

Retail Insurance Sales¹

Introduction

The following supervisory information and examination procedures apply to retail sales, solicitation, advertising, or offers of any insurance product or annuity² to a consumer³ by a bank or any person engaged in such activities at an office of the bank or on behalf of the bank. These materials do not apply to sales of insurance or annuities that occur as part of a bank's trust or fiduciary activities.

Insurance products are not FDIC-insured and may involve investment risk. Consequently, examiners must assess the quality of an institution's compliance management system (CMS) as it pertains to the retail sale of insurance and annuities. Examiners must consider whether the CMS appropriately manages the risks involved in these activities, including whether the CMS produces compliance with Part 343 of the FDIC's regulations (Consumer Protection in Sales of Insurance) and adherence to the Interagency Policy Statement on Retail Sales of Nondeposit Investment Products (the Interagency Policy Statement)⁴ when variable annuities are sold.

Regulatory and Policy Requirements

The primary risks addressed by Part 343 and the Interagency Policy Statement are that consumers will:

- misunderstand the safety of insurance products sold by banks, i.e., assume incorrectly that they are backed by the FDIC or another federal agency, or
- be coerced into believing they must purchase an insurance product or annuity in order to obtain a loan.

FDIC Part 343

Pursuant to the Gramm-Leach-Bliley Act (GLBA), the federal banking agencies have adopted regulations concerning consumer protection in the sale of insurance by banks and thrifts. The regulations, which include the FDIC's Part 343, address matters that are the responsibility of the banking

agencies to oversee and not the responsibility of state insurance departments.⁵

Part 343 applies to the bank as well as other parties that offer insurance or annuities on bank premises or on the bank's behalf. Under Part 343, a party offers these products on behalf of the bank when:

- it represents that it is doing so; or
- it pays the bank commissions for receiving customer referrals; or
- documents that evidence the sales transaction refer to the bank.

Interagency Policy Statement

The Interagency Policy Statement contains requirements that overlap with Part 343, particularly with respect to disclosures and the circumstances under which sales and recommendations may be made. To the extent that Part 343 addresses an area, it governs. However, because variable annuities have an investment component, banks that offer them must also adhere to the program requirements explained in the Interagency Policy Statement. In particular, a bank that offers annuities should establish policies and procedures for its sales program and offer variable annuities only when suitable for customers. A detailed explanation of the requirements of the Interagency Policy Statement is contained in the Investment Sales Procedures.

Examination Procedures

During the compliance examination of a bank that offers insurance products, examiners must consider these activities when assessing the quality of the bank's compliance management system (CMS). The specific guidance and procedures contained in this chapter should be used within the framework of the general compliance examination procedures and, specifically, during the pre-examination planning and review and analysis stages of the compliance examination.

Examiners must determine whether the CMS appropriately manages the risks involved in retail insurance sales activities, including adherence to FDIC Part 343, and the Interagency Policy Statement if variable annuities are sold. In doing so, examiners should consider all documentation related to retail insurance sales, including, but not limited to, agreements with third parties, sales activity volume and financial reports, standard disclosures and acknowledgment forms, records

¹ This section fully incorporates the examination procedures issued under DSC RD Memo 05-038: Revised Compliance Examination Procedures and Supervisory Guidance.

² The sale of variable annuities is supervised as both an insurance and an investment activity. Consequently, banks that offer these products should be examined under both these procedures and the Compliance Examination Procedures and Supervisory Guidance For Retail Investment Sales Activities (Investment Sales Procedures).

³ In this context, a consumer is an individual who purchases, applies to purchase or is solicited to purchase any type of insurance product to be used primarily for personal, family, or household purposes. See 12 CFR §343.20(d).

⁴ FDIC Statements of Policy, Law, Regulation and Related Acts.

⁵ The states continue to be responsible for insurance agent and company licensing, product oversight, rates and forms, and most market conduct regulation, regardless of whether a bank is involved. Moreover, where state law provides greater consumer protection in the sale of insurance than the protection provided by the federal rules, GLBA provides that state law governs. Decisions about which law or regulation provides greater protection are made on a case-by-case basis. The Legal Division should be consulted if such questions arise.

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which document the qualifications of sales personnel, and proprietary product management reports.

Based on the examiner's conclusions about the bank's CMS, a determination should be made about the extent of transaction testing or file review necessary to complete the compliance examination. The severity of the CMS weaknesses and operational risk should dictate the intensity of transaction testing. The expanded analysis should be carefully tailored to weaknesses identified in the CMS as it relates to specific retail insurance sales activities, focusing on those areas of the bank's program that present the greatest degree of risk to the bank or to consumers.

At the conclusion of the examination, examiners should document their conclusions about the bank's retail insurance sales activities in the Risk Profile and Scoping Memorandum, examination work papers, and Report of Examination, as appropriate. Banks that fail to comply with applicable laws and regulations, or fail to establish and observe appropriate policies and procedures consistent with Part 343 or with the Interagency Policy Statement when applicable, should be subject to criticism in the Report of Examination and appropriate corrective action.

Pre-examination Planning

During the initial contact with the institution and through the Compliance Information and Document Request (CIDR):

- identify any insurance or annuities sales activities the institution conducts directly or through other entities on its behalf; and
- obtain copies of relevant policies and procedures, third party agreements, disclosures and acknowledgment forms, advertising copy, records and reports.

In addition, state insurance officials should be contacted to obtain copies of any complaint records involving the bank. Information sharing agreements are in place with most states, and a list of contacts is posted on the DSC website:⁶ <http://fdic01/division/dsc/compliance/SalesInsurance.html>

Review and Analysis

Examiners should use the guidance below to evaluate the bank's CMS as it pertains to retail insurance sales activities to determine whether risks are adequately managed. After completing the review of the bank's CMS, examiners should document their conclusions about the retail insurance sales program area through written responses to the Decision Factors described on page IX-2.3. The written response should be retained in the examination workpapers. A Job

Aid is provided at the end of these procedures which may be helpful in conducting the review.

Board and Senior Management Oversight Evaluation

Consider whether the bank's board of directors has adopted written policies and procedures for the bank's insurance sales program. If not, are they needed? Are the policies and procedures reviewed and updated as necessary?

Does the board of directors and senior management receive and review sufficient information to provide appropriate direction and control of insurance sales?

For retail insurance sales conducted through a networking arrangement with a third-party vendor, also consider whether:

- The bank conducted an appropriate review of the third party's qualifications, experience, regulatory history, financial condition, and references prior to entering into the arrangement;
- The arrangement is controlled by a written agreement that is approved by the bank's board of directors and contains the following elements:
 - Description of each party's duties and responsibilities;
 - Description of the permissible activities by the third party on bank premises;
 - Controls for the use of bank space, personnel, and equipment;
 - Detailed compensation arrangements for all bank and third party personnel;
 - Requirement that sales representatives are appropriately trained, licensed, and qualified;
 - Requirement that the third party comply with all applicable laws and regulations;
 - Authorization for the bank to monitor the activities of the third party and its sales representatives and to periodically review compliance with the agreement;
 - Authorization for the bank and its banking regulatory agency to have access to such records of the third party as are necessary or appropriate to evaluate compliance;
 - Indemnification for the bank for potential liability caused by the third party's sales activities; and
 - Written employment contracts satisfactory to the bank for personnel employed by both the bank and the third party; and
- Bank senior management periodically monitors the third party's compliance with the agreement.

⁶ See DSC RD Memo 01-005: Insurance and Nondeposit Investment Products: Transfer of Supervisory Responsibilities from DOS to DCA.

Compliance Program Evaluation

Policies, Procedures and Internal Controls

Consider whether the retail insurance sales program’s policies and procedures include a description of the following elements:

- Types of products sold;
- Supervision of personnel involved in sales; and
- Compliance procedures to ensure sales activities are conducted in accordance with Part 343.

Review the policies and procedures, and through interviews and observation consider the practices of the bank in the following areas:

Sales Setting

Is the area in which insurance is sold physically distinct from the area in which retail deposits are taken?

- Employees do not make insurance recommendations, or take orders for insurance products, even if unsolicited, while located in the routine deposit-taking area. (This includes reviewing any prepared scripts on handling deposit customers, or customers whose certificates of deposit are maturing.)

Referrals

Employees who are not authorized and qualified to sell insurance only make referrals, and do not make insurance recommendations or take orders for insurance products. (This includes reviewing any prepared scripts on referring deposit customers, or customers whose certificates of deposit are maturing.)

- Management and staff (including tellers and receptionists) adhere to part 343 and the bank’s insurance sales policy when making customer referrals.

Compensation

Compensation to bank employees for customer referrals is a one-time nominal fee of a fixed dollar amount for each referral, and that the compensation is paid regardless of whether the referral results in a transaction.

Sales Practices

Insurance sales practices, including advertising, would not lead consumers to believe that:

- extensions of credit are tied to the sale of insurance or annuities;

- insurance or annuities are backed by the federal government; or
- products that carry investment risk do not do so.

The bank prohibits insurance sales practices that discriminate against victims of domestic violence or providers of services to such victims.

Disclosures, Advertisements, and Acknowledgements

Standard disclosures and advertising contain at least the following minimum content required by Part 343:

- NOT A DEPOSIT
- NOT FDIC-INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT GUARANTEED BY THE BANK
- MAY GO DOWN IN VALUE

Where insurance is offered in connection with a credit application, standard disclosures explain that credit cannot be conditioned on the purchase of insurance from the bank or the consumer’s agreement not to purchase insurance elsewhere.

Disclosures are provided consistently with the manner and timing requirements of Part 343.

Disclosures are understandable and meaningful, as required by Part 343.

The bank obtains the customer acknowledgement of receipt of disclosures as required by Part 343.

Personnel Qualifications

Insurance sales employees and management are qualified (appropriate licensing, training, and/or experience) to conduct their authorized duties.

The bank’s insurance sales training materials appropriately cover the requirements for referral and sales activities, including any appropriate and inappropriate customer referral activities.

Monitoring

Does the bank conduct monitoring of its retail insurance sales program and that of any third party? Does the monitoring include sales practices, the referral process, the manner and timing of disclosures, and customer acknowledgement of receiving disclosures?

Does the bank review customer complaints to identify compliance issues?

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Audit Function Evaluation

Consider whether the bank’s audit program includes its retail insurance sales program, including third party activities, and assess the audit program’s effectiveness.

Decision Factors

After completing the assessment of the compliance management system, examiners should document their conclusions as to whether risks in the retail insurance sales program area are adequately managed by the institution, as well as their responses to each of the following Decision Factors:

1. Do the board of directors and senior management provide effective oversight of the retail insurance sales program?
2. Are policies, procedures, information systems, training, and licensing adequate for such sales activities?
3. Does the institution adequately monitor customer referral and insurance sales activities?
4. Does the audit function include the insurance sales program, and is it adequate?

Based on the conclusions and responses to the above questions, examiners should determine the extent of transaction testing or file review necessary to complete the compliance examination. If such review is deemed appropriate, examiners should pull a sample of accounts and/or files and use the Expanded Analysis procedures below.

Expanded Analysis

The examination procedures in this section should be used when examiners identify material weaknesses in the bank’s compliance management system that require further review to complete their assessment and to determine the bank’s compliance with part 343. The entire set of expanded procedures should not be applied automatically. Examiners should use only those expanded procedures that address specific areas of significant risk, weakness, or supervisory concern.

Disclosures, Notices, Acknowledgements, and Advertisements

Sample customer account files to review disclosures and written acknowledgments, including those incorporated into credit applications.

Review all advertising and promotional materials, including the text of prepared scripts (telemarketing and platform).

Personnel Qualifications

Sample sales representative personnel files to determine whether they have the appropriate licenses and training, and to review their regulatory histories.

Sales Setting

Determine that the retail insurance sales setting is physically distinct from the retail deposit area (visit additional sales locations when practical).

In those instances where there is limited space in the bank, determine that signage and other techniques are used to clearly distinguish the retail insurance sales setting from the retail deposit area to avoid the potential for customer confusion.

Compensation

Review management reports, sales reports, and a sample of employee insurance sales compensation records to verify that customer referral fees are paid as a one-time nominal fee of a fixed dollar amount for each referral, and that the referral fee is paid regardless of whether the referral results in a transaction.

Monitoring

Sample customer account files and evaluate the effectiveness of the bank’s monitoring at identifying and eliminating documentation deficiencies.

Review customer complaints and consider whether the bank addressed them adequately and used them to detect potential compliance breakdowns.

Sales Practices

Review sales records to ensure that only licensed personnel sell insurance.

Documenting Examination Findings.

Findings should be documented in the workpapers and incorporated in the report of examination as appropriate. In addition, record the information about the review and analysis of bank insurance sales in SOURCE under the tabbed section labeled “NDP Sales.”

References

12 CFR 343: Consumer Protection in Sales of Insurance
<http://www.fdic.gov/regulations/laws/rules/2000-6300.html#2000part343>

FIL 84-2000: Consumer Protection for Bank Sales of Insurance
Federal Register publication of insurance sales rule with preamble that contains useful interpretive information.
<http://www.fdic.gov/news/news/financial/2000/fil0084.html>

Interagency Statement on Retail Sales of Nondeposit Investment Products
<http://www.fdic.gov/regulations/laws/rules/5000-4500.html#5000interagencysor>

Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products

<http://www.fdic.gov/regulations/laws/rules/5000-4600.html#5000jointiot>

Also released as FIL 61-95: Nondeposit Investment Activities

<http://www.fdic.gov/news/news/financial/1995/fil9561.html>

FIL 84-2001: Questions and Answers on Consumer Protections for Bank Sales of Insurance:

<http://www.fdic.gov/news/news/financial/2001/fil0184.html>

FDIC Legal Advisory Opinion 92-74: Whether Bank May Act as Agent for Sale of Fixed Rate Annuities and Permit Sale of Mutual Funds on Its Premises Through “Dual Employees” and Registered Broker-Dealer

Contains useful discussion of compensation.

<http://www.fdic.gov/regulations/laws/rules/4000-7650.html>

SOURCE contains a useful list of definitions, under the *View Defined Terms* button on the first page of the NDP sales folder.

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Job Aids

Job Aid for Review of Retail Sales of Insurance and Annuities				
Policies and Procedures	Yes	No	N/A	Comments
<p>1. Do the bank's policies and procedures prohibit sales practices which materially mislead consumers into believing that:</p> <ul style="list-style-type: none"> • extensions of credit are tied to the sale of insurance or annuities; • insurance or annuities are backed by the federal government; or • products that carry investment risk do not do so? <p>See §343.30(a) and (b)</p>				
<p>2. Do the bank's policies and procedures detail sales employee qualification, training, licensing and compensation practices?</p> <p>See §343.60.</p>				
<p>3. Do the bank's policies and procedures establish referral procedures for employees who are not authorized to sell insurance which include limits on referral compensation to a one-time, fixed dollar, nominal fee that is not tied to whether the referral results in a transaction?</p> <p>See §343.50(b)</p>				
<p>4. To the extent practical, do the bank's policies and procedures require that the area in which insurance is sold is physically distinct from the area in which retail deposits are taken?</p> <p>See §343.50(a)</p>				
<p>5. Do the bank's policies and procedures prohibit discrimination against victims of domestic violence or providers of services to such victims?</p> <p>See §343.30 (c)</p>				

Job Aid for Review of Retail Sales of Insurance and Annuities (cont.)				
Disclosures	Yes	No	N/A	Comments
<p>6. Are disclosures readily understandable and meaningful?</p> <p><i>See §343.40(c)(5)& (6);</i></p>				
<p>7. Are written customer acknowledgment forms available for all insurance product disclosures, including those which must be provided when credit applications are taken?</p> <p><i>See §343.40(c)(7);</i></p>				
<p>8. Do disclosures contain at least the minimum required content? “Minimum required content” means that:</p> <ul style="list-style-type: none"> • Except to the extent that it is not accurate, disclosures inform customers that insurance and annuities are: • <i>not</i> deposits or obligations of the bank or its affiliates; <i>See §343.40(a)(1)</i> • <i>not</i> guaranteed by the bank or its affiliates; <i>See §343.40(a)(1)</i> • <i>not</i> insured by the FDIC; <i>See §343.40(a)(2)</i> • <i>not</i> insured by or any other agency of the United States or any affiliate of the bank; <i>See §343.40(a)(2)</i> and • are subject to investment risk, including potential loss of principal. <i>See §343.40(a)(3)</i> 				

IX. Retail Sales – Insurance

Job Aid for Review of Retail Sales of Insurance and Annuities (cont.)				
Disclosures (cont.)	Yes	No	N/A	Comments
<p>9. Where insurance is solicited, offered, or sold in connection with a credit application, do disclosures state that the bank may not condition the extension of credit on either:</p> <ul style="list-style-type: none"> • the consumer’s purchase of an insurance product or annuity from the bank or any of its affiliates <p>See §343.40(b)(1); or</p> <ul style="list-style-type: none"> • the consumer’s agreement not to obtain, or a prohibition on obtaining, an insurance product or annuity from an unaffiliated entity? <p>See §343.40(b)(2)</p>				
Advertising and Promotional Materials	Yes	No	N/A	Comments
<p>10. Are they readily understandable and meaningful?</p> <p>See §343.40(c)(5)and (6);</p>				
<p>11. Do they contain at least the minimum required disclosures, unless they are not accurate for a particular product? The minimum disclosures explains that the product is</p> <ul style="list-style-type: none"> • NOT A DEPOSIT • NOT FDIC-INSURED • NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY • NOT GUARANTEED BY THE BANK • MAY GO DOWN IN VALUE <p>See §343.40(c)(5)</p>				
Training	Yes	No	N/A	Comments
<p>12. Does the bank’s training program cover insurance sales? Does it offer appropriate training to all employees and management?</p> <p>See §343.60</p>				

Job Aid for Review of Retail Sales of Insurance and Annuities (cont.)				
Monitoring	Yes	No	N/A	Comments
<p><i>Sales Practices</i></p> <p>13. Does the bank ensure that sales representatives do not engage in misleading or coercive sales practices?</p> <p>See §343.30.</p> <p>14. Does the bank ensure that tellers or other employees who are not authorized or qualified to sell insurance do not make sales recommendations or take orders for such products?</p> <p>See §343.60</p>				
<p><i>Manner and Timing of Disclosures</i></p> <p>15. Does the bank ensure that disclosures are made in an appropriate and timely way? Does the bank's monitoring system ensure that:</p> <ul style="list-style-type: none"> • disclosures are provided orally and in writing before an initial sale is completed, <p>See §343.40(c)(1),</p> <ul style="list-style-type: none"> • disclosures are provided in advertisements, unless general in nature, <p>See §343.40(d)</p> <ul style="list-style-type: none"> • where insurance is solicited, offered, or sold in connection with a credit application, disclosures are provided orally and in writing when the credit application is taken. <p>See §343.40(c)(1)</p>				

IX. Retail Sales – Insurance

Job Aid for Review of Retail Sales of Insurance and Annuities (cont.)				
Monitoring (cont.)	Yes	No	N/A	Comments
<p>16. Does the bank's monitoring system consider that:</p> <ul style="list-style-type: none"> For insurance transactions completed by mail or through electronic media, oral disclosures are not required. <p>See §343.40(c)(2) and (4)(iii);</p> <ul style="list-style-type: none"> For insurance transactions completed by telephone, written disclosures may be provided by mail within three business days after the sale is completed or the credit application is taken. <p>See §343.40(c)(3)</p> <ul style="list-style-type: none"> For insurance transactions completed electronically, written disclosures may be provided electronically, if the consumer affirmatively consents and the disclosures are provided in a format that the consumer may retain or obtain later. <p>See §343.40(c)(4).</p>				
<p><i>Customer Acknowledgment of Receipt of Disclosures</i></p> <p>17. Does the bank's monitoring system ensure that a written customer acknowledgement of receipt of all insurance disclosures, including those which must be provided when credit applications are taken, is obtained:</p> <ul style="list-style-type: none"> either when such disclosures are given or before an initial sale is completed. <p>See §343.40(c)(7)</p> <ul style="list-style-type: none"> Except that oral acknowledgements are sufficient for telephone transactions, as long as the bank maintains documentation which shows that acknowledgements have been received and makes reasonable attempts to obtain written acknowledgements from consumers. <p>See §343.40(c)(7)(I) and (ii).</p>				

Job Aid for Review of Retail Sales of Insurance and Annuities (cont.)				
Employee Qualifications	Yes	No	N/A	Comments
<p>18. <i>Do hiring practices</i> for insurance sales personnel include consideration of applicants' qualifications and experience? Does the bank ensure that:</p> <ul style="list-style-type: none"> Insurance sales personnel are appropriately licensed under applicable state insurance licensing standards. <p>See §343.60.</p> <ul style="list-style-type: none"> Agents possess current licenses for particular products offered. <p>See §343.60.</p>				
<ul style="list-style-type: none"> For agencies with multi-state operations, agents possess current licenses for all states in which the agency operates. <p>See §343.60.</p>				
<ul style="list-style-type: none"> Bank employees who sell variable insurance products must be properly licensed and trained to sell both insurance and securities because these products are treated as securities for the purpose of securities brokerage activities under the Securities Exchange Act of 1934. <p>See §343.60.</p>				
<p>19. Does the bank maintain a <i>system to periodically confirm</i> that employees remain in good professional standing and are not subject to disciplinary or enforcement action by any state insurance commissioner, or any state or federal regulatory agency?</p>				
Audit Program	Yes	No	N/A	Comments
<p>20. Does the bank have an audit program that includes insurance sales?</p> <p>Is it sufficient given the volume and complexity of the bank's products, as well as the bank's monitoring program?</p>				

IX. Retail Sales – Insurance

Job Aid for Review of Retail Sales of Insurance and Annuities (cont.)				
Complaint Resolution and Monitoring	Yes	No	N/A	Comments
21. Does the bank have a complaint resolution and monitoring program? Is it sufficient? Is it being used as an early warning system to detect potential breakdowns in compliance?				
Management Oversight	Yes	No	N/A	Comments
22. Does the bank responsibly manage the insurance and annuity sales compliance process?				

X. Other Compliance Issues



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Advertisement of Membership—Part 328 of FDIC Rules and Regulations

Introduction

These examination procedures were developed to assist examiners in the review of advertisements and signs for compliance with Part 328 of the FDIC Rules and Regulations.

The regulation contained in this part describes the official signs of the FDIC and prescribes their use by insured depository institutions. It also prescribes the official advertising statement insured banks must include in their advertisements. Insured banks which maintain offices that are not insured in foreign countries are not required to include the advertising statement in advertisements published in foreign countries. For purposes of this Part 328, the term “insured bank” includes a foreign bank having an insured branch.

Examination Objective

The objective of the examination is to:

- Determine whether public advertisements and signs comply with applicable regulatory requirements.

Examination Procedures

1. Determine that the required official (FDIC) sign is displayed at each station or window where deposits are received. (§328)

NOTE: Display of the official sign at automated teller machines (ATMs) is not required.

NOTE: If required posters, signs, etc., are missing or obsolete, inform management of the availability of these items from the FDIC Warehouse upon request and may be obtained by faxing a written request on bank letterhead to:

FAX: (703) 516-5201

Or via FDICconnect at:

<https://www2.fdicconnect.gov>

Requests should indicate the number of each requested item needed and the name and address of the financial institution.

2. If the financial institution has on-premises investment services or offers municipal securities or retail repurchase agreements (uninsured investment services and products), determine that promotional materials, including lobby signs and brochures, do not mislead consumers as to the product’s insured status.
3. Determine if the official advertisement statement “Member FDIC” is properly included in print and broadcast (television, radio) advertisements. (§328.3)

NOTE: Section 328.3(c) lists the types of advertisements that do not require the “Member FDIC” disclosure.

4. If the official advertisement statement “Member FDIC” is in a language other than English, determine whether prior written approval of the translation was obtained from the FDIC. (§328.3(e))

References

FDIC Rules and Regulation Part 328; Advertisement of Membership

<http://www.fdic.gov/regulations/laws/rules/2000-5200.html>

Interagency Statement on Retail Sales of Nondeposit Investment Products

<http://www.fdic.gov/regulations/laws/rules/5000-4500.html>

FDIC Legal Advisory Opinions

Advisory Opinion 89-24: Advertisement of FDIC Insurance by Savings Associations

<http://www.fdic.gov/regulations/laws/rules/4000-5980.html#400089-24>

Advisory Opinion 93-2: Advertisements Soliciting Deposits and Non-Deposit Obligations Should Clearly State Which Investments Are Insured

<http://www.fdic.gov/regulations/laws/rules/4000-7910.html#400093-2>

Advisory Opinion 00-10: Whether the Rules Regarding the Use of the FDIC Logo Apply to Insured Institution Web Sites

<http://www.fdic.gov/regulations/laws/rules/4000-10120.html#400000-10>

Advisory Opinion 87-2: Advertising the Solicitation of Deposits

<http://www.fdic.gov/regulations/laws/rules/4000-3340.html#400087-2>

Advisory Opinion 92-20: Display of Official Deposit Insurance Signs

<http://www.fdic.gov/regulations/laws/rules/4000-7110.html#400092-20>

Advisory Opinion 95-12: “Federal Deposit Insurance Corporation” Should not be Translated into Non-English Equivalent on Advertising

<http://www.fdic.gov/regulations/laws/rules/4000-9420.html#400095-12>

Advisory Opinion 91-60: Guidelines for Advertising of Insured Status by Savings Associations

<http://www.fdic.gov/regulations/laws/rules/4000-6590.html#400091-60>

X. Other – Advertisement of Membership

Advisory Opinion 94-17: Night Depositories and Official Bank Signs

<http://www.fdic.gov/regulations/laws/rules/4000-8890.html#400094-17>

Advisory Opinion 93-42: Official Bank Sign Need not be Displayed on Night Depositories

<http://www.fdic.gov/regulations/laws/rules/4000-8310.html#400093-42>

Advisory Opinion 92-15: Official FDIC Sign Need not be Black or Gold, but Text and Symbol

<http://www.fdic.gov/regulations/laws/rules/4000-7060.html#400092-15>

Advisory Opinion 89-33: Savings Association Display of Official Eagle Logo

<http://www.fdic.gov/regulations/laws/rules/4000-4070.html#400089-33>

Advisory Opinion 90-77: Savings, Loan and Mortgage Charts Listing Both Insured and Uninsured Institutions Need not Include Official FDIC Advertising Statement

<http://www.fdic.gov/regulations/laws/rules/4000-5960.html#400090-77>

Advisory Opinion 92-70: Sign Intended as Supplement to Official Savings Association Sign may not be Displayed Because too Similar

<http://www.fdic.gov/regulations/laws/rules/4000-7610.html#400092-70>

Advisory Opinion 91-29: Size and Design of Official Bank or Savings Association Logo Placed at Teller Windows May not Vary from Requirements of 12 CFR Section 328.1

<http://www.fdic.gov/regulations/laws/rules/4000-6280.html#400091-29>

Advisory Opinion 96-7: Whether an Insured Depository Institution Can Operate Branch Under a Name that is Different Than That of the Insured Institution

<http://www.fdic.gov/regulations/laws/rules/4000-9750.html#400096-7>

Advisory Opinion 92-22: Whether FDIC Logo may be Displayed on Lapel Pin Worn by Bank Employees

<http://www.fdic.gov/regulations/laws/rules/4000-7130.html#400092-22>

Section 42 of the Federal Deposit Insurance (FDI) Act—Branch Closings

Introduction

Section 42 of the Federal Deposit Insurance (FDI) Act (12 USC §1831r) sets forth guidelines for financial institutions to notify the FDIC and its customers regarding proposals to close a branch. Financial institutions are also required to adopt policies for closings of branches, with special content requirements for closing notices relating to branches in low- or moderate-income areas.

Statutory Overview

For purposes of Section 42, a branch is considered to be a traditional brick-and-mortar branch, or any similar banking facility other than a main office, at which deposits are received or checks paid or money lent. Section 42 does not apply to the following:

- An ATM, a remote service facility, a loan production office, or a temporary branch;
- The relocation of a branch or consolidation of one or more branches into another branch, if the relocation or consolidation:
 - Occurs within the immediate neighborhood; and
 - Does not substantially affect the nature of the business or customers served; or
- A branch that is closed in connection with an emergency acquisition.

Examination Objectives

The objectives are to determine whether the institution is in compliance with the statutory requirements for branch closings, including those relating to the following:

- Providing prior notification of any branch closing to its appropriate Federal banking agency and customers of the branch.
- Establishing internal policies for branch closings.

Examination Procedures

1. Determine whether the institution has adopted a branch closing policy that ensures compliance with the Interagency Policy Statement Concerning Branch Closing Notices and Policies, regarding branch closing notices and Section 42 of the FDI Act. (Section 42(c))
2. Determine whether the institution's procedures for closing a branch have been followed since the latter of December

19, 1991, or the last examination in which compliance was assessed with the Policy Statement concerning branch closing notices and Section 42 of the FDI Act.

3. Determine whether the institution provided adequate notice of all branch closings to the FDIC at least 90 days prior to the proposed closing of any branch closed on or after December 19, 1991. (Section 42(a))
4. Determine that the institution provided adequate notice of the proposed closing to its customers at least 90 days prior to the proposed closing of the branch. (Section 42(b))

The institution must:

- Post a notice in a conspicuous manner on the premises of the proposed branch for a period of not less than 30 days ending on the date proposed for that closing, and
- Include a notice in:
 - At least one regular account statement mailed to customers of the branch proposed to be closed, or
 - A separate mailing.
- The notice must include:
 - A detailed statement of the reasons, and
 - Statistical or other information in support of such reasons.

NOTE: In the case of an interstate bank which proposes to close any branch in a low- or moderate-income area, the notice required shall also contain the mailing address of the FDIC and a statement that comments on the proposed closing may be mailed to the FDIC. (Section 42(c))

5. Determine if the institution has posted a notice to branch customers in a conspicuous manner on the branch premises at least 30 days prior to the proposed closing of any branch closed on or after December 19, 1991.

References

Section 42 of the FDI Act: Notice of Branch Closure

<http://www.fdic.gov/regulations/laws/rules/1000-4400.html#1000sec.42>

Interagency Policy Statement Concerning Branch Closing Notices and Policies

<http://www.fdic.gov/regulations/laws/rules/5000-3830.html#5000policyso2>

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The Electronic Signatures in Global and National Commerce Act (E-Sign Act)

Introduction

The Electronic Signatures in Global and National Commerce Act (E-Sign Act)¹, signed into law on June 30, 2000, provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce. The E-Sign Act allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if the consumer has affirmatively consented to such use and has not withdrawn such consent.

Subject to certain exceptions, the substantive provisions of the law were effective on October 1, 2000. Record retention requirements became effective on March 1, 2001. The E-Sign Act grandfathers existing agreements between a consumer and an institution to deliver information electronically. However, agreements made on or after October 1, 2000, are subject to the requirements of the E-Sign Act.

Summary of Major Provisions

Consumer Disclosures

Prior Consent, Notice of Availability of Paper Records

Prior to obtaining their consent, financial institutions must provide the consumer, a clear and conspicuous statement informing the consumer:

- of any right or option to have the record provided or made available on paper or in a non electronic form, and the right to withdraw consent, including any conditions, consequences, and fees in the event of such withdrawal;
- whether the consent applies only to the particular transaction that triggered the disclosure or to identified categories of records that may be provided during the course of the parties' relationship;
- describing the procedures the consumer must use to withdraw consent and to update information needed to contact the consumer electronically; and
- informing the consumer how the consumer may nonetheless request a paper copy of a record and whether any fee will be charged for that copy.

See Section 101(c)(1)(B).

Hardware and Software Requirements; Notice of Changes

Prior to consenting to the use of an electronic record, a consumer must be provided with a statement of the hardware and software requirements for access to and retention of electronic records. See Section 101(c)(1)(i).

If the consumer consents electronically, or confirms his or her consent electronically, it must be in a manner that reasonably demonstrates the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent. See Section 101(c)(1)(C)(ii).

If a change in the hardware or software requirements need to access or retain electronic records creates a material risk that the consumer will not be able to access or retain subsequent electronic records subject to the consent, a financial institution must:

- provide the consumer with a statement of (a) the revised hardware and software requirements for access to and retention of electronic records, and (b) the right to withdraw consent without the imposition of any condition, consequence, or fee for such withdrawal; and
- again comply with the requirements of subparagraph (c) of this section.

See Section 101(c)(1)(D).

Oral communications or a recording of an oral communication shall not qualify as an electronic record. See Section 101(c)(6).

Record Retention

The E-Sign Act requires a financial institution to maintain electronic records accurately reflecting the information contained in applicable contracts, notices or disclosures and that they remain accessible to all persons who are legally entitled to access for the period required by law in a form that is capable of being accurately reproduced for later reference. See Section 101(d).

Agreements reached with consumers prior to October 1, 2000, to deliver information electronically are exempt from the requirements of Section 101(d). However, for any agreements made with new or existing customers on or after October 1, 2000, the requirements of Section 101(c)(1) will supersede all other consumer consent procedures relating to the use of electronic disclosures set forth in other regulations.

Regulatory and Other Actions

The consumer consent provisions in the E-Sign Act became effective October 1, 2000, and did not require implementing regulations. Nonetheless, on March 30, 2001, the Federal Reserve Board (FRB) adopted interim final rules (Interim Final Rules) establishing uniform standards for the electronic delivery of federally mandated disclosures for five consumer protection regulations: Regulation B, Equal Credit Opportunity; Regulation E, Electronic Fund Transfers; Regulation M, Consumer Leasing; Regulation Z, Truth in Lending, and Regulation DD, Truth in Savings.

¹ Public Law 106-229, June 30, 2000.

X. Other – E-Sign Act

The Interim Final Rules provided guidance on the timing and delivery of electronic disclosures. Pursuant to the Interim Final Rules, disclosures can be provided by e-mail or can be made available at another location such as the institution's web site. If a disclosure, such as an account statement or a notice of change of terms, is provided at a web site, an institution must notify the consumer of the disclosure's availability by e-mail. In addition, the disclosures must remain available on the web site for 90 days.

On August 3, 2001, the FRB lifted the mandatory compliance date of October 1, 2001, and directed institutions to follow their existing procedures² or, alternatively, to comply with the Interim Final Rules until permanent rules are issued. Once permanent final rules are issued, the Board expects to afford institutions a reasonable period of time to comply with those rules.

Definitions

“Consumer” – The term “consumer” means an individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

“Electronic” – The term “electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Electronic Agent” – The term “electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action to respond to electronic records or performances in whole or in part without review or action by an individual at the time or the action or response.

“Electronic Record” – The term “electronic record” means a contract or other record created, generated, sent, communicated, received, or stored by electronic means.

“Electronic Signature” – The term “electronic signature” means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

“Federal Regulatory Agency” – The term “Federal regulatory agency” means an agency as that term is defined in section 552(f) of Title 5, United States code.

“Information” – The term “information” means data, text, images, sounds, codes, computer programs, software, databases, or the like.

“Person” – The term “person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

“Record” – The term “record” means information, that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Requirement” – The term “requirement” includes a prohibition.

“Self-Regulatory Organization” – The term “self-regulatory organization” means an organization or entity that is not a Federal regulatory agency or a State, but that is under the supervision of a Federal regulatory agency and is authorized under Federal law to adopt and administer rules applicable to its members that are enforced by such organization or entity, by a Federal regulatory agency, or by another self-regulatory organization.

“State” – The term “State” includes the District of Columbia and the territories and possessions of the United States.

“Transaction” – the term “transaction” means an action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons, including any of the following types of conduct:

1. the sale, lease, exchange, licensing, or other disposition of (i) personal property, including goods and intangibles, (ii) services, and (iii) any combination thereof; and
2. the sale, lease, exchange, or other disposition of any interest in real property, or any combination thereof.

Examination Procedures

1. Determine if and to what extent the financial institution electronically delivers compliance-related notices or disclosures subject to the consumer consent provisions of the Act.
2. Determine if the financial institution has established procedures to ensure compliance with the provisions of this Act.
3. Determine that the consumer, prior to consenting, is provided with a clear and conspicuous statement informing the consumer of any right or option to have the record provided or made available on paper or in nonelectronic form, and the right to withdraw the consent, including any conditions, consequences, or fees in the event of such withdrawal. Verify that the statement contains the following:
 - a. informs the consumer whether the consent applies only to the particular transaction that triggered the disclosure

² Existing procedures of the institutions are expected to be compliant with Federal Reserve Regulations E and DD.

or to identified categories of records that may be provided during the course of the parties' relationship;

- b. describes the procedures the consumer must use to withdraw consent and to update information needed to contact the consumer electronically; and
 - c. informs the consumer how the consumer may nonetheless request a paper copy of a record and whether any fee will be charged for that copy.
4. Determine that the consumer, prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of electronic records.
 5. Determine that the consumer provides affirmative consent electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.
- NOTE: Oral communications shall not qualify as an electronic record.*
6. If a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain subsequent electronic records subject to the consent, verify that the financial institution provides the consumer with the following:
 - a. statement of the revised hardware and software requirements for access to and retention of electronic records;
 - b. the right to withdraw consent without the imposition of any condition, consequence, or fee for such withdrawal; and
 - c. the consumer provides a new affirmative consent as previously outlined.
 7. Determine that the financial institution maintains a single "authoritative" copy of any transferable record relating to a loan secured by real property. Such record must be "unique", "identifiable", and "unalterable".
 8. Determine that the financial institution maintains electronic records accurately reflecting the information contained in

applicable contracts, notices, or disclosures and that they remain accessible to all persons who are legally entitled to access for the period required by law in a form that is capable of being accurately reproduced for later reference.

References

FIL 79-98: Interagency Guidance on Electronic Financial Services and Consumer Compliance

<http://www.fdic.gov/news/news/financial/1998/fil9879.html>
Guidance Attachment

<http://www.fdic.gov/news/news/financial/1998/fil9879a.pdf>

FIL 66-2001: Lifting of Mandatory Compliance Date for Interim Rules Amending Regulations B, E, M, Z, and DD

<http://www.fdic.gov/news/news/financial/2001/fil0166.html>

FIL 40-2001: Interim Final Rules Amending Regulations B, E, M, Z, and DD Regarding Electronic Delivery of Required Disclosures

<http://www.fdic.gov/news/news/financial/2001/fil0140.html>

FIL 72-2000: Notice of Consumer Consent Requirements Applicable to the Electronic Delivery of Consumer Disclosures

<http://www.fdic.gov/news/news/financial/2000/fil0072.html>

DCA RD Memo 96-044: Electronic Banking Activities

<http://fdic01/division/dsc/memos/memos/direct/6480-1.pdf>

FIL 14-97: Examination Guidance on the Safety and Soundness Aspects of Electronic Banking Activities,

<http://www.fdic.gov/news/news/financial/1997/fil9714.html>

FIL 70-2001: FDIC Seeks Comment on Study of Banking Regulations Regarding the Online Delivery of Banking Services

<http://www.fdic.gov/news/news/financial/2001/fil0170.html>

FIL 30-2003: Federal Bank and Credit Union Regulatory Agencies Jointly Issue Guidance on the Risk Associated with Weblinking

<http://www.fdic.gov/news/news/financial/2003/fil0330.html>
Attachment

<http://www.fdic.gov/news/news/financial/2003/fil0330a.html>

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Prohibition Against Use of Interstate Branches Primarily for Deposit Production¹

Introduction

The Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (“the agencies”), jointly issued a final rule, effective October 10, 1997, that adopted uniform regulations² implementing section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (IBBEA).

IBBEA allows banks to branch across state lines. Section 109, however, prohibits any bank from establishing or acquiring a branch or branches outside of its home State, pursuant to IBBEA, primarily for the purpose of deposit production. Congress enacted section 109 to ensure that interstate branches would not take deposits from a community without the bank reasonably helping to meet the credit needs of that community.

Subsequently, section 106 of the Gramm-Leach-Bliley Act of 1999 (GLBA) amended section 109 by changing the definition of an “interstate branch” to include any branch of a bank controlled by an out-of State bank holding company. Interagency regulations implementing this amendment became effective October 1, 2002.

The language of section 109 and its legislative history make clear that the agencies are to administer section 109 without imposing additional regulatory burden on banks. Consequently, the agencies’ regulations do not impose additional data reporting requirements nor do they require a bank to produce, or assist in producing, relevant data.

Coverage

Section 109 applies to any bank that has covered interstate branches. Examples of covered interstate branches can be found at the end of the Examination Procedures in this section.

Definitions

“Covered Interstate Branch”

1. Any branch of a national bank, a State member bank, or a State nonmember bank, and any Federal branch of a foreign bank, or any uninsured or insured branch of a foreign bank licensed by a State, that:
 - (i) is established or acquired outside the bank’s home State pursuant to the interstatebranching authority granted by IBBEA or by any amendment made by IBBEA to any other provision of law; or

- (ii) could not have been established or acquired outside of the bank’s home State but for the establishment or acquisition of a branch described in (i) and

2. any bank or branch of a bank controlled by an out-of-State bank holding company.

“Home State”

1. For State banks, home State means the State that chartered the bank.
2. With respect to a national bank, home State means the State in which the main office of the bank is located.
3. With respect to a bank holding company, home State means the State in which the total deposits of all banking subsidiaries of such company are the largest on the later of:
 - (i) July 1, 1966; or
 - (ii) the date on which the company becomes a holding company under the Bank Holding Company Act.
4. With respect to a foreign bank, home State means:
 - (i) for purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home State of the foreign bank as determined in accordance with 12 USC 3103(c) and Section 211.22 of the Federal Reserve Board’s Regulations (12 CFR §211.22), Section 28.11(o)) of the OCC’s regulations (12 CFR §28.11(o), and Section 347.202(j) of the FDIC’s regulations (12 CFR §347.202(j)); and
 - (ii) for purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the State in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:
 - (a) July 1, 1966; or
 - (b) the date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

“Host State” – means a State in which a covered interstate branch is established or acquired.

“Host State Loan-to-Deposit Ratio” – is the ratio of total loans in the host State to total deposits from the host State for all banks that have that State as their home State.

“Out-of-State Bank Holding Company” – means, with respect to any State, a bank holding company whose home State is another State.

“Statewide Loan-to-Deposit Ratio” – relates to an individual bank and is the ratio of the bank’s loans to its deposits in a particular State where it has one or more covered interstate branches.

The Two Step Test

Beginning no earlier than one year after a covered interstate branch is acquired or established, the agency will determine

¹ This section fully incorporates the examination procedures issued under DSC RD Memo 03-006: Interstate Banking Examination Procedures for Section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.

² See 12 CFR 25, 12 CFR 208, and 12 CFR 369.

X. Other – Deposit Production Offices

whether a bank is complying with the provisions of section 109. Section 109 provides a two-step test for determining compliance with the prohibition against interstate deposit production offices:

1. Loan-to-deposit ratio. The first step involves a loan-to-deposit (LTD) ratio screen, which is designed to measure the lending and deposit activities of covered interstate branches. The LTD ratio screen compares the bank's statewide LTD ratio to the host State LTD ratio. If the bank's statewide LTD ratio is at least one-half of the relevant host State LTD ratio, the bank passes the section 109 evaluation and no further review is required. Host State ratios are prepared, and made public, by the agencies annually. For the most recent ratios, *see* OCC bulletins, FDIC Financial Institution Letters, or FRB Press Releases.
2. Credit needs determination. The second step is a credit needs determination that is conducted if a bank fails the LTD ratio screen or if the LTD ratio cannot be calculated due to insufficient data or due to data that are not reasonably available. This step requires the examiner to review the activities of the bank, such as its lending activity and performance under the CRA, in order to determine whether the bank is reasonably helping to meet the credit needs of the communities served by the bank in the host State. Banks may provide the examiner with any relevant information including loan data, if a credit needs determination is performed.

Although Section 109 specifically requires the examiner to consider a bank's CRA rating when making a credit needs determination, a bank's CRA rating should not be the only factor considered. However, since most of the other factors (*see* procedure for Credit Needs Determination) are taken into account as part of a bank's performance context under CRA, it is expected that banks with a satisfactory or better CRA rating will receive a favorable credit needs determination. Banks with a less than satisfactory CRA rating may receive an adverse credit needs determination unless mitigated by the other factors enumerated in section 109. To ensure consistency, compliance with Section 109 generally should be reviewed in conjunction with the evaluation of a bank's CRA performance.

With respect to institutions designated as wholesale or limited purpose banks, a credit needs determination should consider a bank's performance using the appropriate CRA performance test provided in the CRA regulations. For banks not subject to CRA, including certain special purpose banks and uninsured branches of foreign banks,³ the examiner should use the CRA regulations only as a guideline when making a credit needs determination for such institutions. Section 109 does not

obligate the institution to have a record of performance under the CRA nor does it require the institution to pass any CRA performance tests.

Enforcement and Sanctions

Before a bank can be sanctioned under section 109, the appropriate agency is required to demonstrate that the bank failed to comply with the LTD ratio screen and failed to reasonably help meet the credit needs of the communities served by the bank in the host State. Since the bank must fail both the LTD ratio screen and the credit needs determination in order to be in noncompliance with Section 109, the agencies have an obligation to apply the LTD ratio screen before seeking sanctions, regardless of the regulatory burden imposed. Thus, if a bank receives an adverse credit needs determination, the LTD ratio screen must be applied even if the data necessary to calculate the appropriate ratio are not readily available. Consequently, the agencies are required to obtain the necessary data to calculate the bank's statewide LTD ratio before sanctions are imposed.

If a bank fails both steps of the section 109 evaluation, the statute outlines sanctions that the appropriate agency can impose. The sanctions are:

- (i) ordering the closing of the interstate branch in the host State; and
- (ii) prohibiting the bank from opening a new branch in the host State.

Sanctions, however, may not be warranted if a bank provides reasonable assurances to the satisfaction of the appropriate agency that it has an acceptable plan that will reasonably help to meet the credit needs of the communities served, or to be served. An examiner should consult with the RO before discussing possible sanctions with any bank. Also, before sanctions are imposed, the agencies stated in the preamble to the final 1997 regulation that they intend to consult with State banking authorities.

Examination Objective

To ensure that a bank is not operating a covered interstate branch(es), as defined, primarily for the purpose of deposit production, by determining if the bank meets (i) the loan-to-deposit (LTD) ratio screen, or (ii) the credit needs determination requirements of section 109 of IBBEA.

Examination Procedures

Examples of covered interstate branches can be found at the end of this section.

Identification of Covered Interstate Branches

1. *Banks controlled by an out-of-State bank holding company.*

³ A special purpose bank that does not perform commercial or retail banking services by granting credit to the public in the ordinary course of business is not evaluated for CRA performance by the agencies. In addition, branches of a foreign bank, unless the branches are insured or resulted from an acquisition as described in the International Banking Act, 12 USC 3101 et seq., are not evaluated for CRA performance by the agencies.

- Determine if the bank is controlled by an out-of-State bank holding company by identifying the home State of the bank and the home State of the bank holding company. To determine the home State of a bank, refer to the definition. To determine the home State of a bank holding company, refer to home State data available from your agency and confirm the home State with bank management.
 - If the bank is not controlled by a bank holding company, or the home State of the bank holding company is the same state as the home State of the bank, the bank does not have any covered interstate branches under procedures #1. Go to procedure #2.
 - If the home State of the bank holding company is not the same as the home State of the bank, then the bank meets the definition of a covered interstate branch and is subject to section 109. Go to procedures #2 and #3.
2. *Banks with interstate branches.* Determine if the bank has any branches that were established or acquired pursuant to IBBEA in states other than the bank's home State. If so, the bank has a covered interstate branch. Go to procedure #3. If the bank has no covered interstate branches under procedures #1 and #2, the bank is not subject to section 109 and no further review is necessary.
3. *One-year rule.* For the covered interstate branches identified in procedure #1 and/or #2, determine if any have been covered interstate branches for one year or more. Note that, if any of a bank's covered interstate branches within a particular state have been covered interstate branches for one year or more, then all of the bank's covered interstate branches within that State are subject to review. If any branch has been a covered interstate branch for one year or more, go to procedure #4. If not, no further review is necessary at this time.

Assessing Compliance with the LTD Ratio Screen

4. For a covered interstate branch subject to section 109, determine if the bank has sufficient data to calculate a statewide LTD ratio for each respective host State. (The bank is not required to provide this information or assist in providing this information.) For States where the bank has sufficient data, go to procedure #5. For States where the bank does not have sufficient data, go to procedure #6.
5. For each host State where the bank can provide loan and deposit data, calculate and compare the bank's statewide LTD ratio to the applicable host State LTD ratio provided by the agencies. If the bank's statewide LTD ratio equals or exceeds one-half of the relevant host State LTD ratio, the bank passes the LTD ratio screen and the section 109 evaluation in that state and no further review is necessary. If the bank's statewide LTD ratio is less than one-half of the host State LTD ratio in that state, the bank fails the LTD ratio screen. Go to procedure #6.

Credit Needs Determination

6. For each host State identified in procedure #4 and/or #5, determine whether the bank is reasonably helping to meet the credit needs of communities served by the bank in the host State. When making this determination, consider the following items:
- whether the covered interstate branches were formerly part of a failed or failing depository institution;
 - whether the covered interstate branches were acquired under circumstances where there was a low LTD ratio because of the nature of the acquired institution's business or loan portfolio;
 - whether the covered interstate branches have a higher concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host State;
 - the most recent ratings (overall rating, multistate MSA rating, and State ratings) received by the bank under the Community Reinvestment Act (CRA);
 - economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;
 - the safe and sound operation and condition of the bank; and
 - the CRA regulation, examination procedures, and interpretations of the regulation.

If the bank passes the credit needs determination test, the bank complies with section 109 and no further review is necessary. If the bank fails the credit needs determination test but a LTD ratio screen has not been conducted, go to procedure #7. If the bank fails the credit needs determination test and has failed the LTD ratio screen, the bank is in noncompliance with section 109. Go to procedure #8.

Determining Whether Sanctions are Warranted

7. Calculate the bank's statewide LTD ratio for each host State in which the bank failed the credit needs determination test. The data used to calculate these ratios may be obtained from any reliable source. The bank may, but is not required to, provide the examiner with additional data at any time during the examination. If the bank's statewide LTD ratio(s) is equal to or greater than one-half of the host State LTD ratio, the bank complies with section 109 requirements and no further review is necessary. If a bank's statewide LTD ratio is less than one-half of the respective host State LTD ratio, the bank is in noncompliance with section 109. Go to procedure #8.
8. Consult the RO to determine whether sanctions are warranted.

X. Other – Deposit Production Offices

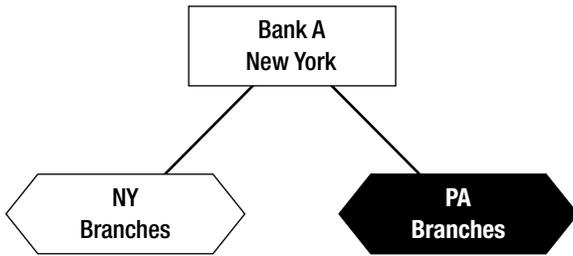
Examination Checklist		
Identify covered interstate branches subject to Section 109		
	Yes	No
Evaluation		
1. Does the bank have any covered interstate branches? Determine: (a) if the bank has established or acquired any branches outside the bank's home State pursuant to the interstate branching authority granted by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, or (b) whether the bank, including a bank consisting of only a main office, is controlled by an out-of-State bank holding company as defined in section 2(o)(7) of the Bank Holding Company Act of 1956.		
<i>If the answer to both (a) and (b) is No, no further review is necessary.</i>		
2. Have any covered interstate branches been covered interstate branches for one year or more? If any of a bank's covered interstate branches within a particular state have been covered interstate branches for one year or more, then all of the bank's covered interstate branches within that state are subject to review.		
<i>If the answer is No, no further review is necessary.</i>		
Assess Compliance with the Loan-to-Deposit (LTD) Ratio Screen		
3. Does the bank have sufficient data to calculate a statewide LTD ratio(s) in each respective host State for covered interstate branches subject to section 109?		
<i>For each host State where the answer is No, proceed to #5.</i>		
4. For each host State where a covered interstate branch exists, calculate the bank's statewide LTD ratio. Is the statewide LTD ratio equal to or greater than one-half of the host state LTD ratio?		
<i>For each host State where the answer is Yes, the bank complies with section 109 and no further review is necessary. For each host State where the answer is No, proceed to #5.</i>		
Perform Credit Needs Determination		
5. For each host State identified in #3 or #4, is the bank reasonably helping to meet the credit needs of the communities served by the bank in the host State? When making this determination, consider the following items:		
• Whether the covered interstate branches were formerly part of a failed or failing depository institution;		
• Whether the covered interstate branches were acquired under circumstances where there was a low LTD ratio because of the nature of the acquired institution's business or loan portfolio;		
• Whether the covered interstate branches have a higher concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host State;		

Examination Checklist (cont.)	Yes	No
<ul style="list-style-type: none"> The most recent ratings (overall rating, multistate MSA rating, and State ratings) received by the bank under the Community Reinvestment Act (CRA); 		
<ul style="list-style-type: none"> Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches; 		
<ul style="list-style-type: none"> The safe and sound operation and condition of the bank; and 		
<ul style="list-style-type: none"> The CRA regulation, examination procedures, and interpretations of this regulation. 		
<p><i>If the bank passes the credit needs determination test, the bank complies with section 109 and no further review is necessary. If the bank fails the credit needs determination test but the LTD ratio screen has not yet been conducted, go to #6. If the bank fails the credit needs determination test and has failed the LTD ratio screen, go to #7.</i></p>		
Determine if Sanctions are Warranted		
<p>6. Calculate the statewide LTD ratio for each host State where the bank failed the credit needs determination test. Is this ratio equal to or greater than one-half of the host State LTD ratio?</p>		
<p><i>If the answer is Yes, the bank complies with section 109 and no further review is necessary. If the answer is No, the bank is in noncompliance with section 109 (go to #7).</i></p>		
<p>7. After consultation with RO, are sanctions warranted?</p>		

X. Other – Deposit Production Offices

Examples of Covered Interstate Branches

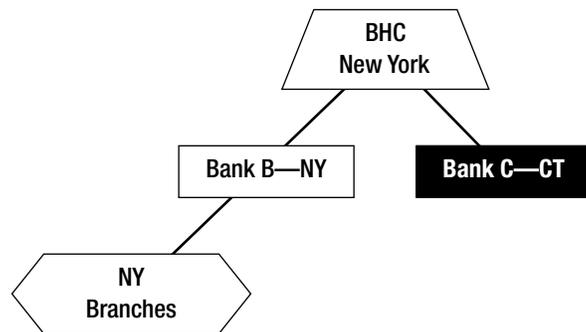
Bank with branches outside of its home State.



Bank A is an interstate bank with branches in PA that were established or acquired under IBBEA. Bank A's home State is NY and its host State is PA. The PA branches are covered interstate branches subject to the section 109 review. Bank A's statewide loan-to-deposit (LTD) ratio in PA is compared to the host State LTD ratio for PA.

The section 109 screen is conducted at the same time as a bank's CRA examination.

Bank, consisting only of a main office, controlled by an out-of-State bank holding company.

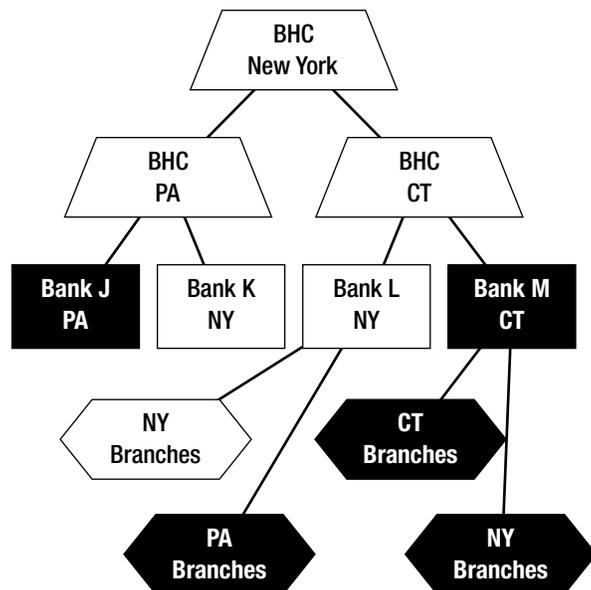


Banks B and Bank C are both controlled by a BHC whose home State is NY. Bank B is an intrastate bank and is not subject to the section 109 review.

Bank C's home State is Connecticut and it is subject to the section 109 review because it is controlled by an out-of-State BHC whose home State is NY. Bank C's statewide LTD ratio in CT will be compared to the host State LTD ratio for CT.

The section 109 screen is conducted at the same time as a bank's CRA examination. The section 109 screen is conducted at the same time as a bank's CRA examination.

Covered interstate branches under a multi-tiered bank holding company structure.



This example illustrates the requirement to look to the top tier BHC when determining whether to conduct the section 109 review. Banks J, K, L, and M are all controlled by a top-tier BHC whose home State is NY.

Out-of-State BHC: Banks J and M are subject to section 109 reviews because an out-of-State top tier BHC controls both of them. Bank J's home State is PA; its statewide LTD ratio in PA will be compared to the host State LTD ratio for PA. Bank M's home State is CT; its statewide LTD ratio in CT will be compared to the host State LTD ratio for CT.

Out-of-State branches: Bank M's branches in NY also are subject to the section 109 review because Bank M is an interstate bank. Bank M's home State is CT; its statewide LTD ratio in NY is compared to the host State LTD ratio for NY. Bank L's branches in PA also are subject to the section 109 review because Bank L is an interstate bank. Bank L's home State is NY; its statewide LTD ratio in PA will be compared to the host State LTD ratio for PA.

Not subject to 109 review: Bank K is not subject to review for section 109 compliance because an out-of-State BHC does not control it and it does not have interstate branches.

The section 109 screen is conducted at the same time as a bank's CRA examination.

References

Regulation - Part 369: Prohibition Against Use of Interstate Branches Primarily for Deposit Production
<http://www.fdic.gov/regulations/laws/rules/2000-9100.html>

Job Aids

Host State Loan-to-Deposit Ratios
<http://www.fdic.gov/news/news/>
(Updated annually. Check current year.)

List of Interstate Banks/Branches
<http://fdic01/division/dsc/compliance/interstate/index.html>
(Updated annually. Check current year.)

List of Banks Controlled by Out-of-State BHCs
<http://fdic01/division/dsc/compliance/interstate/index.html>
(Updated annually. Check current year.)

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Community Reinvestment Act¹

Introduction

The Community Reinvestment Act (CRA) is intended to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods, consistent with safe and sound banking operations. It was enacted by the Congress in 1977 (12 USC 2901) and is implemented by Regulations 12 CFR Parts 25, 228, 345, and 563e. The Regulations were revised in 1995 and 2005.

The CRA requires that each insured depository institution's record in helping meet the credit needs of its entire community be evaluated periodically. That record is taken into account in considering an institution's application for deposit facilities, including mergers and acquisitions. CRA examinations are conducted by the federal agencies that are responsible for supervising depository institutions: the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS).

The agencies, through the FFIEC, have established interagency examination procedures for the following types of institutions: Small Institutions, Intermediate Small Institutions, Large Retail Institutions, Limited Purpose and Wholesale Institutions, and Institutions under Strategic Plans. The five different procedures correspond to the five alternative evaluation methods provided in the CRA regulations and are designed to respond to basic differences in institutions' structures and operations. All of the procedures reflect the intent of the regulation to establish performance-based CRA examinations that are complete and accurate but, to the maximum extent possible, mitigate the compliance burden for institutions. There are also instructions for writing public evaluations; the public evaluation template for each institution type is provided in Section XII.

Small Bank

Small Institutions have a streamlined assessment method. The regulations contain only five performance criteria under the small bank lending test:

1. The institution's loan-to-deposit ratio adjusted for seasonal variation and, as appropriate, other lending related activities

¹ This section fully incorporates the examination procedures issued under DSC RD Memo 05-032: Interagency Community Reinvestment Act Examination Procedures for Intermediate Small Institutions *and* DSC RD Memo 06-009: Revised Interagency Community Reinvestment Act Examination Procedures.

such as secondary market participation, community development loans or qualified investments;

2. The percentage of loans and other lending-related activities located in the institution's assessment area(s);
3. The distribution of lending among borrowers of different income levels and businesses and farms of different sizes;
4. The distribution of lending among geographies of different income levels; and
5. The institution's record of taking action, if warranted, in response to written complaints about its CRA performance.

Small institutions are eligible for a rating of Outstanding, as well as Satisfactory. An examiner may conclude that an institution's performance so exceeds the standards for a Satisfactory rating under the five core criteria that it merits a rating of Outstanding. In addition, at the institution's option, the examiner will consider the institution's performance in making qualified investments and in providing services that enhance credit availability in its assessment area(s) in order to determine whether the institution merits an Outstanding rating.

In carrying out their examination responsibilities, examiners should exercise judgment and common sense in deciding how much material to review and what steps are necessary to reach an accurate conclusion. For example, if an institution's assessment area(s) is comprised of only a few homogenous geographies, a geographic analysis of loans within the assessment area(s) may be unnecessary. Or, if an institution has done an analysis to determine where, and to whom, it is making loans in its assessment area(s) to assist itself in its business efforts, examiners may be able to validate and then use the institution's analysis rather than conduct a detailed analysis of their own. In other words, when evaluating the performance criteria, examiners should always consider and use available, reliable information.

Similarly, if an institution's loan-to-deposit ratio appears low, the examination procedures ask the examiner to evaluate the institution's lending-related activities, such as loan sales and community development lending and investments to determine if they materially supplement its lending performance as reflected in its loan-to-deposit ratio. However, such an analysis may not be necessary or a less extensive analysis may be sufficient if the loan-to-deposit ratio is high.

Examination Procedures for Small Institutions

Examination Scope

1. For institutions with more than one assessment area, identify assessment areas for full scope review. In making those selections, review prior CRA performance evaluations, available community contact materials, and

XI. Community Reinvestment Act – Small Bank

reported lending data and demographic data on each assessment area. Consider factors such as:

- a. The lending opportunities in the different assessment areas;
 - b. The level of the institution's lending activity in the different assessment areas, including low- and moderate-income areas, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies designated by the Agencies² based on (a) rates of poverty, unemployment, and population loss, or (b) population size, density, and dispersion;³
 - c. The number of other institutions in the different assessment areas and the importance of the institution under examination in serving the different areas, particularly any areas with relatively few other providers of financial services;
 - d. The existence of apparent anomalies in the reported HMDA data for any particular assessment area(s);
 - e. The length of time since the assessment area(s) was last examined using a full scope review;
 - f. The institution's prior CRA performance in different assessment areas;
 - g. Examiners' knowledge of the same or similar assessment areas; and
 - h. Comments from the public regarding the institution's CRA performance.
2. For interstate institutions, a rating must be assigned for each state where the institution has a branch and for each multi-state metropolitan statistical area (MSA) or metropolitan division (MD) where the institution has branches in two or more states that comprise that multi-state MSA/MD. Select one or more assessment areas in each state for examination using these procedures.

Performance Context

1. Review standardized worksheets and other agency information sources to obtain relevant demographic, economic and loan data, to the extent available, for each assessment area under review.
2. Obtain for review the Consolidated Reports of Condition (Call Reports), Uniform Bank Performance Reports (UBPR), annual reports, supervisory reports, and prior CRA evaluations of the institution under examination. Review financial information and the prior CRA evaluations of institutions of similar size that serve the same or similar assessment area(s).

² The Board of Governors of the Federal Reserve System, The Federal Deposit Insurance Corporation, and The Office of the Comptroller of the Currency

³ A list of distressed or underserved nonmetropolitan middle-income geographies is available on the FFIEC web site at www.ffiec.gov.

3. Consider any information the institution may provide on its local community and economy, its business strategy, its lending capacity, or that otherwise assists in the evaluation of the institution.
4. Review community contact forms prepared by the regulatory agencies to obtain information that assists in the evaluation of the institution. Contact local community, governmental or economic development representatives to update or supplement this information. Refer to the Community Contact Procedures for more detail.
5. Review the institution's public file for any comments received by the institution or the agency since the last CRA performance evaluation for information that assists in the evaluation of the institution.
6. Document the performance context information gathered for use in evaluating the institution's performance.

Assessment Area

1. Review the institution's stated assessment area(s) to ensure that it:
 - a. Consists of one or more MSAs/MDs or contiguous political subdivisions (e.g., counties, cities, or towns);
 - b. Includes the geographies where the institution has its main office, branches, and deposit-taking ATMs, as well as the surrounding geographies in which the institution originated or purchased a substantial portion of its loans;
 - c. Consists only of whole census tracts;
 - d. Consists of separate delineations for areas that extend substantially across MSA/MD or state boundaries unless the assessment area is located in a multi-state MSA/MD;
 - e. Does not reflect illegal discrimination; and
 - f. Does not arbitrarily exclude any low- or moderate-income area(s), taking into account the institution's size, branching structure, and financial condition.
2. If an institution's assessment area(s) does not coincide with the boundaries of an MSA/MD or political subdivision(s), assess whether the adjustments to the boundaries were made because the assessment area would otherwise be too large for the institution to reasonably serve, have an unusual configuration, or include significant geographic barriers.
3. If the assessment area(s) fails to comply with the applicable criteria described above, develop, based on discussions with management, a revised assessment area(s) that complies with the criteria. Use this assessment area(s) to evaluate the institution's performance, but do not otherwise consider the revision in determining the institution's rating.

Performance Criteria**Loan-to-Deposit Analysis**

1. From data contained in Call Reports or UBPRs, calculate the average loan-to-deposit ratio since the last examination by adding the quarterly loan-to-deposit ratios and dividing by the number of quarters.
2. Evaluate whether the institution's average loan-to-deposit ratio is reasonable in light of information from the performance context including, as applicable, the institution's capacity to lend, the capacity of other similarly-situated institutions to lend in the assessment area(s), demographic and economic factors present in the assessment area(s), and the lending opportunities available in the institution's assessment area(s).
3. If the loan to deposit ratio does not appear reasonable in light of the performance context, consider the number and the dollar volume of loans sold to the secondary market, or the innovativeness or complexity of community development loans and qualified investments to assess the extent to which these activities compensate for a low loan-to-deposit ratio or supplement the institution's lending performance as reflected in its loan-to-deposit ratio.
4. Discuss the preliminary findings in this section with management.
5. Summarize in workpapers conclusions regarding the institution's loan-to-deposit ratio.

Comparison of Credit Extended Inside and Outside of the Assessment Area(s)

1. If available, review HMDA data, automated loan reports, and any other reports that may have been generated by the institution to analyze the extent of lending inside and outside of the assessment area(s). If a report generated by the institution is used, test the accuracy of the output.
2. If loan reports or data analyzing lending inside and outside of the assessment area(s) are not available or comprehensive, or if their accuracy cannot be verified, use sampling guidelines to select a sample of loans originated, purchased or committed to calculate the percentage (by number and dollar amount) located within the assessment area(s).
3. If the percentage of loans or other lending related activities in the assessment area is less than a majority, then the institution does not meet the standards for "Satisfactory" under this performance criterion. In this case, consider information from the performance context, such as information about economic conditions, loan demand, the institution's size, financial condition, branching network, and business strategies when determining the effect of not meeting the standards for satisfactory for this criterion on the overall rating for the institution.

4. Discuss the preliminary findings in this section with management.
5. Summarize in workpapers conclusions regarding the institution's level of lending or other lending related activities inside and outside of its assessment area(s).

Distribution of Credit Within the Assessment Area(s)

1. Determine whether the number and income distribution of geographies in the assessment area(s) are sufficient for a meaningful analysis of the geographic distribution of the institution's loans in its assessment area(s).
2. If a geographic distribution analysis of the institution's loans would be meaningful and the necessary geographic information (street address or census tract numbers) is collected by the institution in the ordinary course of its business, determine the distribution of the institution's loans in its assessment area(s) among low-, moderate-, middle-, and upper-income geographies. Where possible, use the same loan reports, loan data, or sample used to compare credit extended inside and outside the assessment area(s).
3. If a geographic analysis of loans in the assessment area(s) is performed, identify groups of geographies, by income categories, in which there is little or no loan penetration. Note that institutions are not expected to lend in every geography.
4. To the extent information about borrower income (individuals) or revenues (businesses) is collected by the institution in the ordinary course of its business, determine the distribution of loans in the assessment area(s) by borrower income and by business revenues. Where possible, use the same loan reports, loan data, or sample used to compare credit extended inside and outside the assessment area(s).
5. Identify categories of borrowers by income or business revenue for which there is little or no loan penetration.
6. If an analysis of the distribution of loans among geographies of different income levels would not be meaningful (e.g., very few geographies in the assessment area(s)) or an analysis of lending to borrowers of different income or revenues could not be performed (e.g., income data are not collected for certain loans), consider possible proxies to use for analysis of the institution's distribution of credit. Possibilities include analyzing geographic distribution by street address rather than geography (if data are available and the analysis would be meaningful) or analyzing the distribution by loan size as a proxy for income or revenues of the borrower.
7. If there are categories of low penetration, form conclusions about the reasons for that low penetration. Consider available information from the performance context, including:

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- a. Information about the institution's size, branch network, financial condition, supervisory restrictions (if any) and prior CRA record;
 - b. Information from discussions with management, loan officers, and members of the community;
 - c. Information about economic conditions, particularly in the assessment area(s);
 - d. Information about demographic or other characteristics of particular geographies that could affect loan demand, such as the existence of a prison or college; and
 - e. Information about other lenders serving the same or similar assessment area(s).
8. Discuss the preliminary findings in this section with management.
9. Summarize in workpapers conclusions concerning the geographic distribution of loans and the distribution of loans by borrower characteristics in the institution's assessment area(s).

Review of Complaints

1. Review all complaints relating to the institution's CRA performance received by the institution (these should all be contained in the institution's public file) and those that were received by its supervisory agency.
2. If there were any complaints, evaluate the institution's record of taking action, if warranted, in response to written complaints about its CRA performance.
3. If there were any complaints, discuss the preliminary findings in this section with management.
4. If there were any complaints, summarize in workpapers conclusions regarding the institution's record of taking action, if warranted, in response to written complaints about its CRA performance. Include the total number of complaints and resolutions with examples that illustrate the nature, responsiveness to, and resolution of, the complaints.

Investments and Services (at the institution's option to enhance a "Satisfactory" rating)

1. If the institution chooses, review its performance in making qualified investments and providing branches and other services and delivery systems that enhance credit availability in its assessment area(s). Performance with respect to qualified investments and services may be used to enhance an institution's overall rating of "Satisfactory", but cannot be used to lower a rating that otherwise would have been assigned.
2. To evaluate the institution's performance in making qualified investments that enhance credit availability in its assessment area(s), consider:
 - a. The dollar amount of qualified investments, by type and location;
 - b. The impact of those investments on the institution's assessment area(s); and
 - c. The innovativeness or complexity of the investments.
3. To evaluate the institution's record of providing branches and other services and delivery systems that enhance credit availability in its assessment area(s), consider:
 - a. The number of branches and ATMs located in the institution's assessment area(s);
 - b. The number of branches and ATMs located within, or that are readily accessible to, low- and moderate-income geographies compared to those located in, or readily accessible to middle- and upper-income geographies;
 - c. The type and level of service(s) offered at branches and ATMs and alternative delivery systems; and
 - d. The institution's record of opening and closing branches.

Ratings

1. Group the analyses of the assessment areas examined by MSA⁴ and nonmetropolitan areas within each state where the institution has branches. If an institution has branches in two or more states of a multi-state MSA, group the assessment areas that are in that MSA.
2. Summarize conclusions about the institution's performance in each MSA and the nonmetropolitan portion of each state in which an assessment area received a full scope review. If two or more assessment areas in an MSA or in the nonmetropolitan portion of a state received full scope reviews, weigh the different assessment areas considering such factors as:
 - a. The significance of the institution's activities in each compared to the institution's overall activities;
 - b. The lending opportunities in each;
 - c. The importance of the institution in providing loans to each, particularly in light of the number of other institutions and the extent of their activities in each; and
 - d. Demographic and economic conditions in each.
3. For assessment areas in MSAs and nonmetropolitan areas that were not examined using the full scope procedures, consider facts and data related to the institution's lending to ensure that performance in those assessment areas is not inconsistent with the conclusions based on the assessment areas that received full scope examinations.
4. For institutions operating in only one multi-state MSA or one state, assign one of the four preliminary ratings -- "Satisfactory", "Outstanding", "Needs to Improve", and "Substantial Noncompliance" -- in accordance with step 6 below. To determine the relative significance of each MSA

⁴ The reference to MSA may also reference MD.

and nonmetropolitan area to the institution’s preliminary rating, consider:

- a. The significance of the institution’s activities in each compared to the institution’s overall activities;
 - b. The lending opportunities in each;
 - c. The importance of the institution in providing loans to each, particularly in light of the number of other institutions and the extent of their activities in each; and
 - d. Demographic and economic conditions in each.
5. For other institutions, assign one of the four preliminary ratings – “Satisfactory”, “Outstanding”, “Needs to Improve”, and “Substantial Noncompliance” -- for each state in which the institution has at least one branch and for each multi-state MSA in which the institution has branches in two or more states in accordance with step #6 below. To determine the relative significance of each MSA and the nonmetropolitan area on the institution’s preliminary state rating, consider:
- a. The significance of the institution’s activities in each compared to the institution’s overall activities;
 - b. The lending opportunities in each;
 - c. The importance of the institution in providing loans to each, particularly in light of the number of other institutions and the extent of their activities in each; and
 - d. Demographic and economic conditions in each.
6. Consult the Small Institution Ratings Matrix and information in workpapers to assign a preliminary rating of:
- a. “Satisfactory” if the institution’s performance meets each of the standards for a satisfactory rating or if exceptionally strong performance with respect to some of the standards compensates for weak performance in others;
 - b. “Needs to Improve” or “Substantial Noncompliance” if the institution’s performance fails to meet the standards for “Satisfactory” performance. Whether a rating is “Needs to Improve” or “Substantial Noncompliance” will depend upon the degree to which the institution’s performance has failed to meet the standards for a “Satisfactory” rating; or
 - c. “Outstanding” if the institution meets the rating descriptions and standards for “Satisfactory” for each of the five core criteria, and materially exceeds the standards for “Satisfactory” in some or all of the criteria to the extent that an outstanding rating is warranted, or if the institution’s performance with respect to the five core criteria generally exceeds “Satisfactory” and its performance in making qualified investments and providing branches and other services and delivery systems in the assessment area(s) supplement its

performance under the five core criteria sufficiently to warrant an overall rating of “Outstanding”.

7. For an institution with branches in more than one state or multi-state MSA, assign a preliminary rating to the institution as a whole taking into account the institution’s record in different states or multi-state MSAs by considering:
 - a. The significance of the institution’s activities in each compared to the institution’s overall activities;
 - b. The lending opportunities in each;
 - c. The importance of the institution in providing loans to each, particularly in light of the number of other institutions and the extent of their activities in each; and
 - d. Demographic and economic conditions in each.
8. Review the results of the most recent compliance examination and determine whether evidence of discriminatory or other illegal credit practices that violate an applicable law, rule, or regulation should lower the institution’s overall CRA rating or, if applicable, its CRA rating in any state or multi-state MSA.⁵ If evidence of discrimination or other illegal credit practices in any geography by the institution, or in any assessment area by any affiliate whose loans have been considered as part of the institution’s lending performance, was found, consider:
 - a. The nature, extent, and strength of the evidence of the practices;
 - b. The policies and procedures that the institution (or affiliate, as applicable) has in place to prevent the practices;
 - c. Any corrective action the institution (or affiliate, as applicable) has taken, or has committed to take, including voluntary corrective action resulting from self-assessment; and
 - d. Any other relevant information.
9. Assign a final rating for the institution as a whole and, if applicable, each state in which the institution has at least one branch and each multi-state MSA in which it has branches in two or more states, considering:
 - a. The institution’s preliminary rating; and
 - b. Any evidence of discriminatory or other illegal credit practices (*see* #8 above).
10. Discuss conclusions with management.

⁵ “Evidence of discriminatory or other illegal credit practices” includes, but is 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 regarding a consumer’s right of rescission.

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11. Write an evaluation of the institution's performance for the examination report and the public evaluation.
12. Prepare recommendations for a supervisory strategy and for matters that require attention or follow-up activities.

Public File Checklist

1. There is no need to review each branch or each complete public file during every examination. In determining the extent to which the institution's public files should be reviewed, consider the institution's record of compliance with the public file requirements in previous examinations, its branching structure and changes to it since its last examination, complaints about the institution's compliance with the public file requirements, and any other relevant information.
2. In any review of the public file undertaken, determine, as needed, whether branches display an accurate public notice in their lobbies, a complete public file is available in the institution's main office and at least one branch in each state, and the public file available in the main office and in a branch in each state contains:
 - a. All written comments from the public relating to the institution's CRA performance and responses to them for the current and preceding two calendar years (except those that reflect adversely on the good name or reputation of any persons other than the institution);
 - b. The institution's most recent CRA Public Performance Evaluation;
 - c. A map of each assessment area showing its boundaries and, on the map or in a separate list, the geographies contained within the assessment area;
 - d. A list of the institution's branches, branches opened and closed during the current and each of the prior two calendar years, and their street addresses and geographies;
 - e. The HMDA Disclosure Statement for the prior two calendar years, if applicable;
 - f. The institution's loan-to-deposit ratio for each quarter of the prior calendar year;
 - g. A quarterly report of the institution's efforts to improve its record if it received a less than satisfactory rating during its most recent CRA examination; and
 - h. A list of services (loan and deposit products and transaction fees generally offered, and hours of operation at the institution's branches), including a description of any material differences in the availability or cost of services among locations.
3. In any branch review undertaken, determine whether the branch provides the most recent public evaluation and a list of services available at the branch or a description of material differences from the services generally available at the institution's other branches.

Public Notice

Determine that the appropriate CRA public notice is displayed as required by § 345.44.

CRA Ratings Matrix — Small Institutions				
Characteristic	Outstanding	Satisfactory	Needs to Improve	Substantial Noncompliance
Loan-to-Deposit Ratio	The loan-to-deposit ratio is more than reasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.	The loan-to-deposit ratio is reasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.	The loan-to-deposit ratio is less than reasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.	The loan-to-deposit ratio is unreasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.
Assessment Area(s) Concentration	A substantial majority of loans and other lending related activities are in the institution's assessment area(s).	A majority of loans and other lending related activities are in the institution's assessment area(s).	A majority of loans and other lending related activities are outside the institution's assessment area(s).	A substantial majority of loans and other lending related activities are outside the institution's assessment area(s).
Geographic Distribution of Loans	The geographic distribution of loans reflects excellent dispersion throughout the assessment area(s).	The geographic distribution of loans reflects reasonable dispersion throughout the assessment area(s).	The geographic distribution of loans reflects poor dispersion throughout the assessment area(s).	The geographic distribution of loans reflects very poor dispersion throughout the assessment area(s).
Borrower's Profile	The distribution of borrowers reflects, given the demographics of the assessment area(s), excellent penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.	The distribution of borrowers reflects, given the demographics of the assessment area(s), reasonable penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.	The distribution of borrowers reflects, given the demographics of the assessment area(s), poor penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.	The distribution of borrowers reflects, given the demographics of the assessment area(s), very poor penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.
Response to Substantiated Complaints	The institution has taken noteworthy, creative action in response to substantiated complaints about its performance in meeting assessment area credit needs.	The institution has taken appropriate action in response to substantiate complaints about its performance in meeting assessment area credit needs.	The institution has taken inadequate action in response to substantiated complaints about its performance in meeting assessment area credit needs.	The institution is unresponsive to substantiated complaints about its performance in meeting assessment area credit needs.
Investments	The institution's investment record enhances credit availability in its assessment area.	N/A	N/A	N/A
Services	The institution's record of providing branches, ATMs, loan production offices, and/or other services and delivery systems enhances credit availability in its assessment area(s).	N/A	N/A	N/A

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Intermediate Small Bank

On July 19, 2005, the FDIC, FRB, and OCC jointly approved amendments to the CRA regulations which took effect on September 1, 2005. Among the revisions to the regulations, “intermediate small banks” are defined under §345.12 (u) as small banks with assets of at least \$250 million as of December 31 of both of the prior two calendar years and less than \$1 billion as of December 31 of either of the prior two calendar years (these asset figures may be adjusted annually). These banks are evaluated under two tests: the small bank lending test and a community development test.

Intermediate small institutions are not required to collect and report CRA loan data for small business, small farm, and community development loans. Nevertheless, the CRA regulations continue to allow small institutions, including intermediate small institutions, to opt for an evaluation under the (large bank) lending, investment, and service tests, provided the data is collected and reported.

To evaluate the distribution of loans under intermediate small bank procedures, examiners should review loan files, bank reports, or any other information or analyses a bank may provide. To evaluate community development loans, investments, and services under the intermediate small bank community development test, examiners will review (1) any information a bank may provide, including the results of any assessment of community development needs or opportunities if conducted by the bank, and (2) performance context information obtained by examiners from community, government, civic or other sources.

Intermediate Small Institution Examination Procedures**Examination Scope**

For institutions (interstate and intrastate) with more than one assessment area, identify assessment areas for a full scope review. A full scope review is accomplished when examiners complete all of the procedures for an assessment area. For interstate institutions, a minimum of one assessment area from each state, and a minimum of one assessment area from each multistate MSA/MD, must be reviewed using the full scope examination procedures.

1. To identify assessment areas for full scope review, review prior CRA performance evaluations, available community contact materials, and reported lending data and demographic data on each assessment area. Consider factors such as:
 - a. The retail lending and community development opportunities in the different assessment areas, particularly areas where the need for credit and community development activities is significant;

- b. The level of the institution’s activity in the different assessment areas, including in low- and moderate-income areas, designated disaster areas, or distressed or underserved non-metropolitan middle-income geographies designated by the Agencies¹ based on (a) rates of poverty, unemployment, and population loss or (b) population size, density, and dispersion;²
 - c. The number of other institutions in the different assessment areas and the importance of the institution under examination in serving the different areas, particularly any areas with relatively few other providers of financial services;
 - d. The existence of apparent anomalies in the reported data for any particular assessment area(s);
 - e. The length of time since the assessment area(s) was last examined using a full scope review;
 - f. The institution’s prior CRA performance in different assessment areas;
 - g. Examiners’ knowledge of the same or similar assessment areas; and
 - h. Comments from the public regarding the institution’s CRA performance.
2. Select one or more assessment areas in each state, and one or more assessment areas in any multi-state MSA, for examination using these procedures. This is required because for interstate institutions, a rating must be assigned for each state where the institution has a branch and for each multi-state MSA/MD where the institution has branches in two or more states that comprise that MSA/MD.

Performance Context

1. Review standardized worksheets and other agency information sources to obtain relevant demographic, economic, and loan data, to the extent available, for each assessment area under review.
2. Obtain for review the Consolidated Reports of Condition (Call Reports), Uniform Bank Performance Reports (UBPRs), annual reports, supervisory reports, and prior CRA evaluations of the institution under examination to help understand the institution’s ability and capacity, including any limitations imposed by size, financial condition, or statutory, regulatory, economic or other constraints, to respond to safe and sound opportunities in the assessment area(s) for retail loans, and community

1 The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

2 A list of distressed or underserved non-metropolitan middle-income geographies will be made available on the FFIEC web site at www.ffiec.gov.

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development loans, qualified investments and community development services.

3. Discuss with the institution, and consider, any information the institution may provide about its local community and economy, including community development needs and opportunities, its business strategy, its lending capacity, or information that otherwise assists in the evaluation of the institution.
4. Review community contact forms prepared by the regulatory agencies to obtain information that assists in the evaluation of the institution. Contact local community, governmental or economic development representatives to update or supplement this information. Refer to the Community Contact Procedures for more detail.
5. Review any comments received by the institution or the agency since the last CRA examination.
6. By reviewing the public evaluations and other financial data, determine whether any similarly situated institutions (in terms of size, financial condition, product offerings, and business strategy) serve the same or similar assessment area(s) and would provide relevant and accurate information for evaluating the institution's CRA performance. Consider, for example, whether the information could help identify:
 - a. Lending and community development opportunities available in the institution's assessment area(s) that are compatible with the institution's business strategy and consistent with safe and sound banking practices;
 - b. Constraints affecting the opportunities to make safe and sound retail loans, community development loans, qualified investments, and community development services compatible with the institution's business strategy in the assessment area(s); and
 - c. Successful CRA-related product offerings or activities utilized by other lenders serving the same or similar assessment area(s).
7. Document the performance context information, particularly community development needs and opportunities, gathered for use in evaluating the institution's performance.

Assessment Area

1. Review the institution's stated assessment area(s) to ensure that it:
 - a. Consists of one or more MSAs/MDs or contiguous political subdivisions (e.g., counties, cities, or towns);
 - b. Includes the geographies where the institution has its main office, branches, and deposit-taking ATMs, as well as the surrounding geographies in which the institution originated or purchased a substantial portion of its loans;

- c. Consists only of whole census tracts;
 - d. Consists of separate delineations for areas that extend substantially across MSA/MD or state boundaries unless the assessment area is located in a multistate MSA/MD;
 - e. Does not reflect illegal discrimination; and
 - f. Does not arbitrarily exclude any low- or moderate-income area(s), taking into account the institution's size, branching structure, and financial condition.
2. If an institution's assessment area(s) does not coincide with the boundaries of an MSA/MD or political subdivision(s), assess whether the adjustments to the boundaries were made because the assessment area would otherwise be too large for the institution to reasonably serve, have an unusual configuration, or include significant geographic barriers.
3. If the assessment area(s) fails to comply with the applicable criteria described above, develop, based on discussions with management, a revised assessment area(s) that complies with the criteria. Use this assessment area(s) to evaluate the institution's performance, but do not otherwise consider the revision in determining the institution's rating.

Intermediate Small Institution Lending Test Performance Criteria

Loan-to-Deposit Analysis

1. From data contained in Call Reports or UBPRs, calculate the average loan-to-deposit ratio since the last examination by adding the quarterly loan-to-deposit ratios and dividing by the number of quarters.
2. Evaluate whether the institution's average loan-to-deposit ratio is reasonable in light of information from the performance context including, as applicable, the institution's capacity to lend, the capacity of other similarly situated institutions to lend in the assessment area(s), demographic and economic factors present in the assessment area(s), and the lending opportunities available in the institution's assessment area(s).
3. If the loan-to-deposit ratio does not appear reasonable in light of the performance context, consider whether the number and the dollar amount of loans sold to the secondary market compensate for a low loan-to-deposit ratio or supplement the institution's lending performance.
4. Summarize in work papers conclusions regarding the institution's loan-to-deposit ratio.

Comparison of Credit Extended Inside and Outside of the Assessment Area(s)

1. If available, review HMDA data, automated loan reports, and any other reports that may have been generated by the institution to analyze the extent of lending inside and

outside of the assessment area(s). If a report generated by the institution is used, test the accuracy of the output.

2. If loan reports or data analyzing lending inside and outside of the assessment area(s) are not available or comprehensive, or if their accuracy cannot be verified, use sampling guidelines to select a sample of loans originated, purchased or committed to calculate the percentage (by number and dollar volume) located within the assessment area(s).
3. If the percentage of loans or other lending related activities in the assessment area is less than a majority, then the institution does not meet the standards for “Satisfactory” under this performance criterion. In this case, consider information from the performance context, such as information about economic conditions, loan demand, the institution’s size, financial condition, branching network, and business strategies when determining the effect of not meeting the standards for satisfactory for this criterion on the overall rating for the institution.
4. Summarize in work papers conclusions regarding the institution’s level of lending or other lending related activities inside and outside of its assessment area(s).

Distribution of Credit within the Assessment Area(s)

1. Determine whether the number and income distribution of geographies in the assessment area(s) are sufficient for a meaningful analysis of the geographic distribution of the institution’s loans in its assessment area(s).
2. If a geographic distribution analysis of the institution’s loans would be meaningful and the necessary geographic information (street address or census tract number) is collected by the institution in the ordinary course of its business, determine the distribution of the institution’s loans in its assessment area(s) among low-, moderate-, middle-, and upper-income geographies. Where possible, use the same loan reports, loan data, or sample used to compare credit extended inside and outside the assessment area(s).
3. If a geographic analysis of loans in the assessment area(s) is performed, identify groups of geographies, by income categories, in which there is little or no loan penetration. Note that institutions are not expected to lend in every geography.
4. To the extent information about borrower income (individuals) or revenues (businesses) is collected by the institution in the ordinary course of its business, determine the distribution of loans in the assessment area(s) by borrower income and by business revenues. Where possible, use the same loan reports, loan data, or sample used to compare credit extended inside and outside the assessment area(s).
5. Identify categories of borrowers by income or business revenue for which there is little or no loan penetration.

6. If an analysis of the distribution of loans among geographies of different income levels would not be meaningful (e.g., very few geographies in the assessment area(s)) or an analysis of lending to borrowers of different income or revenues could not be performed (e.g., income data are not collected for certain loans), consider possible proxies to use for analysis of the institution’s distribution of credit. Possibilities include analyzing geographic distribution by street address rather than geography (if data are available and the analysis would be meaningful) or analyzing the distribution by loan size as a proxy for income or revenue of the borrower.
7. If there are categories of low penetration, form conclusions about the reasons for that low penetration. Consider available information from the performance context, including:
 - a. Information about the institution’s size, branch network, financial condition, supervisory restrictions (if any) and prior CRA record;
 - b. Information from discussions with management, loan officers, and members of the community;
 - c. Information about economic conditions, particularly in the assessment area(s);
 - d. Information about demographic or other characteristics of particular geographies that could affect loan demand, such as the existence of a prison or college; and
 - e. Information about other lenders serving the same or similar assessment area(s).
8. Summarize in work papers conclusions concerning the geographic distribution of loans and the distribution of loans by borrower characteristics in the institution’s assessment area(s).

Review of Complaints

1. Review all complaints relating to the institution’s CRA performance received by the institution (these should all be contained in the institution’s public file) and those that were received by its supervisory agency.
2. If there were any complaints, evaluate the institution’s record of taking action, if warranted, in response to written complaints about its CRA performance.
3. If there were any complaints, discuss the preliminary findings in this section with management.
4. If there were any complaints, summarize in work papers conclusions regarding the institution’s record of taking action, if warranted, in response to written complaints about its CRA performance. Include the total number of complaints and resolutions with examples that illustrate the nature, responsiveness to, and resolution of, the complaints.
5. Discuss the preliminary findings in the lending test section with management.

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Lending Test Ratings Matrix — Intermediate Small Institutions				
Characteristic	Outstanding	Satisfactory	Needs to Improve	Substantial Noncompliance
Loan-to-Deposit Ratio	The loan-to-deposit ratio is more than reasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.	The loan-to-deposit ratio is reasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.	The loan-to-deposit ratio is less than reasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.	The loan-to-deposit ratio is unreasonable (considering seasonal variations and taking into account lending related activities) given the institution's size, financial condition, and assessment area credit needs.
Assessment Area(s) Concentration	A substantial majority of loans and other lending related activities are in the institution's assessment area(s).	A majority of loans and other lending related activities are in the institution's assessment area(s).	A majority of loans and other lending related activities are outside the institution's assessment area(s).	A substantial majority of loans and other lending related activities are outside the institution's assessment area(s).
Geographic Distribution of Loans	The geographic distribution of loans reflects excellent dispersion throughout the assessment area(s).	The geographic distribution of loans reflects reasonable dispersion throughout the assessment area(s).	The geographic distribution of loans reflects poor dispersion throughout the assessment area(s).	The geographic distribution of loans reflects very poor dispersion throughout the assessment area(s).
Borrower's Profile	The distribution of borrowers reflects, given the demographics of the assessment area(s), excellent penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.	The distribution of borrowers reflects, given the demographics of the assessment area(s), reasonable penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.	The distribution of borrowers reflects, given the demographics of the assessment area(s), poor penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.	The distribution of borrowers reflects, given the demographics of the assessment area(s), very poor penetration among individuals of different income levels (including low- and moderate-income) and businesses of different sizes.
Response to Substantiated Complaints	The institution has taken noteworthy, creative action in response to substantiated complaints about its performance in meeting assessment	The institution has taken appropriate action in response to substantiate complaints about its performance in meeting assessment area credit needs.	The institution has taken inadequate action in response to substantiated complaints about its performance in meeting assessment area credit needs.	The institution is unresponsive to substantiated complaints about its performance in meeting assessment area credit needs.

Intermediate Small Institution Community Development Test

An institution should appropriately assess the needs in its community, engage in different types of community development activities based on those needs and the institution's capacities, and take reasonable steps to apply its community development resources strategically to meet those needs. The flexibility inherent in the community development test allows intermediate small institutions to focus on meeting the substance of community needs through these activities. Examiners will consider the results of any assessment by the institution of community needs along with information from community, government, civic, and other sources to gain a working knowledge of community needs.

1. Identify the number and amount of the institution's community development loans, qualified investments, and community development services. Obtain this information through discussions with management, HMDA data collected by the institution, as applicable; investment portfolios; any other relevant financial records; and materials available to the public. Include, at the institution's option:
 - a. Community development loans, qualified investments, and community development services provided by affiliates, if they are not claimed by any other institution; and
 - b. Community development lending by consortia or third parties.
2. Review community development loans, qualified investments, and community development services to verify that they qualify as community development.
3. If the institution participates in community development lending by consortia or third parties, or claims activities provided by affiliates, review records provided to the institution by the consortia or third parties or affiliates to ensure that the community development loans claimed by the institution do not account for more than the institution's share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.
4. Considering the institution's capacity and constraints and other information obtained through the performance context review, form conclusions about:
 - a. The number and amount of community development loans and qualified investments;
 - b. The extent to which the institution provides community development services, including the provision and availability of services to low- and moderate-income people, including through branches and other facilities in low- and moderate-income areas;

- c. The responsiveness to the opportunities for community development lending, qualified investments, and community development services, considering:
 - 1) The results of any assessment of community development needs and opportunities provided by the institution;
 - 2) The examiner's review of performance context information from community, government, civic, and other sources; and
 - 3) Whether the amount and combination of community development loans, qualified investments, and community development services, along with their qualitative aspects, are responsive to community needs and opportunities.
5. Summarize conclusions regarding the institution's community development performance and retain in the work papers.

Overall Intermediate Small Institution CRA Rating

1. Group the analyses of the assessment areas examined by MSA³ and non-MSA areas within each state where the institution has branches. If an institution has branches in two or more states of a multi-state MSA, group the assessment areas that are in that MSA.
2. Summarize conclusions about the institution's performance in each MSA and the non-MSA portion of each state in which an assessment area received a full scope review. If two or more assessment areas in an MSA or in the non-MSA portion of a state received full scope reviews, weigh the different assessment areas considering such factors as:
 - a. The significance of the institution's activities in each compared to the institution's overall activities;
 - b. The retail lending and community development opportunities in each;
 - c. The importance of the institution in providing loans and community development activities to each, particularly in light of the number of other institutions and the extent of their activities in each; and
 - d. Demographic and economic conditions in each.
3. For assessment areas in MSAs and non-MSA areas that were not examined using these procedures, consider facts and data related to the institution's lending and community development activities to ensure that performance in those assessment areas is not inconsistent with the conclusions based on the assessment areas which received full scope reviews.
4. For institutions operating in only one multi-state MSA or one state, assign one of the four preliminary ratings – "Satisfactory," "Outstanding," "Needs to Improve," or

³ The reference to MSA may also reference MD.

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- “Substantial Noncompliance” -- in accordance with step 6 below. To determine the relative significance of each MSA and non-MSA area to the institution’s preliminary rating, consider:
- a. The significance of the institution’s activities in each compared to the institution’s overall activities;
 - b. The retail lending and community development opportunities in each;
 - c. The importance of the institution to each, particularly in light of the number of other institutions and the extent of their activities in each; and
 - d. Demographic and economic conditions in each.
5. For other institutions, assign one of the four preliminary ratings -- “Satisfactory,” “Outstanding,” “Needs to Improve,” or “Substantial Noncompliance” -- for each state in which the institution has at least one branch and for each multi-state MSA in which the institution has branches in two or more states in accordance with step #6 below. To determine the relative significance of each MSA and the non-MSA area on the institution’s preliminary state rating, consider:
- a. The significance of the institution’s activities in each compared to the institution’s overall activities;
 - b. The retail lending and community development opportunities in each;
 - c. The importance of the institution in each, particularly in light of the number of other institutions and the extent of their activities in each; and
 - d. Demographic and economic conditions in each.
6. Consult the intermediate small institution ratings matrices (lending and community development) and information in work papers to assign a preliminary rating of:
- a. “Satisfactory” if the institution’s performance is rated as “Satisfactory” in each test.
 - b. “Needs to Improve” or “Substantial Noncompliance,” depending upon the degree to which the institution’s performance has failed to meet the standards for a “Satisfactory” rating on a test; or
 - c. “Outstanding” if the institution is rated an “Outstanding” on both tests; or “Outstanding” on one test and the extent to which the institution meets or exceeds the “Satisfactory” criteria on the other test.
7. For an institution with branches in more than one state or multi-state MSA, assign a preliminary rating to the institution as a whole taking into account the institution’s record in different states or multi-state MSAs by considering:
- a. The significance of the institution’s activities in each compared to the institution’s overall activities;
 - b. The retail lending and community development opportunities in each;
 - c. The importance of the institution in providing loans to each, particularly in light of the number of other institutions and the extent of their activities in each; and
 - d. Demographic and economic conditions in each.

Community Development Test Ratings Matrix— Intermediate Small Institutions			
Outstanding	Satisfactory	Needs to Improve	Substantial Noncompliance
The institution’s community development performance demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the institution’s capacity and the need and availability of such opportunities for community development in the institution’s assessment area(s).	The institution’s community development performance demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services as appropriate, considering the institution’s capacity and the need and availability of such opportunities for community development in the institution’s assessment area(s).	The institution’s community development performance demonstrates poor responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the institution’s capacity and the need and availability of such opportunities for community development in the institution’s assessment area(s).	The institution’s community development performance demonstrates very poor responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the institution’s capacity and the need and availability of such opportunities for community development in the institution’s assessment area(s).

8. Review the results of the most recent compliance examination and determine whether evidence of discriminatory or other illegal credit practices should lower the institution's overall CRA rating or, if applicable, its CRA rating in any state or multi-state MSA. If evidence of discrimination or other illegal credit practices in any geography by the institution, or in any assessment area by any affiliate whose loans were considered as part of the institution's lending performance, was found, consider:
 - a. The nature, extent, and strength of the evidence of the practices;
 - b. The policies and procedures that the institution (or affiliate, as applicable) has in place to prevent the practices;
 - c. Any corrective action that the institution (or affiliate, as applicable) has taken, or has committed to take, including voluntary corrective action resulting from self-assessment; and
 - d. Any other relevant information.
 9. Assign a final rating for the institution as a whole and, if applicable, each state in which the institution has at least one branch and each multi-state MSA in which it has branches in two or more states, considering:
 - a. The institution's preliminary rating; and
 - b. Any evidence of discriminatory or other illegal credit practices.
 10. Discuss conclusions with management.
 11. Write an evaluation of the institution's performance for the examination report and the public evaluation.
 12. Prepare recommendations for a supervisory strategy and for matters that require attention or follow-up activities.
- Public File Checklist**
1. There is no need to review each branch or each complete public file during every examination. In determining the extent to which the institution's public files should be reviewed, consider the institution's record of compliance with the public file requirements in previous examinations, its branching structure and changes to it since its last examination, complaints about the institution's compliance with the public file requirements, and any other relevant information.
 2. In any review of the public file undertaken, determine whether branches display an accurate public notice in their lobbies, a complete public file is available in the institution's main office and at least one branch in each state, and the public file(s) in the main office and in each state contain:
 - a. All written comments from the public relating to the institution's CRA performance and any responses to them for the current and preceding two calendar years (except those that reflect adversely on the good name or reputation of any persons other than the institution);
 - b. The institution's most recent CRA Performance Evaluation;
 - c. A map of each assessment area showing its boundaries and, on the map or in a separate list, the geographies contained within the assessment area;
 - d. A list of the institution's branches, branches opened and closed during the current and each of the prior two calendar years, their street addresses and geographies;
 - e. A list of services (loan and deposit products and transaction fees generally offered, and hours of operation at the institution's branches), including a description of any material differences in the availability or cost of services between those locations;
 - f. The institution's loan-to-deposit ratio for each quarter of the prior calendar year;
 - g. A quarterly report of the institution's efforts to improve its record if it received a less than satisfactory rating during its most recent CRA examination; and
 - h. HMDA Disclosure Statements for the prior two calendar years for the institution and for each non-depository affiliate the institution has elected to include in assessment of its CRA record, if applicable.
 3. In any branch review undertaken, determine whether the branch provides the most recent public evaluation and a list of services generally available at its branches and a description of any material differences in the availability or cost of services at the branch (or a list of services available at the branch).

Public Notice

Determine that the appropriate CRA public notice is displayed as required by § 345.44.

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Large Bank

The large institution performance criteria – the Lending, Investment, and Service Tests – cover all institutions with assets of \$1 billion or more (as of December 31 of both of the prior two calendar years) unless they requested designation and received approval as wholesale or limited-purpose institutions or have been approved for evaluation under a strategic plan.

As under the streamlined small institution procedures, examiners are expected to exercise judgment and common sense to minimize the burden imposed by the examination process, consistent with a complete and accurate assessment of performance. Therefore, for example, examiners may be able to use economic and demographic data analyzed in an examination of an institution in examinations of other institutions serving the same or similar assessment areas. Community contacts may also be combined to cover more than one institution in a given market. In cases where an institution has analyzed its CRA performance, examiners may use those analyses, after verifying their accuracy and reliability, and should supplement those analyses when questions are raised. Examiners should consider any performance related information offered by an institution, and should request information called for by examination procedures.

Large institutions are required to collect and report certain loan data relative to small business, small farm, and community development loans. The existence of those data in automated form will permit examiners to conduct much of the necessary analysis prior to the on-site examination and thereby reduce any disruptions caused by the presence of examiners at the institution.

Examination Procedures for Large Institutions

Examination Scope

For institutions (interstate and intrastate) with more than one assessment area, identify assessment areas for a full scope review. A full scope review is accomplished when examiners complete all of the procedures for an assessment area. For interstate institutions, a minimum of one assessment area from each state, and a minimum of one assessment area from each multistate metropolitan statistical area/metropolitan

division (MSA/MD), must be reviewed using the full scope examination procedures.

1. Review prior CRA performance evaluations, available community contact materials, HMDA and CRA performance data including the institution's lending, investment, and service activities by assessment area, the lending of other lenders in those markets, and demographic information from those markets.
2. Select assessment areas for full scope review by considering the factors below.
 - a. The lending, investment, and service opportunities in the different assessment areas, particularly areas where the need for bank credit, investments and services is significant;
 - b. The level of the institution's lending, investment, and service activity in the different assessment areas, including in low- and moderate-income areas, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies designated by the Agencies¹ based on (a) rates of poverty, unemployment, and population loss or (b) population size, density, and dispersion;²
 - c. The number of other institutions in the different assessment areas and the importance of the institution under examination in serving the different areas, particularly any areas with relatively few other providers of financial services;
 - d. Comments and feedback received from community groups and the public regarding the institution's CRA performance;
 - e. The size of the population;
 - f. The existence of apparent anomalies in the reported CRA or HMDA data for any particular assessment area(s);
 - g. The length of time since the assessment area(s) was last examined using a full scope review;
 - h. The institution's prior CRA performance in different assessment areas;
 - i. Examiners' knowledge of the same or similar assessment areas; and
 - j. Issues raised during CRA examinations of other institutions and prior community contacts in the

1 The Board of Governors of the Federal Reserve System, The Federal Deposit Insurance Corporation, and The Office of the Comptroller of the Currency

2 A list of distressed or underserved nonmetropolitan middle-income geographies is available on the FFIEC web site at www.ffiec.gov.