DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 01-16]

RIN 1557-AB98

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R-1112]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064-AC50

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket No. 2001-49]

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 advance notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, and OTS (collectively, “we” or “the agencies”) are beginning a review of our Community Reinvestment Act (CRA) regulations. This advance notice of proposed rulemaking (ANPR) seeks public comment on a wide range of questions as

part of our review. We also welcome comments discussing other aspects of the CRA regulations and suggesting ways to improve the efficacy of the regulations.

DATES: Comments must be received by October 17, 2001.

ADDRESSES:

OCC: Please direct your comments to: Docket No. 01-16, Communications Division, Public Information Room, Mailstop 1-5, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. You can inspect and photocopy all comments received at that address. In addition, you may send comments by facsimile transmission to fax number (202) 874-4448, or by electronic mail to regs.comments@occ.treas.gov.

Board: Comments should refer to Docket No. R-1112 and should be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside those hours. Both the mailroom and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: Mail: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, 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 7:00 a.m. and 5:00 p.m.

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

Electronic: Comments may be submitted to the FDIC electronically over the Internet at http://www.fdic.gov/regulations/laws/publiccomments/index.html. The FDIC has included a page on its web site to facilitate the submission of electronic comments in response to this ANPR concerning the CRA regulations (the EPC site). The EPC site provides an alternative to the written letter and may be a more convenient way for you to submit your comments or suggestions concerning the ANPR to the FDIC. If you submit comments through the EPC site, your comments will receive the same consideration that they would receive if submitted in hard copy to the FDIC's street address. Like comments or suggestions submitted in hard copy to the FDIC's street address, EPC site comments will be made available in their entirety (including the commenter's name and address if the commenter chooses to provide them) for public inspection. The FDIC, however, will not use an individual's name or any other personal identifier of an individual to retrieve records or information submitted through the EPC site. You will be able to view the ANPR directly on the EPC site and provide written comments and suggestions in the spaces provided.

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 9:00 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 Docket No. 2001-49.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention Docket No. 2001-49.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906-6518, Attention: Docket No. 2001-49.

E-Mail: Send e-mails to regs.comments@ots.treas.gov, Attention Docket No. 2001-49 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 Reference 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 10:00 a.m. and 4:00 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: Karen Tucker, National Bank Examiner, Community and Consumer Policy Division, (202) 874-4428; Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874-5750; or Patrick Tierney, Attorney, Legislative & Regulatory Activities Division, (202) 874-5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

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

FDIC: Deanna Caldwell, Senior Policy Analyst, (202) 942-3366; Stephanie Caputo, Fair Lending Specialist (202) 942-3413; or Robert Mooney, Assistant Director, (202) 942-3378, Division of Compliance and Consumer Affairs; or Ann Johnson, Counsel, Legal Division, (202) 898-3573, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

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

SUPPLEMENTARY INFORMATION:

Introduction

The Federal financial supervisory agencies are jointly undertaking a review of our CRA regulations, in fulfillment of our commitment to do so when we adopted the current regulations in 1995. See 60 FR 22156, 22177 (May 4, 1995). This ANPR marks the beginning of our assessment of the effectiveness of the regulations in achieving their original goals of (1) emphasizing in examinations an institution's actual performance in, rather than its process for, addressing CRA responsibilities; (2) promoting consistency in evaluations; and (3) eliminating unnecessary burden. Any regulatory changes that we determine to be necessary to improve the regulations' effectiveness will be made in a rulemaking after completion of this review.

With our initiation of this comprehensive review of the regulations, we seek to determine whether, and if so, how, the regulations should be amended to better evaluate financial institutions' performance under the CRA, consistent with the authority, mandate, and intent of the statute. We encourage comments from the industry and the public on all aspects of this ANPR, as well as other concerns regarding the regulations that may not be represented, in order to ensure a full discussion of the issues.

Background

In 1977, Congress enacted the CRA to encourage federally insured banks and thrifts to help meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices. 12 U.S.C. 2901 et seq. In the CRA, Congress determined that:

(1) regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business;

(2) the convenience and needs of communities include the need for credit services as well as deposit services; and

(3) regulated financial institutions have continuing and affirmative obligation[s] to help meet the credit needs of the local communities in which they are chartered. (12 U.S.C. 2901(a).)

Further, Congress directed the agencies to assess an institution's record of meeting the credit needs of its entire community, and to consider that record when acting on an application for a deposit facility.

In 1993, we initiated a reform of our CRA regulations. The goal of the reform was to develop revised rules that would clarify how we would evaluate the performance of the institutions we supervise. It also was our goal to develop a new system of evaluating financial institutions' records with respect to CRA that would focus primarily on objective, performance-based assessment standards that minimize compliance burden while stimulating improved performance.

After holding seven public hearings and publishing two proposed rules, we jointly issued final rules (the "regulations") on May 4, 1995 (60 FR 22156). See 12 CFR 25, 228, 345, and 563e, implementing 12 U.S.C. 2901 et seq. We published related clarifying documents on December 20, 1995 (60 FR 66048) and May 10, 1996 (61 FR 21362). To assist financial institutions and the public, we have also provided interpretive guidance about the regulations in the form of questions and answers published in the Federal Register. See 65 FR 25088 (April 28, 2000).

Under the regulations, the agencies evaluate a financial institution through a performance-based examination, the scope of which is determined by the institution's size and business strategy. Large, retail-oriented institutions are examined using the lending, investment, and service tests. Small institutions are examined using a streamlined small institution test. Wholesale and limited purpose institutions are examined under a community development test. And, finally, all institutions have the option of being evaluated under a strategic plan. No matter which evaluation method is used, each institution's performance is evaluated in a "performance context" that examiners factor into their CRA evaluations. The performance context includes consideration of factors such as each institution's business strategy and constraints, as well as the needs of, and opportunities afforded by, the communities served.

As stated, our goal was to make CRA examinations more objective and performance-based. To this end, the regulations require large institutions to collect, report, and disclose data on small business, small farm and community development loans, as well as limited data about home mortgage lending outside metropolitan statistical areas (MSAs), if the institution is subject to the Home Mortgage Disclosure Act (HMDA).

Issues for Comment

A fundamental issue for consideration is whether any change to the regulations would be beneficial or is warranted. Industry representatives, community and consumer organization representatives, members of Congress, and the public have discussed the regulations with the agencies over the years, e.g., during examinations, in the application process, at conferences, and at other meetings. Some suggest that the regulations work reasonably well and that little or no change is necessary. Others suggest that more extensive changes may be needed to reflect the significant changes in the delivery of services and expansion of products offered by financial institutions as a result of new technologies and financial modernization legislation. Still others advise that regulatory changes are inherently burdensome, so the benefit of any change should be weighed against the cost of effecting the change.

The following discussion identifies some of the issues that may warrant our review. The discussion is by no means exhaustive of all the issues that could be raised or the viewpoints that could be expressed. Commenters are invited to respond to the questions presented and to offer comments or suggestions on any other issues related to the CRA regulations, including developments in the industry that may impact how we evaluate CRA performance in the future. The agencies also welcome suggestions on what, if any, other steps we might undertake instead of, or in addition to, revising the regulations.

1. *Large Retail Institutions: Lending, Investment, and Service Tests.*

Large retail institutions are subject to the lending, investment, and service tests. These tests primarily consider such things as the number and dollar amount of loans, qualified investments, and services, and the location and recipients of these activities. The tests also call for qualitative consideration of an institution's activities, including whether, and to what extent, loans, investments, and services are responsive to community credit needs; whether and to what extent they are innovative, flexible, or complex activities; and, in the case of investments, the degree to which the investments are not routinely provided by private investors. Thus, the regulations attempt to temper their reliance on quantitative factors by requiring examiners to evaluate qualitative factors, because not all activities of the same numerical magnitude have equal impact or entail the same relative importance when undertaken by different institutions in different communities.

Nonetheless, because the tests first consider the number and dollar amount of loans, investments, or services, some are of the opinion that CRA evaluations have become simply a "numbers game." They question whether the regulations strike the right balance between evaluation of the quantity and quality of CRA activities. They suggest, for example, that the regulations provide too little consideration for an institution's focus on smaller projects – whether or not "innovative" – that are particularly difficult to carry out, but are especially meaningful and responsive to the institution's community.

Institutions' CRA ratings reflect the principle that lending is the primary vehicle for meeting a community's credit needs. In the 1995 preamble to the regulations, the agencies published a ratings matrix for examiners to use when evaluating large retail institutions under the lending, investment, and service tests. Under this matrix, it is impossible for an institution to achieve a "satisfactory" rating overall unless it receives at least a "low satisfactory" rating on the lending test. The agencies continue to use this ratings matrix.

With respect to the emphasis placed on each category of an institution's activities, some question whether lending should be emphasized more than investments and services. They assert that a CRA evaluation should allow for adjustment of this emphasis in a manner that more nearly corresponds with the activities of the institution and the particular needs of its community. For example, they assert, if an institution does not significantly engage in retail lending and, therefore, makes few loans, the lending test should not receive more emphasis than the investment and service tests for that institution's CRA evaluation.

Others contend, however, that lending should always be stressed, because they believe that deposits derived from communities should be reinvested in those communities through loans. Still others assert that lending should be the <u>only</u> basis upon which institutions are evaluated.

Finally, with respect to the three tests, some have argued that an institution's record of providing services should be given more emphasis than it currently is given. Others assert that providing services is not relevant to assessing whether an institution is meeting the *credit* needs of its community.

- Do the regulations strike the appropriate balance between quantitative and qualitative measures, and among lending, investments, and services? If so, why? If not, how should the regulations be revised?

A. Lending test. The agencies evaluate an institution's lending performance by considering 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.

One aspect of the lending test that some have raised with the agencies is that the regulations allow equal consideration for loan originations and purchases. Some assert that only loan originations should be considered in an institution's evaluation. Supporters of this position maintain that consideration of loan purchases does not encourage institutions to increase capital in their communities. Rather, they believe equal consideration may prompt institutions to buy and sell the same loans repeatedly to influence their CRA ratings. On the other hand, some contend that loan purchases free up capital to the selling institution, thus enabling it to make additional loans. Still others argue that both purchases and originations should be considered, but originations should be weighted more heavily because they require more involvement by the institution with the borrower.

A related issue focuses on how the agencies should treat secondary market activity. The regulations currently capture purchased loans under the lending test and purchased asset-backed securities under the investment test. Some find this distinction to be artificial, and propose that purchased loans and purchased asset-backed securities should be captured under the same test, although they differ on which test should be used.

In addition, some are concerned that the regulations generally seem to provide consideration of loans without regard to whether the lending activities are appropriate. They recommend that a CRA examination also should include consideration of whether certain loans contain harmful or abusive terms and, therefore, do not help to meet community credit needs.

- Does the lending test effectively assess an institution's record of helping to meet the credit needs of its entire community? If so, why? If not, how should the regulations be revised?

B. Investment test. The agencies evaluate large retail institutions' performance under the investment test based on 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. The agencies included the investment test in CRA evaluations in recognition that investments, as well as loans, can help meet credit needs.

With respect to whether it is appropriate to evaluate institutions' investment activities, some suggest that investments by financial institutions are invaluable in helping to meet the credit needs of the institutions' communities, particularly in low- and moderate-income areas. Still others assert that the agencies should only consider investment activities to augment institutions' CRA ratings. In their view, although investments may help an institution to meet the credit needs of its community, particularly in low- and moderate-income areas, CRA ratings should be based primarily on lending activity. Others state, however, that it is inappropriate for the agencies to evaluate investments under the CRA as a means of meeting credit needs.

The availability of qualified investments has also been an issue of concern to some. Although some have observed that since the regulations went into effect, the market of available CRA-related investments has grown and continues to grow, others assert that appropriate investment opportunities may not be available in their communities. Further, some of the retail institutions subject to the investment test have indicated that, in some cases, it has been difficult to compete for investment opportunities, particularly against much larger institutions.

In addition, some have raised concerns that the innovative and complex elements of the investment test lead to a constant demand to change programs, even where existing programs are successful, just to maximize CRA consideration. Others have asked the agencies to reduce the uncertainty of how investments will be evaluated in an examination.

- Does the investment test effectively assess an institution's record of helping to meet the credit needs of its entire community? If so, why? If not, how should the regulations be revised?

C. Service test. 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 all 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 community development services.

The criteria for evaluating retail services have led to discussion on the test's effectiveness. Some argue that the service test depends too heavily on the provision of brick and mortar banking services, particularly when one considers that many services are now provided by telephone, mail or electronically. Others assert that brick and mortar banking facilities should be weighted heavily because they are necessary, especially in low- and moderate-income neighborhoods where consumers may not have access to electronic banking services. These issues have led some to propose that the evaluation should consider not only the delivery method and type of service, but also the effectiveness of the delivery method, i.e., the extent to which low- and moderate-income persons actually use the services offered. In addition, some have suggested that the test should provide more consideration for flexible and innovative deposit accounts.

As for community development services, such as providing technical assistance on financial matters to nonprofit organizations serving low- and moderate-income housing needs, some suggest that these services are not given adequate consideration. In particular, they state that community development services are often a critical component of delivering or supporting activities considered under the lending test. Some also argue, however, that there is no incentive for an institution to engage in what might be labor intensive endeavors because community development services are only a small component of its overall evaluation. Others suggest that community development services should be evaluated within the context of other community development activities, such as lending and investments, because evaluating them separately could result in artificial designations and may not give adequate consideration to the integral relationship among the activities. Still others suggest that the community development and retail services components should be combined. See related discussion in 1.D.

- Does the service test effectively assess an institution's record of helping to meet the credit needs of its entire community? If so, why? If not, how should the regulations be revised?

D. Community development activities of large retail institutions. Under the regulations, "community development" means affordable housing (including multifamily rental housing) for low- or moderate-income individuals; community services targeted to low- or moderate-income individuals; activities that promote economic development by financing small businesses and farms; and activities that revitalize or stabilize low- or moderate-income geographies.

The definition of "community development" has spurred discussion since the regulations were published. Some assert that the definition of "community development" is not broad enough to cover the full range of activities that should receive favorable consideration. For example, some indicate that many projects intended to revitalize or stabilize rural communities do not qualify under the current regulatory definition of community development because they are not located in low- or moderate-income geographies, as defined in the regulations. Others assert that the definition does not adequately value activities benefiting communities or projects involving persons with a mix of incomes.

Issues also have arisen with respect to the geographic location of an institution's community development activities. For large retail institutions, the agencies consider community development activities in their assessment areas or a broader statewide or regional area that includes their assessment areas. Some suggest that large retail institutions should receive full consideration for community development activities anywhere they are conducted, as long as the institutions have adequately addressed the needs of their assessment areas. They contend that such consideration should be similar to the consideration of community development activities given wholesale and limited purpose institutions that are evaluated under the community development test. Others express concern, however, that if retail institutions are given the opportunity to receive consideration for community development activities outside their assessment areas and the broader statewide or regional areas that include their assessment areas, such an opportunity may be interpreted as a requirement to serve these areas. Still others argue that allowing activities further afield to receive consideration would diminish institutions' incentives to serve their own communities.

As discussed above, the community development loans, qualified investments, and community development services of large retail institutions are considered separately under the lending, investment, and service tests, respectively. Some suggest this evaluation method leads institutions to be overly concerned with whether they have "enough" of each activity. They argue that all community development activities, whether loans, investments or services, should be evaluated in one separate test, rather than in the existing three tests. Under such a test, an institution would receive consideration for community development loans, investments, and services needed in its community, based on the opportunities that exist and the ability of the institution to respond.

- Are the definitions of "community development" and related terms appropriate? If so, why? If not, how should the regulations be changed?

- Are the provisions relating to community development activities by institutions that are subject to the lending, investment, and service tests effective in assessing those institutions' performance in helping to meet the credit needs of their entire communities? If so, why? If not, how should the regulations be revised?

2. *Small Institutions: The Streamlined Small Institution Evaluation.*

A "small institution" is defined as an institution with total assets of less than $250 million that is independent or is affiliated with a holding company with total bank and thrift assets of less than $1 billion as of the two preceding year ends. Some suggest that the asset thresholds for being considered a small institution are too low. Others assert that holding company assets are irrelevant – if a bank has less than $250 million in assets, it should be considered small even if it is affiliated with a large holding company. Still others suggest that holding company assets are relevant only if the holding company provides support for CRA activities or otherwise directs the CRA activities of an institution.

Small institutions are evaluated under a streamlined test that focuses primarily on lending. When evaluating a small institution, an agency considers its 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 area(s).

The small institution performance standards generally have been favorably received. Some, however, express concerns that the small institution assessment method does not provide for adequate consideration of non-lending-related investments, retail-related services, or community development services. Others assert that the small institution performance standards do not adequately consider the activities small institutions are performing in their communities, particularly in highly competitive markets. Others say that the standards do not create a sufficient incentive for small institutions to seek out and make investments, provide new services, or strive for higher ratings. Some also argue that institutions evaluated under the streamlined method should not be eligible for an "outstanding" rating based on their lending activities alone – that a small institution should be engaged in making investments and providing services in order to receive a rating higher than satisfactory.

- Do the provisions relating to asset size and holding company affiliation provide a reasonable and sufficient standard for defining "small institutions" that are eligible for the streamlined small institution evaluation test? If so, why? If not, how should the regulations be revised?

- Are the small institution performance standards effective in evaluating such institutions' CRA performance? If so, why? If not, how should the regulations be revised?

3. *Limited Purpose and Wholesale Institutions: The Community Development Test.*

The community development test is the evaluation method used for limited purpose and wholesale institutions. A limited purpose institution offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and must request and receive designation as a limited purpose institution from its regulatory agency. A wholesale institution is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and similarly must obtain a designation as a wholesale institution.

Some question whether the definitions of limited purpose and wholesale institutions are appropriate. For example, they ask whether the definition of limited purpose should be expanded to a limited extent to capture retail institutions that offer more than a narrow product line on a regional or national basis.

Under the community development test, the agencies consider the number and amount of community development loans, qualified investments, or community development services; the use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and the institution's responsiveness to credit and community development needs. Wholesale and limited purpose institutions may receive consideration for community development activities outside of their assessment areas (or a broader statewide or regional area that includes their assessment areas) as long as they have adequately addressed the needs of their assessment areas.

Some question whether the community development test for wholesale and limited purpose institutions is as rigorous as the lending, investment, and service tests are for large retail institutions. Others suggest that the community development test may be an appropriate test not only for limited purpose and wholesale institutions, but also for other types of institutions, such as branchless institutions that provide a broad range of retail services nationwide by telephone, mail, or electronically. Still others assert that the community development test may be an appropriate test for any retail institution.

- Are the definitions of "wholesale institutions" and "limited purpose institution" appropriate? If so, why? If not, how should the regulations be revised?

- Does the community development test provide a reasonable and sufficient standard for assessing wholesale and limited purpose institutions? If so, why? If not, how should the regulations be revised?

- Would the community development test provide a reasonable and sufficient standard for assessing the CRA record of other insured depository institutions, including retail institutions? If so, why and which ones, and how should the regulations be revised? If not, why not?

4. *Strategic Plan.*

The agencies developed the strategic plan option to provide institutions with more flexibility and certainty regarding what aspects of their performance will be evaluated and what quantitative and qualitative measures will be applied. To exercise this option, an institution must informally seek suggestions from the public while developing its plan, solicit formal public comment on its plan, and submit the plan to its regulatory agency (along with any written comments received from the public and an explanation of any changes made to the plan in response to those public comments).

To be approved by an agency, a CRA strategic plan must have measurable goals and address how the institution plans to meet the credit needs of its assessment area, in particular, low- and moderate-income geographies and individuals, through lending, investments, and services, as appropriate. Although strategic plans should generally emphasize lending goals, the rule allows institutions the flexibility to choose a different emphasis, as necessary, given their business strategy and the needs of their community.

Strategic plans must contain goals that, if met, would constitute "satisfactory" performance. An institution may also include goals that would constitute "outstanding" performance. Upon examination, an institution that substantially achieves its goals under its approved plan will receive the rating attributed to those goals in its plan.

Only a few institutions have used the strategic plan option. These institutions indicate that they prefer the certainty provided by having a strategic plan. On the other hand, others have said that they have chosen not to pursue this option because of concern about the public nature of the process and the plan itself, including concern that their competitors might obtain information about their business strategy. Some indicate that they have found it difficult to develop a strategic plan with measurable goals. These concerns have led some to suggest that the strategic plan option should be reformed, while others suggest that it should be eliminated.

Some suggest that a strategic plan allows non-traditional institutions, such as institutions that provide a wide range of products nationwide via the Internet or through other non-branch-based delivery systems, to set performance goals that better reflect the markets they serve. Some suggest that a strategic plan should be mandatory for certain non-traditional institutions, particularly an institution for which the vast majority of retail lending activity occurs outside of its assessment area as defined by the regulation. Others suggest that the strategic plan option could be used to blend existing assessment methods for different business lines within one institution, for example, in the context of a bank with a retail branch network in one part of the country and wholesale operations in another, or an Internet presence nationally.

- Does the strategic plan option provide an effective alternative method of evaluation for financial institutions? If so, why? If not, how should the regulations be revised?

5. *Performance Context.*

The regulations provide that an institution's performance under the tests and standards is evaluated in the context of information about the institution, its community, its competitors, and its peers. Such information may include, among other things, demographic data about the institution's assessment areas; the institution's product offerings and business strategy; lending, investment, and service opportunities in its assessment areas; any institutional capacity and constraints; and information about the institution's past performance and the performance of similarly situated lenders.

Some assert that performance context provides a means to evaluate the qualitative impact of an institution's activities in a community, striking the right balance between the quantity and quality of an institution's activity. The appropriate information helps to assess the responsiveness of an institution's activities to community credit needs. Performance context may also provide insight into whether an activity involving a lower dollar amount could meet community needs to a greater extent than an activity with a higher dollar amount, but with less innovation, complexity, or impact on the community.

Others assert that consideration of a performance context may create uncertainty about what activities will be considered and how they will be weighted during a CRA examination. They contend that more specific and quantifiable measures are needed to understand CRA evaluations more fully, despite the quantitative and qualitative factors outlined in the regulations and interagency guidance.

On the other hand, others have raised concerns that prescribing performance ratios for institutions would result in rigid performance requirements, and thereby eliminate the advantages of a performance context analysis. They maintain that the performance context provides examiners with the latitude needed to conduct a meaningful evaluation. They contend this latitude is important given the different types of institutions and communities, and the wide variety of business, market, economic, and other factors that can affect an institution's ability to respond to community credit needs.

- Are the provisions on performance context effective in appropriately shaping the quantitative and qualitative evaluation of an institution's record of helping to meet the credit needs of its entire community? If so, why? If not, how should the regulations be revised?

6. ***Assessment Areas.***

The regulations contain guidelines for institutions to use in defining their assessment areas. The assessment area is the geographic area in which the agencies will evaluate an institution's record of meeting the credit needs of its community. The regulations provide that an institution's assessment area should consist generally of one or more metropolitan statistical areas or one or more contiguous political subdivisions, and include geographies where the institution has its main office, branches, and deposit-taking ATMs, as well as surrounding geographies where the institution has originated or purchased a substantial portion of its loans. An institution may adjust the boundaries of its assessment area to include only the portion of a political subdivision that it can reasonably expect to serve. However, an institution's assessment area may not reflect illegal discrimination and may not arbitrarily exclude low- or moderate-income geographies, taking into account the institution's size and financial condition.

Some indicate that the assessment area delineation in the regulations has proven appropriate for most institutions. They assert that assessment areas are appropriately limited to the geographic areas around an institution's main office, branches, and deposit-taking ATMs. They contend that this is an appropriate and practical way to give focus to an institution's responsibility to help meet the credit needs of its community. Further, they contend that an institution is most familiar with the areas in which it is physically located and is in the best position to help meet credit needs in those areas. Still others are concerned about setting expectations on where institutions should be conducting their business if assessment areas were to include areas in which the institutions are not physically located.

On the other hand, some assert that the regulations' designation of assessment areas – based upon the location of the main office, branches, and deposit-taking ATMs of an institution – ignores a variety of deposit acquisition and credit distribution channels used by an increasing number of institutions to serve the retail public, often reaching widely dispersed markets. They argue that these channels should be considered part of an institution's "community." Others suggest that the regulations' approach to assessment area may create a disincentive for institutions to engage in community development activities in low- and moderate-income communities and rural areas where they have no physical presence and which are not part of their assessment areas.

To address these and other concerns, some recommend that institutions be required to delineate geographically defined assessment areas wherever they deliver retail banking services, whether or not they have physical deposit-gathering branches or ATMs in each locale. Others suggest that the assessment area should not be limited to metropolitan statistical areas (MSAs), but that the regulations should allow statewide and even national assessment areas. Some others suggest that assessment areas without a geographical delimitation should be allowed, such as one based on a type of customer – similar to the way an institution that predominantly serves military personnel is permitted by the statute to delineate its entire deposit customer base as its assessment area. Finally, some propose that the agencies should create a distinct evaluation method with respect to the assessment area for institutions that gather deposits and deliver products and services without using deposit-taking branches or ATMs, for example, those institutions that use the Internet almost exclusively to gather deposits and deliver products.

- Do the provisions on assessment areas, which are tied to geographies surrounding physical deposit-gathering facilities, provide a reasonable and sufficient standard for designating the communities within which the institution's activities will be evaluated during an examination? If so, why? If not, how should the regulations be revised?

7. *Activities of Affiliates.*

Under the lending, investment, and service tests and the community development test, an institution may elect to have activities of its affiliates considered as part of its own record of performance. An "affiliate" is defined as any company that controls, is controlled by, or is under common control with another company. Subsidiaries of financial institutions are considered affiliates under this definition.

Some assert that activities of affiliates, and in particular, subsidiaries of a financial institution, should always be considered in an institution's CRA evaluation. They contend that, because the regulations provide for consideration of affiliates' activities only at an institution's option, some institutions may book loans, make investments, and provide services for low- and moderate-income persons primarily in the institution, while offering other products and services more predominantly targeted to middle- and upper-income persons in their affiliates or by lending through consortia. Thus, they argue, institutions may be using their affiliates' activities to manipulate their CRA ratings. Others contend that if institutions can opt for consideration of affiliates' activities to enhance their CRA performance, their CRA performance should also be affected if their affiliates engage in abusive lending activities.

Others suggest that affiliate activities should be required to have a direct impact on an institution's assessment area. Still others assert that only the activities of an insured depository institution should be considered in its CRA evaluation. Affiliate activities should be irrelevant, they argue, when rating an institution's CRA performance and should not be considered, even at the option of the institution. On the other hand, others have indicated that the current treatment of affiliate activities is appropriate because the CRA applies only to insured depository institutions.

- Are the provisions on affiliate activities, which permit consideration of an institution's affiliates' activities at the option of the institution, effective in evaluating the performance of the institution in helping to meet the credit needs of its entire community, and consistent with the CRA statute? If so, why? If not, how should the regulations be revised?

8. ***Data Collection and Maintenance of Public Files.***

The regulations require large institutions to collect and report data on small business, small farm and community development lending, as well as limited data about home mortgage lending outside MSAs, if the institutions are subject to HMDA. The data requirements were designed to avoid undue data collection, reporting, and disclosure burden by: (1) conforming data requirements to the extent possible with data already collected under HMDA, call reports, and thrift financial reports; (2) limiting data reporting to large institutions; and (3) making reporting of certain types of data optional.

Some question the agencies' authority to require collection and reporting of data under the CRA regulations. Others express concerns about the limitations of the data collected and reported. For example, small business and small farm data are aggregated at the census tract level, while community development loans are aggregated at the institution level. Still others question whether the collected and reported data are sufficiently detailed to be of use. Some also suggest that investment data, as well as data on lending, are necessary to properly evaluate institutions' performance under CRA.

Some indicate that collection of the required data and maintenance of a public file is burdensome and that very few interested parties ask to see the public files. However, others assert that institutions' public files provide valuable information for the public to use to monitor the extent to which they serve their communities.

- Are the data collection and reporting and public file requirements effective and efficient approaches for assessing an institution's CRA performance while minimizing burden? If so, why? If not, how should the regulations be revised?

Conclusion

With this ANPR, we seek input to assist us in determining whether and, if so, how the CRA regulations should be revised. We welcome comments on all aspects of the CRA regulations and encourage all interested parties to provide their views. Hearing from parties with diverse viewpoints will help us to determine the most appropriate way to approach the review of the regulations.

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OCC and OTS: The agencies do not know now whether they will propose changes to the CRA rules and, if so, whether these changes will constitute a significant regulatory action under the Executive Order. This ANPR neither establishes nor proposes any regulatory requirements. OCC and OTS have submitted a notice of planned regulatory action to OMB for review. Because this ANPR does not contain a specific proposal, information is not available with which to prepare an economic analysis. OCC and OTS will prepare a preliminary analysis if they proceed with a proposed rule that constitutes a significant regulatory action.

Accordingly, we solicit comment, information, and data on the potential effects on the economy of any changes to the CRA rule that the commenter may recommend. We will carefully consider the costs and benefits associated with this rulemaking.

Dated: July 11, 2001.

<u>(signed) John D. Hawke, Jr.</u>
John D. Hawke, Jr.,
Comptroller of the Currency.

Dated: July 12, 2001

(signed) Jennifer J. Johnson
Jennifer J. Johnson
Secretary of the Board,
Board of Governors of the Federal Reserve System

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 10th day of July, 2001.

(signed) Robert E. Feldman
Robert E. Feldman,
Executive Secretary

Dated: July 10, 2001.

(signed) Ellen Seidman
Ellen Seidman
Director,
Office of Thrift Supervision