places primary emphasis on lending performance, and secondary emphasis on investment and service performance. A majority of community organization commenters that addressed the question believed that lending should continue to receive more weight than investments or services. Of financial institutions that addressed the issue, more than half agreed. The remainder of industry commenters generally believed either that the components should be weighted equally or that their weights should vary with performance context. As discussed below, many financial institutions felt the investment test is weighted too heavily, while community organizations disagreed.

Based on our review and consideration of the matter, we are not proposing to alter the weights of the three tests, which we continue to believe are appropriate. We address specific concerns about each test below.

Balance Between Quantitative and Qualitative Measures

The component tests primarily employ quantitative measures (such as the number and dollar amount of loans and qualified investments) but also call for qualitative consideration of an institution's activities, including whether, and to what extent, they are responsive to community credit needs and demonstrate innovativeness, flexibility, or complexity. A large number of community organizations indicated that the weight given to quantitative factors is about right, though the same commenters often remarked that the character of activities (for example, the responsiveness of a loan to credit needs and the risk of an investment) should be given more weight. A few financial institutions agreed that quantitative factors receive appropriate weight, but more institutions indicated that too much weight is given to quantitative factors and not enough to contextual considerations such as an institution's business strategy and an activity's profitability. Some financial institutions and community organizations, contending that ratings are not sufficiently consistent and predictable, requested that they be tied to explicit quantitative performance benchmarks, while others disagreed with that suggestion.

Several community organizations and financial institutions expressed concern about some of the qualitative factors specified in the regulations, particularly the application of the terms ''innovative'' and ''complex.'' These commenters argued that an evaluation should focus on an activity's contribution to meeting community credit needs, and that its innovativeness or flexibility should be seen as a means to that end rather than an end in itself. They stated that financial institutions should not be downgraded for failure to demonstrate their activities are innovative or complex.

Based on our review and consideration of the matter, and as explained below in the context of the investment test, we may seek to clarify through interagency guidance how qualitative considerations should be employed.

Loan Purchases and Loan Originations

The regulations weigh loan purchases and loan originations equally. The ANPR sought comment on whether loan purchases should be given less weight than loan originations. Community organizations generally favored giving more weight to loan originations than purchases, on the grounds that originations take more effort and that purchases can be generated solely to influence CRA ratings rather than for economic reasons. Financial institutions that addressed the issue generally stated that equal weighting of purchases and originations improves liquidity, making credit more widely available at lower prices. The agencies also sought comment on whether purchases of loans and purchases of asset-backed securities should be considered under the same test instead of separately under the lending test and the investment test, respectively. Some community organizations raised concerns about the treatment of some types of mortgage-backed securities as qualified investments.

To improve ''transparency'' in CRA evaluations, the agencies propose to distinguish loan purchases from loan originations in a public evaluation's display of loan data, where pertinent. We would not, however, weigh loan purchases less than loan originations. We seek comment on the proposed approach.

Investment Test

Although a small number of commenters objected to any consideration of investments under CRA, the comments reveal a general view that community development-oriented investments (''qualified investments,'' under the regulations) should be considered to the extent they help meet community credit needs. Commenters, nonetheless, disagreed significantly about whether the current investment test effectively and appropriately assesses investments and about the extent to which assessment of investments should be mandatory or optional.

Financial institutions commented that the investment test is not sufficiently tailored to market reality, community needs, or institutions' capacities. Several financial institutions said there are insufficient equity investment opportunities, especially for smaller institutions and those serving rural areas. Some noted that intense competition for a limited supply of community development equity investments has depressed yields, effectively turning many of the investments into grants; some claimed that institutions had spent resources transforming would-be loans into equity investments merely to satisfy the investment test; and some expressed concern that institutions were forced to worry more about making a sufficient number and amount of investments than about the effectiveness of their investments for their communities.

To address these concerns, many financial institutions favored abolishing the stand-alone investment test and making investments optional to one degree or another. Only two financial institutions expressly supported retaining the separate investment test. Several financial institutions and most financial institution trade associations endorsed one or more of the following three alternatives: (1) Treat investments solely as ''extra credit;'' (2) make investments count towards the lending or service test; or (3) treat investments interchangeably with community development services and loans under a new community development test.

In contrast, the majority of community organization commenters urged the agencies to retain the investment test. Many of them claimed that the problem is more often a shortage of willing investors than an insufficient number of investment opportunities. Community organizations also contended that grants and equity investments are crucial to meeting the affordable housing and economic development needs of low- and moderate-income areas and individuals. They stated, for example, that investments support and expand the capacity of nonprofit community development organizations to meet credit needs. A few community organizations acknowledged a basis for some of the financial institutions' complaints concerning the investment test, but most of those community organizations argued that refining, rather than restructuring, the large retail institution test would address such complaints.

Commenters also split over the appropriateness of the definition of ''community development,'' which is incorporated in the definition of ''qualified investment.'' Financial institutions asked the agencies to remove from the definition of ''community development'' the requirement that community development activities target primarily low- or moderate-income individuals or areas, and expand the definition to include community-building activities that incidentally benefit low- or moderate-income individuals or areas. For instance, several financial institutions contended that any activity that helps ''revitalize and stabilize'' an area (such as after a natural disaster or a steady economic decline) should be considered community development, even if the activity is not located in, or targeted to, low- or moderate-income communities. Other examples of activities for which they sought consideration included municipal bonds and grants to cultural organizations and other charities. In contrast, community organizations that expressed a view favored retaining the current definition of ''community development'' or narrowing it. For example, many community organizations sought to limit the ''economic development'' component of the definition (which consists of financing small businesses or small farms) to financing minority-owned businesses or farms and businesses or farms in low- or moderate-income areas.

Apart from the larger debate about the proper role of an investment component in the three-part test and the proper definition of qualified investments, many commenters sought changes to the investment test. Several financial institutions and trade associations felt that examiners do not grant enough weight to investments on the books since the previous examination period. They contended that this practice creates pressure to make new investments more quickly than the market generated new investment opportunities, and undermined the supply of ''patient capital.'' A few commenters proposed full consideration for investments outside assessment areas to promote more efficient allocation of community development capital. Several financial institutions, trade associations, and community organizations contended that insufficient consideration is given to an investment's impact on the community, while too much weight is placed on its innovativeness or complexity. Some suggested that the criterion of ''innovative or complex'' be eliminated or made subservient to the criterion of ''responsiveness * * * to credit and community development needs.'' Some commenters complained of uncertainty about ''how much is enough'' and inconsistency among agencies and areas in evaluating investments. A few financial institutions and community organizations requested that the agencies adopt ratings benchmarks (for instance, ratios of qualified investments to Tier I capital or total assets). Other commenters opposed benchmarks as unnecessarily restrictive.

The comments reflect a general consensus that qualified investments should be considered in some fashion in CRA evaluations for their ability to meet community credit needs. The premise of the agencies' adoption of a separate investment test in 1995 was that, for consideration of investments to be meaningful, they must be treated as more than mere ''extra credit'' that assured an Outstanding rating for an institution otherwise rated Satisfactory. Therefore, the separate investment test embodies an expectation that an institution make such investments, or their equivalent, where feasible and appropriate.

The comments and other feedback suggest that the levels and kinds of expectations under the current investment test sometimes are unrealistic or unproductive, or at least appear that way. It is inevitable that the supply of, demand for, and quality of investment opportunities will vary by region and city; the performance evaluation is supposed to take those variations into account. We are concerned that some institutions nevertheless believe they are expected to make equity investments that are economically unsound. We considered whether this impression was an unavoidable result of the current structure of the investment test or an avoidable result of the implementation of that structure.

Some commenters suggested that the evaluation of community development activities under three separate component tests (lending, investment, service) risks causing institutions to concern themselves more with meeting perceived thresholds in each component test than with maximizing community impact. This possibility led us to study alternatives to the existing three-component structure of the large retail institution test.

One alternative we considered was a two-part large retail institution test consisting of (1) a community development test, which would integrate community development loans, investments, and services, and (2) a retail test, which would include retail loans and services. Under the community development test we considered, different community development activities (loans, investments, and services) would, at least in theory, be fungible and interchangeable so that an institution would have flexibility to allocate its community development resources among different types of community development activities; a rating on this test would be based, in part, on some measure of the total amount of the institution's community development activities.

A different two-part large retail institution test we considered would eliminate the separate investment test and consider investments within the lending test, where they would be treated similarly to community development loans.

Changing the structure of the large retail institution test, as entailed in those alternatives, would not necessarily yield a substantial net benefit. Adopting a new test structure might simply substitute one set of implementation challenges for another. The existing regulations have been criticized by financial institutions and community organizations alike for not being clear about ''how much is enough'' or how much weight an activity carries relative to another. A restructured large retail institution test would be no less vulnerable to those criticisms. For example, it would raise the question of how to compare investments, loans, and services.

Moreover, the freestanding investment test has become an integral part of CRA and the community development finance markets. We believe that evaluation of investment performance under that test has contributed substantially to the growth of the market for community development-oriented investments. That market has helped institutions to spread risk and maximize the impact of their community development capital. Institutional risk is spread and lowered by instruments such as securities backed by mortgages to low- and moderate-income borrowers. The impact of community development capital is maximized by channeling it through organizations with the knowledge and skills that optimize its use. Thus, we believe the investment test has encouraged community development.

Replacing the investment test might cloud market expectations and understandings, injecting a degree of uncertainty that could be costly, not just for financial institutions and community organizations, but also for local communities. Many commenters pointed out that it took several years for them to become comfortable with the current CRA regulations, and it could take several years again for affected parties to adjust to a new regulatory structure. During that adjustment period, institutions would likely incur substantial implementation costs, for instance, to retrain personnel and, possibly, to change data collection procedures. In weighing those factors, we are mindful of the repeated cautions from financial institution commenters about the costs of major changes.

Thus, we propose to address concerns about the burdens of the investment test by means other than replacing or restructuring it. As explained later in this notice, we are proposing to raise the asset-size threshold at which an institution becomes subject to the large retail institution test and, therefore, the investment test. This would respond to comments that smaller institutions at times have had difficulty competing for investments. As noted earlier, the change would not materially reduce the portion of the nation's bank and thrift assets covered by the large retail institution test, including the investment test.

The criticisms the commenters made of the investment test appear to have more to do with the implementation of the regulations than the regulations themselves. We anticipate developing additional interagency guidance to clarify that the investment test is not intended to be a source of pressure on institutions to make imprudent equity investments. Such guidance also may discuss (1) when community development activities outside of assessment areas can be weighted as heavily as activities inside of assessment areas; (2) that the criteria of ''innovative'' and ''complex'' are not ends in themselves, but means to the end of encouraging an institution to respond to community credit needs; (3) the weight to be given to investments from past examination periods, to commitments for future investments, and to grants; and (4) how an institution may demonstrate that an activity's ''primary purpose'' is to serve low- and moderate-income people. We seek comment on the possible content of such guidance.

Service Test

Service Delivery Methods

Many commenters addressed the evaluation of service delivery methods under the service test. Many community organizations commented that the test should emphasize the placement of bricks-and-mortar branches in low- and moderate-income areas. A few financial institutions agreed, but most institutions that addressed the issue argued that putting less weight on branches and more on alternative service delivery methods was necessary to adequately measure the provision of services to low- and moderate-income individuals. Some community organizations stated that the weight given to alternative methods should depend on data showing their use by low- and moderate-income individuals, and a couple of financial institutions agreed that such data would be useful.

The comments highlight the fact that a service delivery method's appropriate weight will vary from examination to examination based on performance context. Critical factors such as an institution's business strategy naturally vary over time and from institution to institution. Examiners can address such variations through their analysis of performance context. To the extent guidance or examiner training needs to be improved to ensure that such factors are appropriately addressed through the performance context, we will do so.

Banking Services and Nontraditional Services for Low- and Moderate-Income Individuals

Community organizations believed the service test should show special concern for the services available to and used by low- and moderate-income individuals. Many community organizations said that financial institutions should be required to report data on the distribution of their deposits by income and other criteria. Many organizations also said that the service test should give weight to providing low-cost services and accounts to low- and moderate-income individuals and areas; a few said that credit for such services and accounts should depend on data demonstrating that they are used. Many organizations recommended that ''payday lending'' or ''check cashing'' activities should hurt, or at least not help, an institution's service test rating, though a few organizations qualified that check cashing should not prejudice a rating where the fee for the service is reasonable. Few financial institutions addressed those specific issues, but many voiced general concerns about increasing data collection burdens or assessing the appropriateness of a product or service.

The service test takes into account the degree to which services are tailored to meet the needs of low- and moderate-income geographies, whether as ''mainstream'' retail banking services or community development services. Indeed, an Outstanding rating on the service test is not available unless an institution's services ''are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or * * * individuals'' and the institution is ''a leader in providing community development services.'' We believe that those provisions properly encourage institutions to pay close attention to services for low- and moderate-income people and areas, and evaluations will continue to reflect the effectiveness of these services as appropriate.

Community Development Services

We also received comment on the definition and weight of community development services. Some financial institutions asked that the service test rating depend more on community development services and less on other elements of the test. Community development services are limited by the regulations to services that are financial in nature. Some commenters contended that community development services should include non-financial services, such as employees' participation in volunteer home-renovation programs. Many community organizations, however, opposed broadening the definition. We believe that the regulations' linking of community development services to services that are financial in nature is consistent with the purposes of CRA. Therefore, we are not proposing to change the definition of community development services or the weight they receive in the service test.

Assessment Areas

An institution is evaluated primarily on its performance within one or more assessment areas. An institution's assessment area(s) is/are the Metropolitan Statistical Area(s) (MSA(s)) or contiguous political subdivision(s) (such as counties, cities, or towns) that include(s) the census tracts in which the institution has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding census tracts in which it has originated or purchased a substantial portion of its loans. An institution may adjust the boundaries of an assessment area to include only those parts of a political subdivision that it can reasonably serve. But its assessment area(s) may not reflect illegal discrimination, arbitrarily exclude low- or moderate-income geographies, extend substantially beyond designated boundaries, or consist of partial census tracts. Special rules apply to wholesale and limited-purpose institutions and to institutions that serve military personnel.

The ANPR asked whether it was reasonable to continue to anchor the regulations' definition of ''assessment area'' in deposit-taking facilities. Community organizations contended that substantial portions of lending by institutions covered by CRA are nonetheless not subject to CRA evaluation because of institutions' increasing use of nonbranch channels (including agencies, the Internet, and telephone) to provide credit outside of their branch-based assessment areas. They further commented that an institution's assessment area must include all commercial channels, not just branches and deposit-taking ATMs. Thus, many commenters proposed that an institution's assessment areas include all areas in which the institution has more than a specified share (many suggested 0.5 percent) of the lending market or deposit market.

The majority of financial institutions and trade associations that expressed an opinion about assessment areas endorsed continuing to keep the assessment areas linked to deposit-taking facilities. Those commenters opposed mandatory evaluation outside of the communities served by deposit-taking facilities. Some questioned whether such an expansion would be consistent with the Act. Others argued that an institution needs a substantial local presence to understand a community's needs and to develop and exploit opportunities to serve those needs, but requested credit for activities they might willingly conduct outside their assessment areas.

Few financial institutions suggested that an expansion of the assessment area definition was necessary to accommodate their choice of business strategy. To address the challenge of nonbranch institutions, several commenters recommended subjecting them, like wholesale and limited-purpose institutions, to a community development test while continuing to draw assessment areas around their main offices. Several financial institutions suggested narrowing the current definition by removing the requirement that assessment areas be delineated around deposit-taking ATMs because banks do not *originate* deposit relationships through ATMs. Others argued that the requirement should be removed in special circumstances—for example, when ATMs are on the property of an organization closed to nonemployees.

No definition of ''assessment area'' will foresee every conceivable bank or thrift business model. We considered whether the current definition is suitable to most financial institutions. To a large extent, nontraditional channels in the market today seem to be used as complements to, rather than substitutes for, branches and deposit-taking ATMs. Even with widespread access to the Internet by bank and thrift customers, few banks or thrifts are Internet-only, without branches. In fact, it has been reported that some institutions created with an Internet-only strategy later added branches or deposit-taking ATMs. The number of branchless banks and thrifts that conduct business through other channels, such as independent agents, though growing, is also small. To be sure, traditional retail institutions increasingly rely on nontraditional channels to take deposits and make loans—including nonbranch or agency offices, mail, telephone, on-line computer networks, and agents or employees of affiliated nonbank companies. Many of those institutions still originate a substantial portion of their CRA-relevant loans (including the vast majority of their small business loans) in their branch-based assessment areas, whether through branches or other means. In short, the definition of ''assessment area'' appears adequate to delineate the relevant communities of the overwhelming majority of financial institutions.

Moreover, for institutions that do a substantial portion of their lending outside branch areas, the agencies have interpreted the regulations as giving examiners flexibility to address, on a case-by-case basis, institutions that conduct a substantial part of their business through nontraditional channels. For instance, an institution's loans to low- and moderate-income persons and small business and small farm loans outside of its assessment area(s) will be considered if it has adequately addressed the needs of borrowers within its assessment area(s), although such loans will not compensate for poor lending performance inside the assessment area(s). An institution with poor retail lending performance inside the assessment area may, however, compensate with exceptionally strong performance in community development lending in its assessment area or a broader statewide or regional area that includes the assessment area. The regulations also permit an institution to propose a strategic plan tailored to its unique circumstances.

Although limitations in the current definition of ''assessment area'' might grow in significance as the market evolves, we believe any limitations are not now so significant or pervasive that the current definition is fundamentally ineffective. Moreover, none of the alternatives we studied seemed to improve the existing definition sufficiently to justify the costs of regulatory change. Many of the alternative definitional changes to assessment area we reviewed were not feasible to implement, and some of them raised fundamental questions about the scope and purpose of CRA and entail political judgments that may be better left to elected officials in the first instance.

For example, we considered community organizations' proposal to expand an assessment area to include all areas where an institution does a significant level of business. The implementation questions raised by the proposal are many and complex, including the following: Is the relevant type of business deposit-taking, lending, investing, or two or all three of those types? What is the relevant measure of the amount of business? Is it the share of the market? If so, how is the market defined and where are data obtained? Is it the share of the institution's business? Would an institution, its examiners, and interested community organizations know sufficiently early where the institution's business would reach significant levels to adjust their CRA planning and resource commitments accordingly? How would institutions, examiners, and community organizations cope with the possibility that an institution's assessment areas could change substantially from one examination period to the next? Could institutions be expected to have enough knowledge, expertise, and ability in areas where they do not have branches to make informed decisions about meeting community credit needs and effectively execute them?

The agencies also considered comments advocating elimination of the requirement to delineate assessment areas around deposit-taking ATMs. ATMs can generate substantial deposits and provide a wide range of services, often substituting for branches with respect to many functions.

For these reasons, the agencies will continue to address nontraditional institutions flexibly, using such measures as strategic plans, existing agency interpretations mentioned above and new guidance as appropriate.

Wholesale and Limited Purpose Institutions

An institution is a limited-purpose institution if it offers only a narrow product line, such as credit card or motor vehicle loans, to a regional or broader market. An institution is a wholesale institution if it is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers. Both limited purpose and wholesale institutions are evaluated under a community development test. Under this test, the agencies consider the number and amount of community development loans, qualified investments, or community development services; the extent to which such activities are innovative, complex, and, in the case of qualified investments, not routinely provided by private investors; and the institution's responsiveness to credit and community development needs.

Most financial institutions that addressed the appropriateness of the definitions of ''wholesale'' or ''limited purpose'' institution suggested that the definition of ''limited purpose institution'' should be expanded. Some said it should not be restricted to institutions with certain product lines, such as credit cards and auto loans, but should include any institution, regardless of its product line, that serves a narrow customer base. A couple of financial institution commenters also sought expansion of the category of wholesale institutions. Community organizations, in contrast, contended that these definitions are not sufficiently restrictive and that the agencies have incorrectly designated some large retail institutions as wholesale or limited purpose institutions.

Commenters also disagreed about extending the community development test now reserved for limited purpose and wholesale institutions to additional categories of institutions. Several financial institutions suggested that non-branch institutions and other nontraditional institutions be treated as limited purpose institutions eligible for evaluation under a community development test. Many, but not all, community organizations opposed extending the test to other types of institutions.

Based on our review and consideration of the matter, we are not proposing any changes to the regulations concerning the definitions of wholesale and limited purpose institutions or expansion of the community development test to additional types of institutions.

Strategic Plan

Every institution has the option to develop a strategic plan with measurable goals for meeting the credit needs of its assessment area(s). An institution must informally solicit suggestions from the public while developing its plan, solicit formal public comments on its plan, and submit the plan to its supervisory agency for approval with any written comments from the public and an explanation of how, if at all, those comments are reflected in the plan.

Relatively few comments addressed the strategic plan provision. Most of the financial institutions that addressed the issue said the option should be retained though modified; a few community organizations agreed, while a few others said the strategic plan option should be eliminated. A principal concern of financial institutions was a perceived lack of flexibility, for instance, to modify their goals as the economy or their business changes. Of equal concern to them were the requirements of the plan approval process to solicit public comment and disclose information they regard as proprietary.

Based on our review and consideration of the matter, we are not proposing any changes to the regulations concerning strategic plans.

Performance Context

Regardless of type, an institution is always evaluated in light of its performance context, including information about the institution, its community, its competitors, and its peers. Relevant information includes assessment area demographics; product offerings and business strategy; lending, investment, and service opportunities in the assessment area; institutional capacity and constraints; and information about the institution's past performance and that of similarly situated lenders.

Many commenters from various viewpoints emphasized the importance of considering performance context in CRA evaluations, but were critical of how the agencies have developed and used performance context. Some commented that examiners do not adequately solicit and incorporate input from community organizations and financial institutions in the development of performance context, participants do not have sufficient guidance about what information to present to examiners to aid in the development of the performance context, and the guidelines examiners use to determine performance context (such as selecting an institution's peers) are not transparent. Some commented that performance evaluations do not adequately tie performance context to evaluations and that examiners do not give sufficiently nuanced consideration to an institution's business strategy or local needs.

Based on our review and consideration of the matter, we believe that the current regulations provide sufficient flexibility to address the concerns that have been raised, and that performance context issues can be addressed adequately through examiner guidance and training.

Data Collection and Reporting

Large institutions are required to collect and report data on small business, small farm and community development loans, and to supplement

Home Mortgage Disclosure Act (HMDA) data with property locations for loans made outside MSAs. In the ANPR we asked whether these data reporting requirements are effective and efficient in assessing CRA performance while avoiding undue burden.

Most community organizations believed that the data collection and reporting requirements could be more effective in assessing an institution's CRA performance. Many of them stated that more detailed data should be collected on small business and small farm lending, including race, sex, loan cost, purpose of loan, action taken, and reasons for denial. Many organizations also asked that the agencies disaggregate small business and small farm loan data to the census tract level, and that we identify the census tract and purpose for each community development loan.

Many financial institutions commented that the regulations' data collection and reporting provisions are a significant burden. Some also said that the data are not useful and fails to accurately represent a financial institution's efforts to meet credit needs; a few questioned the agencies' authority to require data collection and reporting. They suggested that data collection and reporting be eliminated or made optional. However, other financial institutions commented that no changes to the regulations' data provisions are necessary.

We believe existing reporting requirements correctly balance burden and benefit for the institutions that would remain subject to those requirements were the definition of ''small institution'' to be amended as proposed and discussed in detail below.

The agencies intend to revise the regulations, however, to enhance the data disclosed to the public. The regulations do not now provide for disclosure of business and farm loans by geography (census tract) in the CRA Disclosure Statement the agencies prepare for every institution's public file. Rather, the regulations provide for aggregation of that data across tracts within tract-income categories. As we intend to revise the regulations, they will provide that the Disclosure Statement would contain the number and amount of the institution's small business and small farm loans by census tract. During the 1994–95 CRA rulemaking, we received comments expressing concern that disclosing loan data at the census tract level might reveal private information about small-business and small-farm borrowers. We believe that the risk of revealing such information is likely very small, and that the benefit to the public of having data at the census tract level is substantial.

We seek comment on whether the revision properly balances the benefits of public disclosure against any risk of unwarranted disclosure of otherwise private information. We also invite any specific suggestions for display of the data.

Public File Requirements

Most community organizations commenting on the public file requirements believed that the current regulations should be maintained. A few asked that public files be made available on the Internet.

Most financial institutions addressing the issue commented that the current public file requirement is burdensome and should be revised or eliminated, though some said no change in the regulations should be made. Commenters seeking change stated that requests for public files are rarely presented to branches but, rather, are usually presented to CRA officers; they suggested that a hard copy of the public files be maintained at the main office only, and be available elsewhere upon request. Others suggested streamlining the public file by removing all but the most essential information (such as an institution's assessment areas, primary delivery channels, products, services, and last performance evaluation).

Based on our review and consideration of the matter, we are not proposing any changes to the regulations concerning public file requirements.

Small Institutions

In connection with the interagency rulemaking that culminated in the revised CRA regulations adopted in 1995, the agencies received a large number of comments from small institutions seeking regulatory relief. These commenters stated that they incurred significant regulatory burdens and costs from having to document CRA performance, and that these burdens and costs impeded their ability to improve their CRA performance. The regulations reflect the agencies' objectives that the CRA regulations provide for performance-based assessment standards that minimize compliance burden while stimulating improved performance.

An institution is considered small under the regulations if, at the end of either of the two previous years, it had less than $250 million in assets and was independent or affiliated with a holding company with total bank and thrift assets of less than $1 billion. Under the regulations, small institutions' CRA performance is evaluated under a streamlined test that focuses primarily on lending. The test considers the institution's loan-to-deposit ratio; the percentage of loans in its assessment areas; its record of lending to borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of its loans; and its record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment areas.

Most small institutions commented that they were satisfied that the streamlined test adopted in 1995 substantially reduced their CRA compliance burden, though many stated that it was too difficult for a small institution to achieve an Outstanding rating. Some of those commenters sought a way to receive consideration for their service and investment activities without undergoing the evaluation of such activities imposed on large retail institutions. In contrast, community organizations generally believed the performance standards for small institutions did not effectively measure the institutions' contributions to meeting community credit needs.

Many other commenters stated that the small institution performance standards should be available to a larger number of institutions. Generally, these commenters raised many of the same concerns as those that had been raised in connection with the 1995 rulemaking, primarily that the regulatory burden of the CRA rules impedes smaller banks from improving their CRA performance. Many financial institutions suggested that, to reduce undue burden, the agencies raise significantly the small institution asset threshold and either raise significantly or eliminate the holding company limitation. These commenters supported these suggestions by citing burdens on retail institutions that are subject to the ''large institution'' CRA tests because they slightly exceed the asset threshold for small institutions. Financial institutions singled out two aspects of the large retail institution test as particularly burdensome for institutions just above the threshold. First, they asserted that those institutions have difficulty achieving a Low Satisfactory or better rating on the investment test, and, as a result, have difficulty achieving an Outstanding rating overall. Those institutions are said to encounter serious challenges competing with larger institutions for suitable investments and, as a result, to sometimes invest in activities inconsistent with their business strategy, their own best financial interests, or community needs.

Second, financial institutions asserted that data collection and reporting are proportionally more burdensome for institutions just above the threshold than for institutions far above the threshold. Some commenters asserted that institutions that exceed the $250 million threshold face a threefold increase in compliance costs for CRA due to the need for new personnel, data collection and reporting costs, and the particular burdens imposed by the investment test applicable to large retail institutions. They asserted that raising the asset threshold for small institutions would be consistent with the agencies' belief in 1995 that the CRA rules should not impose such regulatory burden. They also questioned the benefit of reporting small business and small farm loan data, especially by institutions that serve limited geographic areas. Some commenters suggested that banks be relieved of reporting such data and that examiners instead sample files or review only the data gathered and maintained by banks pursuant to other laws or procedures (for example, the Call Report or Thrift Financial Report).

Financial institutions also commented that changes in the industry had rendered the threshold out-of-date. They pointed to the consolidation in the banking and thrift industries through mergers and acquisitions, and the growing gap between ''mega-institutions'' and those under $1 billion in assets. They noted that the number of institutions considered small, and the percentage of overall bank and thrift assets held by those institutions, has decreased significantly since the 1995 revisions.

Financial institutions suggested raising the small institution asset-size threshold from $250 million to amounts ranging from $500 million to as much as $2 billion. They also generally suggested eliminating or raising the $1 billion holding company threshold. They contended that affiliation with a large holding company does not enable an otherwise small institution to perform any better under the large retail institution test than a small institution without such an affiliation.

Community organizations that commented on the issue opposed changing the definition of ''small institution.'' These commenters were primarily concerned that reducing the number of institutions subject to the large retail institution test—and, therefore, the investment test—would reduce the level of investment in low- and moderate-income urban and rural communities. Community organizations also expressed concerns about the reduction in publicly available small business and small farm loan data that would follow a reduction in the number of large retail institutions.

The regulations distinguish between small and large institutions for several important reasons. Institutions' capacities to undertake certain activities, and the burdens of those activities, vary by asset size, sometimes disproportionately. Examples of such activities include identifying, underwriting, and funding qualified equity investments, and collecting and reporting loan data. The case for imposing certain burdens is sometimes more compelling with larger institutions than with smaller ones. For instance, the number and volume of loans and services generally tend to increase with asset size, as do the number of people and areas served, although the amount and quality of an institution's service to its community certainly is not always directly related to its size. Furthermore, evaluation methods appropriately differ depending on institution size. For example, the volume of originations of loans other than home mortgage loans in the smallest institutions will generally be small enough that an examiner can view a substantial sampling of loans without advance collection and reporting of data by the institution. Commenters from various viewpoints tended to agree that the regulations should draw a line between small and large institutions for at least some purposes. They differed, however, on where the line should be drawn.

The agencies considered the institution asset-size and holding company asset-size thresholds in light of these comments. When we adopted the definition in 1995, we indicated that we included a holding company limitation to reflect the ability of a holding company of a certain size (over $1 billion) to support a bank or thrift subsidiary's compliance activities. Anecdotal evidence, however, suggests that a relatively small institution with a sizable holding company often finds addressing its CRA responsibilities no less burdensome than does a similarly-sized institution without a sizable holding company. Thus, we are proposing to eliminate the holding company limitation on small institution eligibility.

Several factors led us to propose raising the asset threshold. First, with the increase in consolidation at the large end of the asset size spectrum, the gap in assets between the smallest and largest institutions has grown substantially since the line was drawn at $250 million in 1995. The compliance burden on institutions just above any threshold, measured as the cost of compliance relative to asset size, generally will be proportionally higher than the burden on institutions far above the same threshold, because some compliance costs are fixed. But, the growing asset gap between the smallest above-the-threshold institutions and the largest institutions has meant that the disproportion in compliance burden has grown on average. Second, the number of institutions defined as small has declined by over 2,000 since the threshold was set in 1995, and their percentage of industry assets has declined substantially. Third, some asset growth since 1995 has been due to inflation, not real growth. Fourth, the agencies are committed to reducing burden where feasible and appropriate.

For these reasons, we propose to raise the small institution asset threshold to $500 million, without reference to holding company assets. Raising the asset threshold to $500 million and eliminating the holding company limitation would approximately halve the number of institutions subject to the large retail institution test (to roughly 11% of all insured depository institutions), but the percentage of industry assets subject to the large retail institution test would decline only slightly, from a little more than 90% to a little less than 90%. That decline, though slight, would more closely align the current distribution of assets between small and large banks with the distribution that was anticipated when the agencies adopted the definition of ''small institution.''

The proposed changes would not diminish in any way the obligation of all insured depository institutions subject to CRA to help meet the credit needs of their communities. Instead, the changes are meant only to address the regulatory burden associated with evaluating institutions under CRA. We seek comment on whether the proposal improves the effectiveness of CRA evaluations, while reducing unwarranted burden.

Credit Terms and Practices

The regulations provide that ''evidence of discriminatory or other illegal credit practices adversely affects'' an agency's evaluation of an institution's CRA performance and may affect the rating, depending upon consideration of factors specified in the regulations. Interagency guidance explains that this provision applies when there is evidence of certain violations of laws including certain violations of the Equal Credit Opportunity Act (ECOA), Fair Housing

Act, Home Ownership and Equity Protection Act (HOEPA), Real Estate Settlement Procedures Act (RESPA), Truth in Lending Act (TILA), and Federal Trade Commission Act (FTC Act).[2] The guidance further explains that violations of other provisions of consumer protection laws generally will not adversely affect an institution's CRA rating, although the violations may be noted in a CRA performance evaluation.

The ANPR noted that some parties have maintained that the CRA regulations should take more account of whether loans contain abusive terms or reflect abusive practices, prompting comments supporting and opposing that view.

Community organizations uniformly urged expanding CRA's role in detecting and penalizing credit practices deemed predatory or abusive. Commenters suggested that the agencies give ''negative'' credit for loans evidencing unlawful or otherwise abusive practices, exclude such loans from evaluation, or automatically rate an institution making such loans lower than Satisfactory.

Commenters recommended that the regulations themselves specify the practices that will adversely affect a CRA evaluation, using the list in the interagency guidance, to include, but not be limited to, evidence of particular violations of the Equal Credit Opportunity Act, Fair Housing Act, Home Ownership and Equity Protection Act, Real Estate Settlement Procedures Act, Truth in Lending Act, and Federal Trade Commission Act.

Commenters also recommended the regulations clarify that a number of particular loan terms or characteristics, whether or not specifically prohibited by law, that have been associated with predatory lending practices should adversely affect an institution's CRA evaluation. These include high fees, prepayment penalties, single-premium credit insurance, mandatory arbitration clauses, frequent refinancing (''flipping''), lending without regard to repayment ability, equity ''stripping,'' targeting low- or moderate-income neighborhoods for subprime loans, and failing to refer qualifying borrowers to prime financial products. Commenters also suggested that certain types of loans, such as payday loans, be categorically treated as inappropriate and lead to a rating reduction.

Financial institutions generally opposed determining under the CRA whether activities beyond those identified in the regulations are predatory or abusive. They noted that the regulations already expressly provide that violations of certain laws can adversely affect a rating. They contended that abusive credit terms and practices generally should not be regulated through CRA because Congress enacted other laws for that purpose, and expressed doubt that a workable regulatory definition of ''predatory lending'' could be developed. They also contended that the increased compliance costs caused by using CRA examinations to detect and deter abusive practices would not be justified because regulated financial institutions are not responsible for the bulk of abuses. They urged instead that the agencies continue to rely on fair lending and compliance examinations to detect and deter abuses.

As concern about lending practices has often focused on nondepository affiliates, the agencies also solicited and received comment on the role of affiliate loans in an institution's CRA evaluation. Nondepository institutions are not covered by the Act, but the regulations permit an institution to elect, at its option, to have loans of a nondepository affiliate considered as part of the institution's own record of performance. An institution must elect consideration of affiliate loans by assessment area and lending category. For example, if an institution elects for examiners to consider residential mortgage loans of a particular affiliate, examiners will evaluate all residential mortgage loans made in the same assessment area by any of its affiliates. There can be an ''upside'' to including an affiliate's activities in an institution's CRA lending evaluation because affiliate loans are considered favorably in an institution's lending evaluation, particularly if they increase the number and amount of lending in low- and moderate-income areas.

Many community organizations contended that the problem of predatory lending lies as much or more in nondepository affiliates as in institutions subject to CRA. They generally urged mandating the inclusion of affiliate loans in an institution's CRA evaluation, instead of letting the institution decide whether to include them. Finally, a few commenters recommended directly subjecting nonbank affiliates to CRA evaluations and ratings. Financial institutions opposed those suggestions.

The agencies believe that predatory and abusive lending practices are inconsistent with important national objectives, including the goals of fair access to credit, community development, and stable home ownership by the broadest spectrum of Americans, and are inconsistent with the purposes of the CRA. We have acted to attack abusive practices through rulemakings under various statutes, supervisory policies, financial literacy education, and community development support.

The CRA regulations can play a role in promoting responsible lending practices and discouraging abusive practices, where feasible. The regulations give the agencies considerable discretion to determine whether lending activities help to meet the credit needs of the community consistent with safe and sound practices. The regulations reward with special consideration efforts to insulate borrowers from abusive practices.[3] And, as noted above, evidence of certain illegal credit practices adversely affects the agency's evaluation of an institution's CRA performance.

The agencies believe that it is appropriate to enhance how the CRA regulations address credit practices that may be discriminatory, illegal, or otherwise predatory and abusive, and that are inconsistent with helping to meet community credit needs in a safe and sound manner. Therefore, in response to commenters' recommendations that the agencies' CRA regulations address predatory lending, whether by regulated financial institutions or an affiliate, the agencies are proposing to revise and clarify the regulations in several respects.

First, the agencies plan to specify in the regulations examples of certain violations of law that will adversely affect an agency's evaluation of an institution's CRA performance. The regulations would specify, in an illustrative list, that evidence of the following practices adversely affects an agency's evaluation of an institution's CRA performance: discrimination against applicants on a prohibited basis in violation of, for example, the Equal Credit Opportunity or Fair Housing Acts; evidence of illegal referral practices in violation of section 8 of the Real Estate Settlement Procedures Act; evidence of violations of the Truth in

[2] See ''Interagency Questions and Answers Regarding Community Reinvestment,'' 66 FR 36620, 36640 (July 12, 2001).

[3] For example, the agencies look favorably on loan programs that feature financial education to help borrowers avoid unsuitable loans; promote subprime borrowers to prime terms when appropriate; report to consumer reporting agencies; and provide small unsecured consumer loans in a safe and sound manner, based on borrowers' ability to repay, on reasonable terms. Credit for ''community development'' activities also is available under the service and investment tests for providing or supporting financial education or affordable loans to low- and moderate-income individuals, the population most vulnerable to inappropriate practices.

Lending Act concerning a consumer's right to rescind a credit transaction secured by a principal residence; evidence of violations of the Home Ownership and Equity Protection Act; and evidence of unfair or deceptive credit practices in violation of section 5 of the Federal Trade Commission Act. These laws are listed to give an indication of the types of illegal and discriminatory credit practices that the agency may consider. Evidence of violations of other applicable consumer protection laws affecting credit practices, including State laws if applicable, may also adversely affect the institution's CRA evaluation. While no substantive change will result from listing these examples, specifying in the regulation examples of violations that give rise to adverse CRA consequences should improve the usefulness of the regulations by providing critical information in primary compliance source material.

The agencies also propose to clarify that an institution's evaluation will be adversely affected by practices described above in connection with any type of lending activity described in ____.22(a) (home mortgage, small business, small farm, consumer, and community development loans). This would also clarify that the agencies may consider such practices in connection with consumer loans, even if the institution did not elect to have such loans included in its evaluation.

Second, the agencies propose to explicitly address equity stripping by revising the regulations to provide that evidence of a pattern or practice of extending home mortgage or consumer loans based predominantly on the foreclosure or liquidation value of the collateral by the institution, where the borrower cannot be expected to be able to make the payments required under the terms of the loan,[4] also adversely affects an institution's overall rating. An institution may determine that a borrower can be expected to be able to make the payments required under the terms of the loan based, for example, on information about the borrower's credit history, current or expected income, other resources, and debts; preexisting customer relationships (such as accommodation lending); or other information ordinarily considered by the institution (or affiliate, as applicable) and as documented and verified, stated, or otherwise ordinarily determined by the institution (or affiliate, as applicable).

This element of the agencies' proposal addresses one of the central characteristics of predatory lending, and describes a practice clearly not consistent with helping to meet the credit needs of the community. For example, home-secured loans made without regard to borrowers' ability to repay can lead to unwarranted foreclosures, which, in turn, undermine the entire community. To be sure, equity stripping is not the only potential lending abuse in home mortgage and consumer loans, but it is more readily susceptible to clear definition in a regulation than many other abuses. The agencies believe that other abuses not expressly prohibited by HOEPA, TILA, RESPA, or ECOA, may be better addressed on a case-by-case basis under the unfair-or-deceptive standard of the FTC Act, rather than by regulatory definitions. The FTC Act is particularly well suited to addressing evidence of predatory lending practices that are not otherwise prohibited by Federal law. For example, many practices that have been criticized as predatory and abusive, such as loan flipping, the refinancing of special subsidized mortgage loans, other forms of equity stripping, and fee packing, can entail unfair or deceptive practices that violate the FTC Act.[5]

As noted above, this aspect of the proposal is limited to home mortgage loans and consumer loans. It does not cover loans to businesses. Further, the proposal is not intended to cover loans such as reverse mortgages that, by their terms, will be paid from liquidation of the collateral.

In addition, under the proposed standard, an institution would determine that a borrower may be expected to be able to make the payments required under the terms of the loan by considering information it ordinarily considers in connection with the type of loan. Depending upon the institution's normal procedures in the circumstances and consistent with safe and sound underwriting, such information may or may not be documented and verified. For example, many institutions ordinarily do not verify or even consider income of people with high net worth or exemplary records of paying credit obligations. Note, however, that HOEPA requires lenders to document the borrower's ability to repay a loan subject to HOEPA, and that HOEPA violations adversely affect an institution's CRA evaluation.

The agencies seek comment on whether the inclusion in the regulations of a provision to address the pattern or practice of making home mortgage and consumer loans based predominantly on the foreclosure or liquidation value of the collateral by the institution, where the borrower cannot be expected to be able to make the payments required under the terms of the loan, is sufficient or whether a different formulation of that provision would better discourage abusive lending practices without risking curtailment of consumers' access to credit. We also seek comment on whether it is feasible to define any other specific abuses by regulation in a way that both shields consumers from the costs of the abuse and avoids inadvertently curtailing the availability of credit to consumers.

Third, the agencies propose to clarify that an institution's evaluation will be adversely affected by discriminatory, other illegal, or abusive credit practices described in the regulations regardless of whether the practices involve loans in the institution's assessment area(s) or in any other location or geography. The regulations currently provide that evidence of discriminatory or other illegal credit practices by an institution can adversely affect the institution's rating, and they do not limit the agencies' consideration of such evidence to lending within an assessment area.

Fourth, the proposed revisions would clarify that an institution's CRA evaluation also can be adversely affected by evidence of discriminatory, other illegal, and abusive credit practices *by any affiliate,*[6] if *any* loans of that affiliate have been considered in the CRA evaluation pursuant to ____.22(c)(1) and (2). Loans by an affiliate currently are permitted to be included in an institution's evaluation of an assessment area only, and the proposal would be similarly limited to affiliate lending practices within any assessment area. We seek comment on whether the agencies should provide in the regulation that evidence of discriminatory, other illegal, or abusive credit practices by an affiliate whose loans have been considered in an institution's evaluation will adversely affect the institution's rating whether or

[4] Note that other Federal law, such as HOEPA and OCC regulations (*see* 12 CFR parts 7 and 34) contain similar, but not identically worded, prohibitions on such lending practices in certain circumstances.

[5] *See* OCC Advisory Letter 2003–2, "Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices," February 21, 2003.

[6] An affiliate means any company that controls, is controlled by, or is under common control with another company. Generally, for CRA purposes, this includes companies engaged in lending that are owned and controlled by bank holding companies or thrift holding companies, as well as companies engaged in lending that are direct operating subsidiaries of an insured bank or thrift.

not the activities were inside any of the institution's assessment areas.

The agencies will consider all credible evidence of discriminatory, other illegal, or abusive credit practices that comes to their attention. Such information could be obtained from supervisory examinations (including safety and soundness examinations and compliance examinations), CRA comments in connection with applications for deposit facilities, and public sources. However, CRA examinations themselves generally will not entail specific evaluation of individual complaints or specific evaluation of individual loans for illegal credit practices or otherwise abusive lending practices.

With these proposed changes to the CRA regulations, the agencies seek to ensure that evidence of predatory and abusive lending practices are appropriately considered in an institution's CRA evaluation. We considered suggestions for adopting a more categorical response to evidence of an illegal credit practice, such as rating the institution no higher than Needs to Improve. We continue to believe an institution should be evaluated based on all relevant ratings factors without mandating a particular rating result. Further, it may be impractical for the agencies to try to exclude from CRA consideration all loans originated in connection with an illegal or abusive credit practice because it could require examiners to identify and segregate each such loan, and we invite comment on this issue.

We invite comment on all aspects of the proposed revisions to section ____28.(c), including the extent to which the proposed revisions would make CRA evaluations more effective in measuring an institution's contribution to community credit needs without imposing undue burden.

Enhancement of Public Performance Evaluations

A public performance evaluation is a written description of an institution's record of helping to meet community credit needs, and includes a rating of that record. An evaluation is prepared at the conclusion of every CRA examination and made available to the public. The agencies intend to use publicly available HMDA and CRA data to disclose the following information in CRA performance evaluations by assessment area:

(1) The number, type, and amount of purchased loans;

(2) The number, type, and amount of loans of HOEPA loans and of loans for which rate spread information is reported under HMDA (data that will be available in mid-2005); and

(3) The number, type, and amount of loans that were originated or purchased by an affiliate and included in the institution's evaluation, and the identity of such affiliate.

These changes should make it easier for the public to evaluate the lending by individual institutions according to particular factors that many commenters suggested. They should not impose any burden on institutions, as it does not call for any change to data collection or reporting procedures. The agencies seek comment on the extent to which the enhancements of public CRA performance evaluations described above will make the evaluations more effective in communicating to the public an institution's contribution to meeting community credit needs.

Regulatory Analysis

Paperwork Reduction Act

Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995, the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number (OCC, 1557–0160; Board, 7100–0197; FDIC, 3064–0092; and OTS, 1550–0012). The Agencies also give notice that, at the end of the comment period, the proposed collections of information, along with an analysis of the comments, and recommendations received, will be submitted to OMB for review and approval.

Comments are invited on:

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

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

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

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

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

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the information collections should be modified prior to submission to OMB for review and approval. The comments will also be summarized or included in the Agencies' requests to OMB for approval of the collections. All comments will become a matter of public record.

Comments should be addressed to:

OCC: Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW., Mail stop 1–5, Attention: Docket 04–06, Washington, DC 20219; fax number (202) 874–4448; Internet address: *regs.comments@occ.treas.gov.* Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit their comments by fax or e-mail. You can make an appointment to inspect the comments at the Public Information Room by calling (202) 874–5043.

Board: Comments should refer to Docket No. R–1181 and may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Please consider submitting your comments through the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm,* by e-mail to *regs.comments@federalreserve.gov,* or by fax to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Rules proposed by the Board and other Federal agencies may also be viewed and commented on at *http://www.regulations.gov.*

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (C and 20th Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Leneta G. Gregorie, Legal Division, Room MB–3082, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to the title of the proposed collection. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m., Attention: Comments/Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *information collection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition, interested persons may inspect the comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

Title of Information Collection:

OCC: Community Reinvestment Act Regulation—12 CFR 25.

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

FDIC: Community Reinvestment—12 CFR 345.

OTS: Community Reinvestment—12 CFR 563e.

Frequency of Response: Annual.

Affected Public:

OCC: National banks.

Board: State member banks.

FDIC: Insured nonmember banks.

OTS: Savings associations.

Abstract: This Paperwork Reduction Act section estimates the burden that would be associated with the regulations were the agencies to change the definition of ''small institution'' as proposed, that is, increase the asset threshold from $250 million to $500 million and eliminate any consideration of holding-company size. The two proposed changes, if adopted, would make ''small'' approximately 1,350 insured depository institutions that do not now have that status. That estimate is based on data for all FDIC-insured institutions that filed Call or Thrift Financial Reports on March 31, 2003. Those data also underlie the estimated paperwork burden that would be associated with the regulations if the proposals were adopted by the agencies.

Estimated Paperwork Burden under the Proposal:

OCC

Number of Respondents: 2,066.

Estimated Time Per Response: Small business and small farm loan register, 219 hours; Consumer loan data, 326 hours; Other loan data, 25 hours; Assessment area delineation, 2 hours; Small business and small farm loan data, 8 hours; Community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; Data on lending by a consortium or third party, 17 hours; Affiliated lending data, 38 hours; Request for designation as a wholesale or limited purpose bank, 4 hours; Strategic Plan, 275 hours; and Public file, 10 hours.

Total Estimated Annual Burden: 223,062 hours.

Board

Number of Respondents: 950.

Estimated Time Per Response: Small business and small farm loan register, 219 hours; Consumer loan data, 326 hours; Other loan data, 25 hours; Assessment area delineation, 2 hours; Small business and small farm loan data, 8 hours; Community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; Data on lending by a consortium or third party, 17 hours; Affiliated lending data, 38 hours; Request for designation as a wholesale or limited purpose bank, 4 hours; and Public file, 10 hours.

Total Estimated Annual Burden: 114,350 hours.

FDIC

Number of Respondents: 5,341.

Estimated Time Per Response: Small business and small farm loan register, 219 hours; Consumer loan data, 326 hours; Other loan data, 25 hours; Assessment area delineation, 2 hours; Small business and small farm loan data, 8 hours; Community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; Data on lending by a consortium or third party, 17 hours; Affiliated lending data, 38 hours; Request for designation as a wholesale or limited purpose bank, 4 hours; and Public file, 10 hours.

Total Estimated Annual Burden: 331,358 hours.

OTS

Number of Respondents: 958.

Estimated Time Per Response: Small business and small farm loan register, 219 hours; Consumer loan data, 326 hours; Other loan data, 25 hours; Assessment area delineation, 2 hours; Small business and small farm loan data, 8 hours; Community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; Data on lending by a consortium or third party, 17 hours; Affiliated lending data, 38 hours; Request for designation as a wholesale or limited purpose bank, 4 hours; and Public file, 10 hours.

Estimated Total Annual Burden: 116,493 hours.

Regulatory Flexibility Act

OCC: Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC certifies that since the proposal would reduce burden and would not raise costs for small institutions, this proposal will not have a significant economic impact on a substantial number of small entities. This proposal does not impose any additional paperwork or regulatory reporting requirements. The proposal would increase the overall number of small banks that are permitted to avoid data collection requirements in 12 CFR part 25. Accordingly, a regulatory flexibility analysis is not required.

Board: Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board certifies that since the proposal would reduce burden and would not raise costs for small institutions, this proposal will not have a significant economic impact on a substantial number of small entities. This proposal does not impose any additional paperwork or regulatory reporting requirements. The proposal would increase the overall number of small banks that are permitted to avoid data collection requirements in 12 CFR part 228. Accordingly, a regulatory flexibility analysis is not required.

FDIC: Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that since the proposal would reduce burden and would not raise costs for small institutions, this proposal will not have a significant economic impact on a substantial number of small entities. This proposal does not impose any additional paperwork or regulatory reporting requirements. The proposal would increase the overall number of small banks that are permitted to avoid data collection requirements in 12 CFR part 345. Accordingly, a regulatory flexibility analysis is not required.

OTS: Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that since the proposal would reduce burden and would not raise costs for small institutions, this proposal will not have a significant economic impact on a substantial number of small entities. This proposal does not impose any additional paperwork or regulatory reporting requirements. The proposal would increase the overall number of small savings associations that are permitted to avoid data collection requirements in 12 CFR part 563e. Accordingly, a regulatory flexibility analysis is not required.

OCC and OTS Executive Order 12866 Determination

The OCC and OTS have determined that their portion of the proposed rulemaking is not a significant regulatory action under Executive Order 12866.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS have determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, neither agency has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

The Treasury and General Government Appropriations Act, 1999—Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681.

Board, FDIC, and OTS Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board, the FDIC, and the OTS to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board, the FDIC, and the OTS invite comments on whether the proposed rules are clearly stated and effectively organized, and how the Board, the FDIC, and the OTS might make the proposed text easier to understand.

OCC Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The OCC invites your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

OCC Executive Order 13132 Determination

The Comptroller of the Currency has determined that this final rule does not have any Federalism implications, as required by Executive Order 13132.

OCC Community Bank Comment Request

The OCC invites your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

List of Subjects

12 CFR Part 25

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

12 CFR Part 228

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

12 CFR Part 345

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

12 CFR Part 563e

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

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the joint preamble, the Office of the Comptroller of the Currency proposes to amend part 25 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

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

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

2. Revise § 25.12(t) to read as follows:

§ 25.12 Definitions.

* * * * *

(t) *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than $500 million.

* * * * *

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

§ 25.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory, other illegal, and abusive credit practices.*

(1) The OCC's evaluation of a bank's CRA performance is adversely affected by evidence of the following in any geography by the bank or in any assessment area by any affiliate whose loans have been considered pursuant to § 25.22(c):

(i) In connection with any type of lending activity described in § 25.22(a), discriminatory or other illegal credit practices including, but not limited to:

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

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

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

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

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

(ii) In connection with home mortgage and secured consumer loans, a pattern or practice of lending based predominantly on the foreclosure or liquidation value of the collateral by the bank (or affiliate, as applicable), where the borrower cannot be expected to be able to make the payments required under the terms of the loan.[1]

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

4. Revise § 25.42(h) to read as follows:

§ 25.42 Data collection, reporting, and disclosure.

* * * * *

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

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

(i) The number and amount of small business and small farm loans reported as originated or purchased by geography, grouped according to whether the geography is low-, moderate-, middle-, or upper-income;

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

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

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

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

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

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

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

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

* * * * *

Dated: January 28, 2004.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

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

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

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

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

2. Revise § 228.12(t) to read as follows:

§ 228.12 Definitions.

* * * * *

(t) *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than $500 million.

* * * * *

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

§ 228.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory, other illegal, and abusive credit practices.* (1) The Board's evaluation of a bank's CRA performance is adversely affected by evidence of the following in any geography by the bank or in any assessment area by any affiliate whose loans have been considered pursuant to § 228.22(c):

(i) In connection with any type of lending activity described in § 228.22(a), discriminatory or other illegal practices including, but not limited to:

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

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

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

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

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

(ii) In connection with home mortgage and secured consumer loans, a pattern or practice of lending based predominantly on the foreclosure or liquidation value of the collateral by the bank, where the borrower cannot be expected to be able to make the payments required under the terms of the loan.[1]

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

4. Revise § 228.42(h) to read as follows:

§ 228.42 Data collection, reporting, and disclosure.

* * * * *

(h) *CRA Disclosure Statement.* The Board prepares annually for each bank

[1] A bank (or affiliate, as applicable) may determine that a borrower can be expected to be able to make the payments required under the terms of the loan based, for example, on information about the borrower's credit history, current or expected income, other resources, and debts; preexisting customer relationships; or other information ordinarily considered, and as documented and verified, stated, or otherwise ordinarily determined, by the bank (or affiliate, as applicable) in connection with the type of lending.

[1] A bank (or affiliate, as applicable) may determine that a borrower can be expected to be able to make the payments required under the terms of the loan based, for example, on information about the borrower's credit history, current or expected income, other resources, and debts; preexisting customer relationships; or other information ordinarily considered, and as documented and verified, stated, or otherwise ordinarily determined, by the bank (or affiliate, as applicable) in connection with the type of lending.

that reports data pursuant to this section a CRA disclosure statement that contains, on a State-by-State basis:

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

(i) The number and amount of small business and small farm loans reported as originated or purchased by geography, grouped according to whether the geography is low-, moderate-, middle-, or upper-income;

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

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

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

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

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

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

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

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

*   *   *   *   *

By order of the Board of Governors of the Federal Reserve System.

Dated: January 29, 2004.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

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

PART 345—COMMUNITY REINVESTMENT

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

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

2. Revise § 345.12(t) to read as follows:

§ 345.12 Definitions.

*   *   *   *   *

(t) *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than $500 million.

*   *   *   *   *

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

§ 345.28 Assigned ratings.

*   *   *   *   *

(c) *Effect of evidence of discriminatory, other illegal, and abusive credit practices.* (1) The FDIC's evaluation of a bank's CRA performance is adversely affected by evidence of the following in any geography by the bank or in any assessment area by any affiliate whose loans have been considered pursuant to § 345.22(c):

(i) In connection with any type of lending activity described in § 345.22(a), discriminatory or other illegal practices including, but not limited to:

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

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

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

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

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

(ii) In connection with home mortgage and secured consumer loans, a pattern or practice of lending based predominantly on the foreclosure or liquidation value of the collateral by the bank, where the borrower cannot be expected to be able to make the payments required under the terms of the loan.[1]

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

*   *   *   *   *

4. Revise § 345.42(h) to read as follows:

§ 345.42 Data Collection, Reporting, and Disclosure

*   *   *   *   *

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

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

(i) The number and amount of small business and small farm loans reported as originated or purchased by geography, grouped according to whether the geography is low-, moderate-, middle-, or upper-income;

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

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

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

(i) The number and amount of small business and small farm loans reported as originated or purchased in each geography, grouped according to

[1] A bank (or affiliate, as applicable) may determine that a borrower can be expected to be able to make the payments required under the terms of the loan based, for example, on information about the borrower's credit history, current or expected income, other resources, and debts; preexisting customer relationships; or other information ordinarily considered, and as documented and verified, stated, or otherwise ordinarily determined by the bank (or affiliate, as applicable) in connection with the type of lending.

median income of the geography relative to the area median income, as follows: less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

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

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

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

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

* * * * *

Dated at Washington, DC, this 20th day of January, 2004.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Office of Thrift Supervisiion

12 CFR CHAPTER V

For the reasons outlined in the joint preamble, the Office of Thrift Supervision proposes to amend part 563e of chapter V of title 12 of the Code of Federal Regulations as set forth below:

PART 563e—COMMUNITY REINVESTMENT

1. The authority citation for part 563e continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

2. Revise § 563e.12(s) to read as follows:

§ 563e.12 Definitions.

* * * * *

(s) *Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had total assets of less than $500 million.

* * * * *

3. Revise § 563e.28(c) to read as follows:

§ 563e.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory, other illegal, and abusive credit practices.* (1) The OTS's evaluation of a savings association's CRA performance is adversely affected by evidence of the following in any geography by the savings association or in any assessment area by any affiliate whose loans have been considered pursuant to § 563e.22(c):

(i) In connection with any type of lending activity described in § 563e.22(a), discriminatory or other illegal practices including, but not limited to:

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

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

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

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

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

(ii) In connection with home mortgage and secured consumer loans, a pattern or practice of lending based predominantly on the foreclosure or liquidation value of the collateral by the savings association, where the borrower cannot be expected to be able to make the payments required under the terms of the loan.[1]

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

4. Revise § 563e.42(h) to read as follows:

[1] A savings association (or affiliate, as applicable) may determine that a borrower can be expected to be able to make the payments required under the terms of the loan based, for example, on information about the borrower's credit history, current or expected income, other resources, and debts; preexisting customer relationships; or other information ordinarily considered, and as documented and verified, stated, or otherwise ordinarily determined by the savings association (or affiliate, as applicable).

§ 563e.42 Data collection, reporting, and disclosure.

* * * * *

(h) *CRA Disclosure Statement.* The OTS prepares annually for each savings association that reports data pursuant to this section a CRA disclosure statement that contains, on a State-by-State basis:

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

(i) The number and amount of small business and small farm loans reported as originated or purchased by geography, grouped according to whether the geography is low-, moderate-, middle-, or upper-income;

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

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

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

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

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

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

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

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

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Dated: January 22, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–2354 Filed 2–5–04; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM273; Notice No. 25–04–01–SC]

Special Conditions: Boeing Model 777 Series Airplanes; Overhead Crew Rest Compartment Occupiable During Taxi, Take-off, and Landing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Boeing Model 777 series airplanes. These airplanes will have novel or unusual design features because of the installation of an overhead crew rest (OHCR) compartment which is proposed to be occupiable during taxi, take-off, and landing (TT&L). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before March 8, 2004.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM273, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM273. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Thompson, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–1157; facsimile (425) 227–1100.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On June 25, 2002, the Boeing Commercial Airplane Group (BCAG), P.O. Box 3707, Seattle, Washington, 98124, applied for a change to Type Certificate No. T00001SE for a design change to install an OHCR, which is proposed to be occupiable during TT&L, in Boeing Model 777 series airplanes. The Boeing Model 777 series airplanes are large twin-engine airplanes with various passenger capacities and ranges depending upon airplane configuration.

The OHCR compartment is located in the overhead space above the main passenger cabin immediately aft of the first pair of main deck emergency exits (Door 1) and will include a maximum of two private berths and two seats. Occupancy of the OHCR compartment will be limited to a maximum of four crewmembers during flight and two flightcrew members, one in each seat, during TT&L.

The OHCR compartment will be accessed from the main deck by stairs through a vestibule. In addition, an emergency hatch, which opens directly into the main passenger seating area, will be provided for the OHCR compartment as an alternate route for evacuating occupants of the OHCR compartment in an emergency. A smoke detection system and an oxygen system will be provided in the compartment. Other optional features, such as a kitchenette and lavatory, may be provided as well.

While the installation of an OHCR compartment is not a new concept for large transport category airplanes, each OHCR compartment has unique features based on design, location, and use on the airplane. Previously, OHCR compartments have been installed and certified in Boeing 777 series airplanes in the main passenger seating area, in the overhead compartment above the main passenger seating area, and below the passenger seating area within the cargo compartment. On April 9, 2003, the FAA issued Special Conditions No. 25–230-SC for an OHCR compartment immediately aft of the Door 1 exits and an overhead flight attendant rest compartment adjacent to Door 3 in Boeing 777 series airplanes. These new special conditions address an OHCR compartment at the same location aft of Door 1 as in the April 2003 special conditions, except that they address occupancy of trained flightcrew during TT&L.

Type Certification Basis

Under the provisions of § 21.101, Amendment 21–69, effective September 16, 1991, Boeing Commercial Airplane Group must show that Model 777 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. T00001SE or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes did not become effective until June 10, 2003, which is after the application date for this type design change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The U.S. type certification basis for Boeing Model 777 series airplanes is established in accordance with 14 CFR 21.17 and 21.29 and the type certificate application date. The type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for Boeing Model 777 series airplanes because of a novel or unusual design feature, special conditions are