

of this part: “outstanding”; “satisfactory”; “needs to improve”; or “substantial noncompliance” as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the OCC reflects the bank’s record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

(d) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the OCC anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

§ 25.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank’s record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank’s home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank’s business, the OCC will evaluate the bank’s consumer lending in one or more of the following categories: motor vehicle, credit card, home equity, other secured, and other unsecured loans. In addition, at a bank’s option, the OCC will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in § 25.42(c)(1), the data for each category that the bank elects to have the OCC evaluate.

(2) The OCC considers originations and purchases of loans. The OCC will also consider any other loan data the bank may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A bank may ask the OCC to consider loans originated or purchased by consortia in which the bank participates or by third parties in which the

bank has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The OCC will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The OCC evaluates a bank’s lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the bank’s home mortgage, small business, small farm, and consumer loans, if applicable, in the bank’s assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the bank’s home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the bank’s lending in the bank’s assessment area(s);

(ii) The dispersion of lending in the bank’s assessment area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank’s assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the bank’s assessment area(s), of the bank’s home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The bank’s community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The bank’s use of innovative or flexible lending practices in a safe and

sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a bank's option, the OCC will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to § 25.42.

(2) The OCC considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a bank elects to have the OCC consider loans within a particular lending category made by one or more of the bank's affiliates in a particular assessment area, the bank shall elect to have the OCC consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the bank's affiliates.

(3) The OCC does not consider affiliate lending in assessing a bank's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the bank participates or by a third party in which the bank has invested:

(1) Will be considered, at the bank's option, if the bank reports the data pertaining to these loans under § 25.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The OCC rates a bank's lending performance as provided in appendix A of this part.

§ 25.23 Investment test.

(a) *Scope of test.* The investment test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(b) *Exclusion.* Activities considered under the lending or service tests may not be considered under the investment test.

(c) *Affiliate investment.* At a bank's option, the OCC will consider, in its assessment of a bank's investment performance, a qualified investment made by an affiliate of the bank, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the bank that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The OCC evaluates the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The OCC rates a bank's investment performance as provided in appendix A of this part.

§ 25.24 Service test.

(a) *Scope of test.* The service test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.