

## § 228.26

### § 228.26 Small bank performance standards.

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

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

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

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

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

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

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

### § 228.27 Strategic plan.

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

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

(2) The Board has approved the plan;

(3) The plan is in effect; and

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

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

(c) *Plans in general—(1) Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable

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goals under which the Board will evaluate the bank's performance.

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

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

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

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

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

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

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

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

(ii) A bank shall address in its plan all three performance categories and, unless the bank has been designated as

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

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

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

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

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

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

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

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

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

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

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

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

[Reg. BB, 60 FR 22193, May 4, 1995, as amended at 60 FR 66050, Dec. 20, 1995]

### § 228.28 Assigned ratings.

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

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

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

(2) A bank that receives an "outstanding" rating on both the service