

**MEMORANDUM FOR TIMOTHY R. BURNISTON CHAIR, FFIEC CONSUMER COMPLIANCE TASK FORCE**

**FROM:** Carolyn J. Buck  
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Chair, FFIEC Legal Advisory Committee

**SUBJECT:** CRA Amendments in the Riegle-Neal Interstate  
Banking and Branching Efficiency Act of 1994

**I. Introduction and Summary of Conclusions**

This responds to the questions you have raised, on behalf of the FFIEC Consumer Compliance Task Force, regarding amendments to the Community Reinvestment Act of 1977 (“CRA”) <sup>1</sup> made by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (“IBBEA”). <sup>2</sup> The Task Force is comprised of representatives of the Office of the Comptroller of the Currency (“OCC”), the Federal Deposit Insurance Corporation (“FDIC”), the Federal Reserve Board (“FRB”), and the Office of Thrift Supervision (“OTS”) (collectively, the “agencies”).

First, you ask whether on-site examinations must be conducted in each evaluation area <sup>3</sup> where an institution maintains branches. Under the Administrative Procedures Act (“APA”), agency determinations can be set aside by the courts if an agency is unable to articulate a reasonable factual basis for its determination. It follows, therefore, that the level of agency review in any evaluation area must be tailored to support the type of determination required for that area. Where the statute requires assignment of a separate examination rating for an area (e.g., multistate metropolitan areas and statewide areas), agency review must be sufficient to support a specific rating. In areas where conclusions regarding assessment factors and supporting data are required, but not a separate rating (e.g., metropolitan areas and the remainder of the nonmetropolitan area within a state), a lesser level of review may suffice, depending upon the nature of the conclusion reached (see next paragraph). We defer to the expertise of the compliance policy staff at the various agencies to determine whether something other than an on-site examination can yield the data necessary to provide reasonable support for ratings and/or conclusions regarding assessment factors.

For evaluation areas where no rating is required, you ask whether the agencies can satisfy the statutory requirement that they state the “conclusions” regarding assessment factors by indicating that the data available concerning the institution’s performance in the areas are not inconsistent with the institution’s over-all CRA rating. For reasons explained fully below, we believe that a conclusion of this nature is permissible for evaluation areas where no rating is required, provided (a) the conclusion is modified to refer to the institution’s performance under each relevant assessment factor, rather than its overall performance, as required by the statute; and (b) the agencies gather and review baseline data regarding each of the relevant assessment factors for the areas in question. A conclusion of the type you propose would not have a rational basis, as required by the APA, if made in the absence of baseline data regarding the relevant assessment factors.

Finally, you ask whether the statutory requirement that the agencies state their conclusions regarding an institution’s performance under “each assessment factor identified in the regulation” should be deemed to refer to the “performance tests” in the CRA regulation or the “performance tests” in the CRA regulation or the “performance criteria” arrayed under each of the performance tests. For a variety of reasons explained below, we believe the statute requires conclusions regarding the performance tests, not the performance criteria.

I am issuing this opinion in my capacity as Chair of the FFIEC Legal Advisory Committee. This opinion has been reviewed by the Chief Counsel of the OCC, the General Counsel of the FRB, and the General Counsel of the FDIC. Each has indicated that he or she concurs with the conclusions expressed herein.

**II. Background**

Congress enacted the CRA in 1977 to encourage depository institutions to help meet the credit needs of their local communities, including low- and moderate-income neighborhoods. <sup>4</sup> The CRA requires the agencies to assess periodically each institution’s record of meeting the credit needs of its community and to take this record into account when considering applications for deposit facilities. <sup>5</sup>

As originally enacted, the CRA did not specify the contents of the written evaluations prepared by the agencies on the basis of their examinations or indicate whether the agencies could disclose their evaluations to the public. However, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (“FIRREA”),<sup>6</sup> added § 807, entitled “Written Evaluations,” to the CRA.<sup>7</sup> This section requires the agencies to prepare, upon completion of a CRA examination, a written evaluation of the examined institution’s record of meeting the credit needs of its community. The contents of the evaluation are to be divided between a public section and a confidential section. The confidential section is to contain references to specific customers, employees, or officers, and any other statements deemed too sensitive or speculative to be disclosed publicly. The public section is to contain the rating assigned to the institution along with supporting facts and conclusions regarding each regulatory assessment factor.

Recently, both congress and the agencies have made changes to the CRA process. On September 29, 1994, Congress enacted the IBBEA. Section 110 of the IBBEA amends the CRA to require the agencies’ written evaluations to contain separate discussions of institutions’ CRA performance in certain evaluation areas. For these purposes, § 110 draws a distinction between institutions with branches in one state (“single-state institutions”) and institutions with branches in more than one state (“multistate institutions”). For single-state institutions, § 110 requires a separate discussion of the institution’s CRA performance in each metropolitan areas in which the institution has a branch, as well as a discussion of the institution’s overall performance.<sup>8</sup>

For multistate institutions, § 110 requires separate written evaluations of the institution’s CRA performance: as a whole; in each state in which it maintains a branch; and in any multistate metropolitan area in which it maintains a branch in two or more states.<sup>9</sup> Section 110 also requires the statewide written evaluations of a multistate institution to contain separate discussions of the institution’s performance in any metropolitan area in the state in which it maintains a branch, as well as in the nonmetropolitan area of the state if a branch is maintained there.<sup>10</sup> In addition, the written evaluation of a multistate institution’s performance in each state must “describe how the examination was performed and list the individual branches examined.”<sup>11</sup>

Congress’ focus on multistate institutions is explained by the context in which the foregoing CRA amendments were enacted. The IBBEA is intended to make it easier for banks to expand across state lines. This, in turn, raised a concern that banks branching into new states might continue to focus their lending or other services on customers in their home state. To protect against this, Congress required heightened scrutiny of multistate institutions.

In July 1993, President Clinton asked the agencies to develop new CRA regulations and examination procedures that “replace paperwork and uncertainty with greater performance, clarity, and objectivity.”<sup>12</sup> After a series of public hearings and issuance of two proposed regulations, the agencies published a joint final regulation on May 4, 1995.<sup>13</sup> The new regulation contains a series of phase-in periods, the first of which began on January 1, 1995.<sup>14</sup>

You indicate the FFIEC Task Force is in the process of modifying CRA examination procedures to conform to the requirements of the new CRA regulation and the IBBEA. You have asked us to advise you whether the procedures that the Task Force intends to follow, which are described in your memorandum, would be consistent with the requirement of the IBBEA. In this regard, you have raised several specific questions, each of which is addressed below.

### III. Discussion

#### A. Does the IBBEA allow for sampling of evaluation areas, particularly when such sampling may not provide for an on-site examination of each state where a multistate institution maintains a branch or of each metropolitan area in which an institution maintains a branch?

As noted above, the IBBEA amended the CRA to require that, in addition to evaluating an institution’s overall performance, the agencies must also disclose certain assessment information for designated evaluation areas either in a separate written evaluation or a separate discussion within a written evaluation.

Currently, when evaluating the CRA performance of an institution that has branches in more than one evaluation area, you indicate that the agencies usually conduct on-site examinations at branches located in some, but not necessarily all, of the institution’s evaluation areas. The agencies have found this approach, called “sampling,” to be an effective method of evaluating an institution’s CRA performance, particularly if an examination of the institution’s home office is conducted. Also, this approach has enabled the agencies, with their limited resources, to examine institutions on an average of once every two years.

Your memorandum indicates that the agencies would like to continue sampling. you propose that in evaluation areas where on-site examinations are not conducted, the agencies will prepare tables that provide demographic data regarding the area and disclose the institution's reported lending activity in that area. Although you indicate that the agencies would prefer not to state any conclusions based on this data, you suggest that, if necessary, the agencies could make a statement such as, "the data presented are not inconsistent with the overall rating of the institution."

An analysis of your proposal requires review of the legal standards established for assessing CRA performance in each of the evaluation areas designated in the statute.

### **1. State-by-State Evaluations of Multistate Institutions**

Section 807(d)(1)(B) of the CRA, as amended by the IBBEA, provides that for a multistate institution an agency must prepare:

for each State in which the institution maintains 1 or more domestic branches, a separate written evaluation of the institution's record of performance within such State under this chapter, as required by subsections (a), (b), and (c) of this section.<sup>15</sup>

Subsection (a) is a general provision that states that a written evaluation must assess an institution's "record of meeting the credit needs of its entire community, including low and moderate-income neighborhoods." Subsection (c) merely establishes the standards for what information should be placed in the confidential section of written evaluations. It is subsection (b) that specifies the core content of a written evaluation. Subsection (b) provides that a written evaluation must state the agency's conclusions regarding the institution's performance under each regulatory assessment factor, must provide facts supporting the conclusions, and must include a rating.

Accordingly, under .S. 807(d)(1)(B), the agencies are required to prepare a separate written evaluation for each state in which a multistate institution maintains a branch. Moreover, each statewide evaluation must, *inter alia*, include a rating of the institution's CRA performance in that state. The legislative history of § 807 confirms this interpretation. A colloquy between Senators Wellstone and Riegle is directly on point:

Sen. Wellstone: For institutions that operate in more than one State, will [the legislation] require a separate CRA rating for each State in which the institution operates?

Sen. Riegle: Yes, it will... For multistate institutions, the bill requires a written evaluation for the entire institution and a separate written evaluation for each State in which the institution maintains one or more domestic branches. Under the [CRA], such evaluations each include the following: first the banking agency's conclusions for each assessment factor identified in the regulations; second the facts and data supporting such conclusions; and third the institution's rating and statement describing the basis for the rating.

The institution will not, however, receive a separate CRA rating for each of the metropolitan and nonmetropolitan areas covered in the State level evaluation.<sup>16</sup>

Thus, for a multistate institution, an agency must prepare a written evaluation for each state in which the institution maintains a branch, and the evaluation must include a rating. The statute does not permit the agencies to elect not to evaluate an institution's record in a state in which it maintains one or more branches.

With this as background, we can now turn to your question regarding what level of examination must be conducted for a statewide evaluation. Although the statute neither defines the term "examination" nor specifies the steps that an agency must take in arriving at an examination rating, it is a well established principle of law that determinations made by a federal agency must have a rational basis. The APA authorizes the courts to set aside agency actions that are arbitrary or capricious.<sup>17</sup> This means that, when an agency is called upon to make a determination affecting a regulated institution, the agency must review the relevant data and be able to articulate "a rational connection between the facts found and the choice made."<sup>18</sup> Accordingly, when assigning a statewide CRA rating, an agency must be able to point to a reasonable factual basis for the rating.

We defer to the expertise of the compliance policy staff of the various agencies to determine the type and volume of data that must be gathered to provide a reasonable basis for assigning a statewide CRA rating. We wish to emphasize, however, that the agencies' options are not limited to choosing between data tables, on the one hand, and traditional on-site examinations, on the other hand. As noted above, the CRA neither defines the term "examination" nor specifies the procedures that an agency must follow when conducting an examination. We defer to the agencies' compliance policy staff to determine whether some level of information gathering other than a traditional on-site exam could generate sufficient information to provide a reasonable basis for a statewide examination rating.

Thus, to recap, the agencies have a legal obligation to assign a separate CRA rating for each state in which a multistate institution has a domestic branch. They also have a legal obligation to prepare a written evaluation that discloses this rating and provides a rational factual basis for the rating.<sup>19</sup> We defer to the compliance policy staff of each agency to determine what type and level of review will be sufficient to provide a reasonable factual basis for its state-by-state ratings and conclusions. There is no legal requirement for traditional on-site examinations in each state if the agencies can devise an alternative means for gathering sufficient data to support a statewide rating.

## **2. Multistate Metropolitan Areas**

For institutions that maintain branches in more than one state in a multistate metropolitan area, CRA § 807(d)(2) provides:

the appropriate [agency] shall prepare a separate written evaluation of the institution's record of performance within such metropolitan area under this chapter, as required by subsections (a), (b), and (c) of this section.<sup>20</sup>

The wording of this provision is, in relevant part, identical to the wording of the provision just discussed for the state-by-state evaluations of a multistate institution in Part III.A.1, above. Accordingly, our conclusions are the same. There is a legal requirement to assign a rating and to provide supporting conclusions and data. We defer to the compliance policy staff of each agency to determine what type and level of review will be sufficient to provide a reasonable basis for assigning a rating in multistate metropolitan areas.

## **3. Metropolitan Areas and Nonmetropolitan Areas Within a Single State**

Section 807(b)(1)(B) of the CRA requires the agencies' written evaluations of institutions to contain:

The information required by clauses (i) and (ii) of [§ 807(b)(1)(A)]...presented separately for each metropolitan area in which a regulated depository institution maintains one or more domestic branch offices.<sup>21</sup>

Section(d)(3)(A) of the CRA confirms that this requirement applies to multistate institutions, not just single-state institutions, and indicates that the same information should also be separately presented for any nonmetropolitan area in which a multistate institution maintains a branch.<sup>22</sup>

Clauses (i) and (ii) of § 807(b)(1)(A) require the written evaluation to: (i) state the appropriate [agency's] conclusions for each assessment factor identified in the regulations prescribed by the [agencies] to implement this chapter; [and]

(ii) discuss the facts and data supporting such conclusions...<sup>23</sup>

Unlike the provisions discussed above governing evaluations for states and multistate metropolitan areas, the provisions at issue here do not incorporate clause (iii) of § 807(b)(1)(A), which requires the assignment of a rating. This is consistent with Senator Riegle's statement quoted above. In that statement, Senator Riegle noted that agencies do not have to assess ratings for each metropolitan and nonmetropolitan area within a state in which an institution maintains a branch. Although Senator Riegle was speaking of multistate institutions, the text of CRA § 807(b)(1)(B) indicates that Congress intended to apply a similar approach to single-state institutions operating branches in a metropolitan area.

Thus, the separate discussions prepared for metropolitan areas and nonmetropolitan areas need only contain "conclusion for each assessment factor identified in the regulations" and the "facts and data supporting such conclusions." For these purposes, you ask what type of conclusions are required. You indicate that in evaluation areas where on-site

examinations are conducted, the agencies will provide affirmative conclusions regarding an institution's performance under each assessment factor and supporting facts and data. However, as noted above, the agencies would prefer not to be required to conduct an on-site examination in all metropolitan and nonmetropolitan areas. For areas in which an on-site examination is not conducted, the agencies would prefer to provide only lending and demographic data without comment or, alternatively, to provide such data with a conclusion such as "the data presented are not inconsistent with the overall rating of the institution." You ask whether one or both of these approaches would qualify as a "conclusion" within the meaning of the CRA.

The agencies' first option, providing only lending and demographic data without comment, does not satisfy the requirements of the statute. Section 807(b)(1)(A) requires that a written evaluation include both facts and data and the agencies' conclusions based on the facts and data. Thus, the statute clearly distinguishes between supporting facts and data on the one hand and conclusions on the other hand. Accordingly, lending and demographic data would not qualify as conclusions under the statute.

As for the agencies' second option, providing lending and demographic data together with a statement that "the data presented are not inconsistent with the overall rating of the institution," we note that § 807(b)(1)(A)(i) requires that conclusions be expressed regarding the institution's performance under each of the regulatory assessment factors. Thus, your conclusions must be tied to the assessment factors, rather than to an institution's overall performance. At a minimum, therefore, the agencies should state that "the data presented are not inconsistent with the overall conclusions expressed with respect to each assessment factor."

We believe that a statement such as this would be sufficient under the statute. In our view, the type of conclusion required should be determined in the context of the overall review process prescribed by the statute. Conclusions that form the direct underpinning for a specific exam rating clearly need to be more definitive than those that do not. Separate ratings are not required for metropolitan and nonmetropolitan assessment areas within a single state. Thus, the conclusions expressed for those areas and their supporting data are evaluated together with conclusions and data drawn from other areas within a state to form the statewide rating and written evaluation. At the state level, definitive conclusions and supporting facts and data are clearly required to support the required statewide rating. Below this level, however, we believe that a conclusion such as that suggested above would be legally sufficient.

As noted above, agency determinations must have a rational basis. What constitutes a rational basis will necessarily vary depending on the type of determination made. The less definitive the conclusion, the lower the level of supporting data required to provide a rational basis for the conclusion. A conclusion that "the data presented is not inconsistent with the overall conclusions expressed with respect to each assessment factor" would, in our view, be reasonably supported if an agency gathers and reviews baseline data regarding each of the relevant assessment factors. We defer to the expertise of the compliance policy staff of each agency to determine the precise type and amount of baseline data necessary to provide a reasonable basis for a conclusion of the type envisioned.

**B. What constitutes an "assessment-factor" for statutory purposes now that the new CRA regulation eliminated the twelve assessment factors that formed the basis for past CRA evaluations?**

Under § 807(b)(1)(A)(i), as added by FIRREA, the written evaluation of an institution's overall CRA performance, and of its performance in each evaluation area must:

state the appropriate [agency's] conclusions for each assessment factor identified in the regulations prescribed...to implement this chapter.<sup>24</sup>

Prior to the agencies' May rulemaking, the CRA regulation required an institution's CRA performance to be evaluated on the basis of twelve "assessment factors," some of which were of procedural nature (e.g., participation by the board of directors in developing CRA policies) and some of which were more substantive (e.g., number and types of loans made in the local community).<sup>25</sup>

The CRA rulemaking conducted by the agencies earlier this year substantially revised the CRA regulation "in order to promote consistency, to reduce compliance burden and to improve performance."<sup>26</sup> The current CRA regulation no longer uses the term "assessment factors." Instead, under the current regulation, CRA performance of large retail

institutions, for example, is generally to be assessed under three “performance tests”—a lending test, and investment test, and a services test.<sup>27</sup> Moreover, for each of these tests, the regulation lists detailed “performance criteria.”<sup>28</sup>

If the twelve “assessment factors” of the former regulation are compared to the three “performance tests” and detailed “performance criteria” in the current regulation, no clear pattern emerges. A few of the former “assessment factors” appear to correspond most closely to the new “performance tests,”<sup>29</sup> while several others appear to correspond most closely to certain of the “performance criteria.”<sup>30</sup> However, the majority of the former “assessment factors” have no clear counterpart in the current regulation.

Given these developments, you ask whether the statutory requirements that the agencies state conclusions regarding each “assessment factor” should be deemed to require conclusions regarding the applicable “performance tests” or the detailed “performance criteria” in the current regulation. In our view, the performance tests are the most appropriate choice, for several reasons.

First, the performance tests in the current regulation perform the same function as the assessment factors in the former regulation, that is, they are factors the agencies use to assess performance. An institution’s CRA rating under the former regulation was based directly on its performance under the twelve criteria. Similarly, an institution’s CRA rating under the current regulation is based directly on its performance under the applicable performance tests. Thus, from a functional perspective, the performance tests of the current regulation correspond most closely to the assessment factors of the former regulation. The performance criteria, on the other hand, correspond more closely to the “facts and data” that the statute requires the agencies to present in support of their conclusions.

Second, we believe that a written evaluation that expresses an agency’s conclusions with respect to the performance tests, rather than the performance criteria, will come closer to achieving the policy objectives that underlie the statutory disclosure requirement. The purpose of the disclosure requirement is to ensure that the public is clearly informed of the basis for an agency’s ratings. As noted above, CRA ratings will be based directly on the performance tests. In order to provide meaningful disclosure, therefore, it makes sense for the agency’s written evaluations to focus on the performance tests.

Accordingly, we conclude that the agencies are required to present conclusions regarding the applicable performance tests. This does not mean that the performance criteria are irrelevant, however. As noted above, the written evaluations must also provide facts and data in support of their conclusions. An agency is not required to state a conclusion on each of the performance criteria in the new regulation, but the facts and data presented in the evaluation in support of conclusions regarding the performance tests should relate to one or more to the performance criteria.

In reaching the foregoing conclusions, we have relied upon the representations made in your memorandum. Our conclusions depend upon the accuracy and completeness of those facts. Any material change in circumstances might result in different conclusions.

If you have further questions regarding these matters, please feel free to contact John Flannery, Attorney, Office of the Chief Counsel, OTS, at (202) 906-7293

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<sup>1</sup>Pub. L. 95-128, 91 Stat. 1147 (1977)

<sup>2</sup>Pub. L. 103-328, § 110, 108 Stat. 2364 (1994)

<sup>3</sup>For purposes of this memorandum, an “evaluation area” is one of the statutorily-designated geographic areas (e.g., each state, each multistate metropolitan area, each metropolitan area, and the remainder of the non metropolitan area of a state where the institution maintains a branch) for which the agencies must disclose certain assessment information, discussed below, either in a separate written evaluation or in a separate discussion within a written evaluation.

<sup>4</sup>See 12 U.S.C.A. § 2901(b) (West Supp. 1995).

<sup>5</sup>See 12 U.S.C.A. § 2903 (West 1989).

<sup>6</sup>Pub. L. 101-73, § 1212(b), 103 Stat. 527 (1989).

<sup>7</sup>See 12 U.S.C.A. § 2906 (West Supp. 1995).

<sup>8</sup>12 U.S.C.A. § 2906(b)(1)(B) (West Supp. 1995).

<sup>9</sup>12 U.S.C.A. § 2906(d) (West Supp. 1995).

<sup>10</sup>12 U.S.C.A. § 2906(d)(3) (West Supp. 1995).

<sup>11</sup>12 U.S.C.A. § 2906(d)(3)(B) (West Sup. 1995).

<sup>12</sup>58 Fed. Reg. 67466, 67467 (Dec. 21, 1993).

<sup>13</sup>See 60 Fed. Reg. at 22156 (May 4, 1995). All references to the CRA regulation in this memorandum are to the OTS’s CRA regulation. However, each of the agencies has a corresponding CRA regulation, see 12 C.F.R. Part 25 (OCC), 12 C.F.R. Part 228 (FRB), and 12 C.F.R. Part 345 (FDIC).

<sup>14</sup>See 60 Fed. Reg. at 22220 (to be codified at 12 C.F.R. § 563e.51).

<sup>15</sup>12 U.S.C.A. § 2906(d)(1)(B) (West Supp. 1995).

<sup>16</sup>140 Cong. Rec. S4801, S4819 (April 1994).

<sup>17</sup>See 5 U.S.C.A. § 706(2)(A) (West Supp. 1995).

<sup>18</sup>E.g., *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962); see also OTS Op. Chief Counsel, December 17, 1992, p. 11.

<sup>19</sup>Also, as stated previously, a statewide written evaluation of a multistate institution must include a discussion of how the examination was performed and a list of the individual branches examined.

<sup>20</sup>12 U.S.C.A. § 2906(d)(2) (West Supp. 1995).

<sup>21</sup>12 U.S.C.A. § 2906(b)(1)(B) (West Supp. 1995).

<sup>22</sup>12 U.S.C.A. § 2906(d)(3)(A) (West Supp. 1995). This provision contains a technical drafting error in that it cross-references subparagraphs (A) and (B) of § 807(b)(1), rather than clauses (A)(i) and (A)(ii) of § 807(b)(1). Prior to enactment of the IBBEA, clauses (A)(i) and (A)(ii) appeared as subparagraphs (A) and (B), respectively. Section 807(d)(3)(A) was apparently drafted with this enumeration scheme in mind. During the legislative process, however, a provision was added to the IBBEA that redesignated subparagraphs (A) and (B) of § 807(b)(1) as clauses (A)(i) and (A)(ii). When this change was made, the drafter apparently forgot to make conforming changes to the cross-reference in § 807(d)(3)(A). Thus, if the cross reference were read literally, the agencies would be required in the evaluations of multistate institutions to disclose ratings for each metropolitan area in which an institution maintains a branch and the remaining nonmetropolitan areas within a state if the institution maintains a branch there. However, the Riegle/Wellstone colloquy quoted above clearly indicates that this was not what Congress intended. It is a well-established principle of

statutory construction that mistakes with respect to statutory cross-references should be corrected by persons charged with interpreting a statute if necessary to effectuate Congressional intent. 2A Sutherland, *Statutory Construction*, § 47.38 (5th ed. 1992).

<sup>23</sup>12 U.S.C.A. § 2906(b)(1)(A)(i) and (ii) (West Supp. 1995).

<sup>24</sup>12 U.S.C.A. § 2906(b)(1)(A)(i) (West Supp. 1995).

<sup>25</sup>See 12 C.F.R. § 563e.7 (1995).

<sup>26</sup>58 Fed. Reg. At 67468. See also 60 Fed. Reg. At 22158, 22162.

<sup>27</sup>See 60 Fed. Reg. At 22213 (to be codified at 12 C.F.R. § 563.21). Not all institutions are subject to the lending, services, and investment tests. Modified requirements apply to certain small institutions, wholesale or limited purpose institutions, and institutions that are operating under an approved strategic plan. See 60 Fed. Reg. At 22213 (to be codified at 12 C.F.R. § 563.21(a)). The data gathered should pertain to the tests applicable to the institution being evaluated.

<sup>28</sup>For example, under the lending test, the agencies must consider a variety of criteria including the proportion of an institution's lending in its service area, the dispersion of lending in its service area, and the number and amount of loans in low-, moderate-, middle- and upper-income geographies in the institution's assessment area. See 60 Fed. Reg. At 22214 (to be codified at 12 C.F.R. § 563e.22(b)(2)).

<sup>29</sup>For example, compare 12 C.F.R. § 563.7(l) and (h) (1995), with new § 563.22(a)(1) and § 563.23(a), respectively.

<sup>30</sup>For example, compare 12 C.F.R. § 563e.7(e) and (g) (1995), with new § 563e.22(b)(2)(i) and (ii) and § 563e.24(d)(2), respectively.