

## § 563e.21

than 80 percent in the case of a geography.

(3) *Middle-income*, which means an individual income that is at least 80 percent and less than 120 percent of the area median income or a median family income that is at least 80 and less than 120 percent in the case of a geography.

(4) *Upper-income*, which means an individual income that is 120 percent or more of the area median income or a median family income that is 120 percent or more in the case of a geography.

(n) *Limited purpose savings association* means a savings association that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose savings association is in effect, in accordance with § 563e.25(b).

(o) *Loan location*. A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

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

(p) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

(t) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(u) *Small savings association*—(1) *Definition*. *Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than

## 12 CFR Ch. V (1–1–12 Edition)

\$1.122 billion. *Intermediate small savings association* means a small savings association with assets of at least \$280 million as of December 31 of both of the prior two calendar years and less than \$1.122 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment*. The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the OTS, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

(v) *Small business loan* means a loan included in “loans to small businesses” as defined in the instructions for preparation of the Thrift Financial Report.

(w) *Small farm loan* means a loan included in “loans to small farms” as defined in the instructions for preparation of the Thrift Financial Report.

(x) *Wholesale savings association* means a savings association that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale savings association is in effect, in accordance with § 563e.25(b).

[60 FR 22212, May 4, 1995, as amended at 60 FR 66050, Dec. 20, 1995; 61 FR 21364, May 10, 1996; 69 FR 41188, July 8, 2004; 69 FR 51161, Aug. 18, 2004; 71 FR 18618, Apr. 12, 2006; 72 FR 13435, Mar. 22, 2007; 72 FR 72573, Dec. 21, 2007; 73 FR 78155, Dec. 22, 2008; 74 FR 68664, Dec. 29, 2009; 75 FR 82219, Dec. 30, 2010; 75 FR 79286, Dec. 20, 2010]

### Subpart B—Standards for Assessing Performance

SOURCE: 60 FR 22213, May 4, 1995, unless otherwise noted.

#### § 563e.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests and standards*. The OTS assesses the CRA performance of a savings association in an examination as follows:

(1) *Lending, investment, and service tests*. The OTS applies the lending, investment, and service tests, as provided in §§ 563e.22 through 563e.24, in

evaluating the performance of a savings association, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose savings associations.* The OTS applies the community development test for a wholesale or limited purpose savings association, as provided in §563e.25, except as provided in paragraph (a)(4) of this section.

(3) *Small savings association performance standards.* The OTS applies the small savings association performance standards as provided in §563e.26 in evaluating the performance of a small savings association or a savings association that was a small savings association during the prior calendar year, unless the savings association elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The savings association may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other savings associations under §563e.42.

(4) *Strategic plan.* The OTS evaluates the performance of a savings association under a strategic plan if the savings association submits, and the OTS approves, a strategic plan as provided in §563e.27.

(b) *Performance context.* The OTS applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a savings association's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the savings association's assessment area(s) maintained by the savings association or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(3) The savings association's product offerings and business strategy as determined from data provided by the savings association;

(4) Institutional capacity and constraints, including the size and finan-

cial condition of the savings association, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the savings association's ability to provide lending, investments, or services in its assessment area(s);

(5) The savings association's past performance and the performance of similarly situated lenders;

(6) The savings association's public file, as described in §563e.43, and any written comments about the savings association's CRA performance submitted to the savings association or the OTS; and

(7) Any other information deemed relevant by the OTS.

(c) *Assigned ratings.* The OTS assigns to a savings association one of the following four ratings pursuant to §563e.28 and Appendix A 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 OTS reflects the savings association'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 savings association.

(d) *Safe and sound operations.* This part and the CRA do not require a savings association to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the OTS anticipates savings associations can meet the standards of this part with safe and sound loans, investments, and services on which the savings associations expect to make a profit. Savings associations 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.

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a savings association under this part, the OTS considers, as a factor, low-cost education loans originated by the savings association to borrowers, particularly in its assessment area(s), who

have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, “low-cost education loans” means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a state or local education loan program), originated by the savings association for a student at an “institution of higher education,” as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned savings association under this part, the OTS considers as a factor capital investment, loan participation, and other ventures undertaken by the savings association in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the savings association’s assessment area(s) or the broader statewide or regional area that includes the savings association’s assessment area(s).

[60 FR 22213, May 4, 1995, as amended at 70 FR 10030, Mar. 2, 2005; 72 FR 13435, Mar. 22, 2007; 75 FR 61045, Oct. 4, 2010]

#### § 563e.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a savings association’s record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a savings association’s home mortgage, small business, small farm, and community development lending. If con-

sumer lending constitutes a substantial majority of a savings association’s business, the OTS will evaluate the savings association’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 savings association’s option, the OTS will evaluate one or more categories of consumer lending, if the savings association has collected and maintained, as required in § 563e.42(c)(1), the data for each category that the savings association elects to have the OTS evaluate.

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

(3) A savings association may ask the OTS to consider loans originated or purchased by consortia in which the savings association participates or by third parties in which the savings association has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The OTS will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The OTS evaluates a savings association’s lending performance pursuant to the following criteria:

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

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

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

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

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-