TESTIMONY OF

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COMMISSIONER OF BANKS

COMMONWEALTH OF MASSACHUSETTS

On

REQUEST FOR COMMENT ON THE COMMUNITY REINVESTMENT ACT REGULATIONS

Before the

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, FEDERAL DEPOSIT INSURANCE CORPORATION, OFFICE OF THE COMPTROLLER OF THE CURRENCY, AND OFFICE OF THRIFT SUPERVISION

July 19, 2010, 9:30 a.m.

L. William Seidman Center
Federal Deposit Insurance Corporation
3501 Fairfax Drive
Arlington, VA 22201-2305

Introduction

Good morning. My name is Steven L. Antonakes and I serve as the Commissioner of Banks for the Commonwealth of Massachusetts. The Division of Banks (Division) is the primary regulator of 230 Massachusetts state-chartered banks and credit unions with total combined assets in excess of $255 billion. The Division is also charged with the licensing and examination of nearly 1,000 non-bank mortgage lenders and brokers, over 4,000 individual mortgage loan originators, and an additional 3,500 non-bank financial entities, including check cashers, money transmitters, finance companies, and debt collectors.

I would like to thank the federal banking agencies for the opportunity to provide comment on the agencies' Community Reinvestment Act (CRA) regulations and offer my view on how the agencies should revise their CRA regulations to better serve the goals of CRA. The last time that the CRA regulations were reviewed and amended in their entirety was in 1995. The mortgage market has changed dramatically since then and these hearings begin the process to consider the first substantive changes to CRA since our economic challenges and foreclosure crisis took hold.

Over the past few years, the mortgage industry has significantly consolidated resulting in a small handful of nationwide money center banks now holding a dominant share of the mortgage market. Prior to this consolidation, a number of developments significantly impacted the banking and mortgage industries. These include the widespread securitization of mortgage loans; the outsourcing of mortgage origination channels resulting in broader access to credit, but weaker controls; new product offerings;

and significant improvements in technology which produced new delivery systems, automated underwriting, and risk-based pricing.

However, ongoing documented disparities between the pricing of loans made to white borrowers versus African American and Hispanic borrowers clearly demonstrates that more needs to be done. Unfortunately, it will take years for many urban communities to recover from the devastation of the ongoing foreclosure crisis. More so than ever before, access to sustainable homeownership opportunities in low- and moderate-income neighborhoods will be essential. Simply put, we cannot allow the events of the past few years to undo the significant gains in homeownership among our nation's African American , Hispanic, and Asian communities that CRA helped enable.

Given today's very different banking landscape, the ongoing financial crisis, and the near passage of landmark financial reform legislation, it is the appropriate time to consider the CRA regulations' strengths and weaknesses; the regulations' ongoing relevance; and how the CRA regulations can be modernized to make them even more effective in the years ahead.

In my testimony today, I will primarily focus on three areas. First, I will address the false notion that CRA had a role in causing our ongoing financial difficulties. Second, I will relate the Massachusetts experience over the past 28 years to broaden CRA to cover institutions beyond banks, including state-chartered credit unions and most recently licensed non-bank mortgage companies. Finally, I will provide some thoughts on how the federal CRA regulations can be further improved to enhance the accessibility of credit in low- to moderate-income neighborhoods and individuals and to ensure that such credit is sustainable over the long-term.

CRA Played No Role in the Ongoing Financial Crisis

As our foreclosure crisis has deepened, an argument has been advanced recently by some that the subprime crisis was caused, in part, by CRA in that it supposedly encouraged banks to sacrifice underwriting standards to promote increased homeownership opportunities. I started my regulatory career over 20 years ago as a bank examiner charged with conducting CRA examinations. I later managed the Division's CRA examination effort. CRA is arguably the most significant of all banking laws passed in the 1960s and 1970s to address the issue of redlining or refusing to lend in low- and moderate-income communities despite sound lending opportunities. In my view, the supposition that CRA is the root cause of the rise in foreclosures we are seeing today and the turmoil in the credit markets is completely without merit.

First, while CRA requires banks to serve all communities with which they do business, the Act and regulations specifically prohibits banks from making unsafe and unsound loans. The drafters of CRA recognized that unsustainable loans are more harmful to consumers and communities than an absence of credit availability. In addition to the obvious safety and soundness concerns, CRA-covered lenders that engaged in high risk lending -- most notably Fremont Investment and Loan, Countrywide, National City, IndyMac, and Washington Mutual, among several others -- should have, at a minimum, been strongly criticized by federal regulators in terms of CRA compliance for originating, funding, and/or purchasing mortgage loans that borrowers could not afford and for the devastating resulting impact on neighborhoods.[1] High CRA ratings awarded in these

[1] While Fremont Investment and Loan was ultimately assigned a less than Satisfactory CRA rating by the FDIC in 2008, it previously scored an "Outstanding" CRA rating. Virtually all large banks that had significant concentrations of non traditional mortgage loans also scored "Satisfactory" or "Outstanding" CRA Ratings.

instances were inappropriate. Accordingly, the misapplication of CRA, not the law itself, was the problem. Banks should have been punished instead of rewarded for marketing, originating, and funding loans that were not affordable or sustainable.

Second, banks, lenders and Wall Street firms did not develop later generations of subprime mortgage loans with increased risk layering and often confusing terms out of an altruistic sense of obligation to meet the needs of low- and moderate-income individuals and communities. Although reduced documentation and option adjustable-rate mortgages have existed for many years, they traditionally served a niche, higher income market. There are very few instances in which a reduced documentation loan and its corresponding higher pricing structure would be appropriate for first time homebuyers. Moreover, a finite market should have existed for those interested in paying above market prices in order to provide less documentation to qualify for mortgage credit. Instead, stated income loans became the product of choice. Pushing stated income loans to low-income borrowers for homes they could not afford served only one purpose – greed.

State Consumer Protection Efforts and Massachusetts Application of CRA

The states have long been recognized as laboratories for innovation. Accordingly, many of the nation's key financial consumer protections were first implemented on the state level. For example, Massachusetts had systems for deposit insurance that predated the creation of the Federal Deposit Insurance Corporation. In addition, the federal Truth-In-Lending Act was primarily based on the Truth-In-Lending Act which was enacted in Massachusetts two years earlier. In addition, to date, 35 states, including Massachusetts, and the District of Columbia have enacted subprime and predatory lending laws[2].

[2] Source: National Conference of State Legislatures, www.ncsl.org.

State efforts to strengthen loan origination practices and develop and implement the Nationwide Mortgage Licensing System (NMLS) to improve the supervision of non-bank mortgage lenders, brokers, and loan originators is another example of state innovation which provided the framework for federal action. The states began developing the NMLS in 2003 as a means for identifying and tracking mortgage entities. Congress embraced this effort through the 2008 passage of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). The SAFE Act sought to raise minimum standards throughout the United States by giving states until July 31, 2009 to pass laws licensing loan originators and to utilize the NMLS. Today, all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands have enacted legislation to implement the SAFE Act's requirements.

Some assert that preserving the rights of the states to promulgate higher consumer protection standards, such as CRA, will balkanize consumer protection standards and create excessively burdensome inconsistencies. Advocates of this position argue they will be forced to operate under a "patchwork quilt" of varying state laws. However, the facts don't support this assertion. When a high federal standard is established – generally based on laws tested at the state level – the states tend to harmonize to the federal standard.

The SAFE Act is a very recent example of a coordinated state-federal approach that is accomplishing important consumer protection goals in addressing weaknesses in mortgage regulation and doing so in a nationally consistent manner. The states implemented the provisions of the SAFE Act in a rapid and seamless manner. As a result of new federal standards that created a floor and not a ceiling, mortgage regulation and applicable law has never been more consistent.

Additionally, the notion that state enforcement will result in disparate standards is also without evidence. States have shown consistency and coordination on landmark nationwide enforcement actions.

But what also must be noted is the importance of preserving that ability of states to act in the absence of adequate federal consumer protections. For the past decade the states have filled significant voids to address issues such as predatory lending, foreclosure scams and data security breaches. There is significant benefit to well-coordinated state-federal regulation in terms of the varying perspectives and incentives. Also, mandating that the federal standards serve as a "floor not a ceiling" to state action will help promote stronger consumer protection and need not lead to the much-maligned "patchwork quilt".

In addition to conducting regular safety and soundness examinations of all state-chartered banks and credit unions, the Division also conducts consumer compliance examinations and CRA and fair lending examinations of all state-chartered banks and credit unions. In Massachusetts, the Division created administrative requirements in 1975 mandating that state-chartered banks serve their entire communities, two years prior to the passage of the federal Community Reinvestment Act. A specific Massachusetts Community Reinvestment Act was later enacted in 1982.[3]

[3] See Massachusetts General Laws, Chapter 167 §14 and its implementing regulations at 209 CMR 46.00 *et seq.*

Massachusetts Experience Extending CRA to Credit Unions

The Massachusetts CRA has always had broader coverage than the federal law. Massachusetts remains the only state to examine all credit unions, including community, industrial, and other common bonds, for their CRA performance[4]. Extending CRA to credit unions is not as simple as just cutting and pasting the bank regulations and applying them to credit unions. Massachusetts passed the nation's first credit union act and has chartered some of the oldest credit unions in the country. The Division's extensive experience in supervising credit unions and our understanding of the credit union movement has helped us to craft some unique distinctions in the regulations to account for the differences between banks and credit unions.

First, for credit unions that do not serve a geographic area (i.e. industrial credit unions), the notion of an "assessment area" has limited value. Since they can only lend to credit union "members" and since their membership is based on where someone works and not where they live, such credit unions can not be expected to serve a geographic assessment area. Therefore, the Massachusetts CRA regulations[5] allow such credit unions to define their entire membership as their assessment area for the purpose of compliance with CRA.

Second, for small industrial credit unions, the parts of the examination dealing with geography are not considered under the small institution performance standards. This includes the percentage of loans originated inside the assessment area and the geographic distribution of loans. Rather, the Division reviews the credit union's loan-to-

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[4] Connecticut performs CRA examinations of community-based credit unions.
[5] See 209 CMR 46.00 *et seq*.

share ratio, its lending to members of different incomes, and its fair lending performance and record of responding to complaints.

Finally, for large credit unions (those over $1 billion in assets, adjusted annually), the Division does not conduct an Investment Test. Since credit unions are significantly limited by statute from most investment activity, including investments that might be considered under the Investment Test for large institutions, such a review would be meaningless. Therefore, the Division uses the Lending and Service Tests to evaluate a large credit union's CRA performance.

Massachusetts Effort to Extend CRA to Mortgage Companies

The Massachusetts 2007 foreclosure prevention law also extended Community Reinvestment Act-like requirements to licensed mortgage lenders originating 50 or more mortgage loans (reportable under Home Mortgage Disclosure Act) a year in the Commonwealth. Thus, Massachusetts became the first state in the nation to extend CRA to non-depository lenders. This is further evidence of how deeply Massachusetts believes CRA is part of the answer to the current economic difficulties and not part of the problem.

The CRA mandate requires the Division to conduct public examinations of licensed mortgage lenders to determine their record of meeting the mortgage credit needs in the Commonwealth. Similar to the Massachusetts experience in supervising credit unions for CRA, the Division has had to make adjustments to its regulations for mortgage lenders. Most importantly, the whole idea of an assessment area is irrelevant for the non-bank mortgage lending industry. These companies do not take deposits and, in many cases, do not have any branches. In fact, many companies do not even have a physical presence in Massachusetts. Therefore, the Division has eliminated any requirement for a mortgage lender to define a specific assessment area and, instead, evaluates the mortgage lender's performance in meeting the mortgage credit needs throughout the Commonwealth, including both lending and services.

In an effort to increase the pace of lenders responding to homeowners hardest hit by the foreclosure crisis, successful loan modifications completed for delinquent borrowers (or lack thereof) are also assessed during the Division's examination process. In addition to loan modifications, other efforts to prevent foreclosures are reviewed, including loans and services designed to keep delinquent homeowners in their homes.

Finally, the Division has included a suitability standard in its regulations for mortgage lenders. The federal CRA regulations include an assessment of a bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies. The Massachusetts regulations have extended this concept to not only review whether a mortgage lender uses flexible or innovative practices, but also consider the suitability of such products or practices for low- and moderate-income individuals.

To date, 19 mortgage lender CRA examinations have been completed by the Division. The public ratings and public evaluations of 11 licensed mortgage lenders are available for public download from our website.

Suggestions to Improve the CRA Regulations

In my testimony, I have provided information relative to how Massachusetts has expanded the reach of CRA to include credit unions and non-bank mortgage lenders. In addition, I offer the following ideas for modernizing the CRA regulations to make them more effective in fulfilling the goals of the Act of ensuring access to credit throughout the United States, including communities and individuals of low- and moderate-income.

Require Affiliate Lending to Be Reviewed

Earlier in my testimony, I rejected the false contention that CRA was a contributing factor to the current economic crisis. However, there is another fallacy that is being spread by a few of the defenders of large banks; namely that CRA-covered banks had nothing to do with the subprime mortgage mess. It is true that the vast majority of community banks did not engage in subprime or non-traditional mortgage lending, did not buy subprime loans, did not fund subprime lenders, and did not securitize subprime mortgage-backed assets. However, some of the largest banks in this country were either directly or indirectly involved in the subprime and non-traditional mortgage markets. And yet, in nearly every case, the largest banks have consistently received "Satisfactory" or "Outstanding" CRA ratings.

If CRA mandates that a bank only lend consistent with safe and sound banking practices, how is it then that these large, nationwide banking institutions were able to consistently achieve "Satisfactory" or Outstanding" CRA ratings? Part of the answer may be that the current CRA regulations basically allow banks to only have their "good" loans considered and their "bad" loans can be shielded in either a subsidiary or affiliate institution. The joint CRA regulations of the four federal bank regulators specify that a bank, "at a bank's option", can have the lending, investment, and service activities of an "affiliate" considered. An affiliate can be a subsidiary, a parent organization, or other affiliated company.[6] Because of the way the CRA regulations are written, a bank can structure its lending, investments, and services so that activities that enhance its CRA performance are either done directly by the bank or through an affiliate at its choosing. Activities done by an affiliate that might detract from a bank's CRA performance would not be evaluated since no bank would opt to have such activities considered. Even worse, the affiliate option is parsed further to the bank's assessment area. So, for example, a bank could have the activities of an affiliate considered in one assessment area if those activities helped, and opt not to have the activities considered in other assessment areas if the bank thought they might hurt its CRA rating.

A review of some of the largest banking institutions in the country, including some that have recently failed, reveals that most have participated in subprime and non-traditional lending through affiliated institutions. Others have been involved in the subprime market by funding non-bank subprime lending or by buying pools of subprime mortgages. I am not aware of any bank that has opted to have such activities conducted by non-bank affiliates considered as part of its CRA examination.

The regulatory option for affiliate activities has essentially created a loophole for large banks with multiple subsidiaries and other affiliates to game the system. It has also contributed to the belief by some CRA defenders that CRA-covered banks did not play any role in the recent subprime meltdown. I would strongly encourage the federal

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[6] *Affiliate* means any company that controls, is controlled by, or is under common control with another company. The term "control" has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company. See 12 CFR 228.12(a) (Board of Governors of the Federal Reserve System), 12 CFR 345.12(a) (Federal Deposit Insurance Corporation), 12 CFR 25.12(a) (Office of the Comptroller of the Currency), and 12 CFR 563e.12(a) (Office of Thrift Supervision).

regulators to change this system so that all lending and activities by affiliates of a bank be a mandatory part of the review of a bank's CRA performance.

Increase Review Standards for the Largest Institutions

Existing federal CRA regulations define a large bank as having assets over $1 billion (adjusted annually, currently at $1.098 billion). These institutions are often, in practice, examined every 4 to 5 years if they have previously achieved a CRA rating of "Satisfactory" or "Outstanding". However, as the banking industry has further consolidated, the $1 billion asset threshold has become increasingly antiquated. It seems entirely inappropriate for a $1 billion community bank to be examined under the same schedule and methodology as the nation's largest and most complex institutions which often have assets from $500 billion to over $1 trillion and command large and increasing market share. For example, the nation's largest bank mortgage lender was last examined for CRA by its primary federal regulator as of December 31, 2006 for which it received an "Outstanding" rating. Its prior CRA examination was conducted as of December 31, 2001 and it received an "Outstanding" rating. The five years between examinations matches the previous interval since the bank's prior examination in 1996.

Any attempt to improve the application of CRA should seek to ensure that the scope and frequency of CRA examinations is commensurate with a bank's market share. Currently, the focus and scrutiny on smaller banks relative to CRA remains disproportionate to the supervision of our nation's largest banks when you consider the dominant market share the nation's largest banks command. Efforts to further streamline examinations and compliance costs for small banks (and intermediate small banks) should be considered while a significantly more robust annual examination process should be undertaken for the top 20 bank lenders in the country.

Using the current categories, I would recommend that the definition of "Small Bank" be raised from less than $1.098 billion to less than $10 billion and the definition of "Intermediate Small Bank" be raised from between $274 million and $1.098 billion to between $1 billion and $10 billion. Furthermore, I would encourage the federal agencies to consider including affiliated depository institutions in the calculation of the asset thresholds. In other words, if a bank would otherwise be considered a Small Bank, but is part of Bank Holding Company that is larger that $10 billion, then that bank would be evaluated under the Large Bank tests.

Downgrade Banks that Originate Unsustainable Home Mortgage Loans

As I noted earlier, our new mortgage lender CRA regulations include a suitability standard. Consideration should be given to require such an assessment under the federal CRA regulations. The origination of unsustainable loans should have an adverse impact on a bank's CRA rating. Accordingly, CRA examinations should be expanded to consider loan performance and any patterns of early payment defaults.

Mandate the Evaluation of Loan Modification Efforts

I am aware that on June 17, 2010, the federal agencies announced a proposed change to the CRA regulations to support stabilization of communities affected by high foreclosure levels. The proposed change specifically would encourage depository institutions to support the Neighborhood Stabilization Program (NSP) administered by the U.S. Department of Housing and Urban Development (HUD). As I noted earlier in my testimony, this is something that the Division has already done with its CRA-type requirements for certain mortgage lenders.

Existing efforts to modify delinquent mortgage loans have been disappointing. Moving forward, CRA should be utilized to measure the pace, number, and quality of loan modifications for homeowners seeking assistance within the existing Services Test. This type of public analysis of a bank's efforts to modify loans, where appropriate, would perhaps provide the further incentive necessary to take action to avoid unnecessary foreclosures. I strongly support the proposed changes to the CRA regulations to encourage participation in the NSP program.

Downgrade Banks Whose Partnerships Harm the Underbanked

Federal regulators should also hold banks accountable for activities conducted outside as well as within their assessment areas that result in the gouging of unbanked or underbanked consumers. The true spirit of CRA embodies an accessible banking industry which promotes savings and increased credit opportunities in order to promote upward economic mobility. Accordingly, the CRA regulations should be utilized to downgrade the CRA ratings of banks that engage in partnerships with third parties to offer payday loans, refund anticipation loans, or costly check cashing services. These third party relationships are often utilized by national banks and federal thrifts to evade state consumer protection laws and usury laws by arguing that federal preemption extends to these third party providers.

The Division recently entered into six Consent Orders with Massachusetts licensed check cashers who had partnered with out-of-state banks to steer Social Security and SSI beneficiaries into abusive direct deposit arrangements, whereby substantial portions of recipient benefit checks were assessed multiple fees bearing no correlation to the risk of cashing these instruments. The Consent Orders provided for the immediate termination of these direct deposit arrangements. In addition, the Division filed a CRA public comment letter with the bank's primary regulator in the case of another bank operating a similar direct deposit program through third-party check cashers in the Commonwealth. In its comment letter, the Division stated that if an institution has identified a need for basic banking services, either inside or outside its assessment area, CRA should compel it to look for ways to provide this service in a less costly manner. Further, the institution also should give strong consideration to providing consumer education programs which would encourage individuals to open a traditional account at a bank rather than seeking out the services of a check casher that is luring customers in with the promise of a Federal Deposit Insurance Corporation (FDIC) insured bank account for which they have no access. Ideally, these "partnerships" to offer high rate loans or charge high fees for consumers to cash public assistance and social security benefit checks should be banned. Until that is accomplished, CRA should be utilized to strongly criticize participating institutions for engaging in these unfair or deceptive activities regardless of whether they occur within or outside a bank's assessment area.

Encourage Additional Access to Banking Services

Conversely, banks should be encouraged to be flexible in designing products and services targeted to low- to moderate-income and underbanked consumers. Currently, over 120 banks in Massachusetts, which includes 75 percent of the Commonwealth's state-chartered banks, participate in the *Basic Banking Program,* a voluntary initiative established in 1994 through the Massachusetts Community & Banking Council (MCBC).

The goal of the Basic Banking Program is to provide affordable checking and savings banking alternatives for people with modest incomes.

By establishing traditional banking relationships, a consumer is able to accumulate significant transaction cost savings over non-traditional, high-cost, banking services. The availability of flexible and low-cost financial products within our local banks has helped to draw-in unbanked consumers who have historically elected to rely on check-cashing and/or pre-pay money businesses. Having affordable banking options, as the one endorsed by MCBC, has played a role in Massachusetts being one of the ten States with the lowest percentage of unbanked households (4%).[7]

I commend the FDIC, in particular, for its recent efforts to expand services to the unbanked and underbanked. In 2008, the FDIC launched a two-year pilot program to study the feasibility of banks offering affordable small-dollar loans as an alternative to high-cost credit products, such as payday loans and high-cost overdraft programs. The study concluded that banks can offer such affordable small-dollar loan programs at a profit and within their business strategies. CRA can be an important incentive to encourage banks to offer such affordable alternatives to payday loans or overdrafts. The agencies should consider amending the CRA regulations to provide an incentive to offer expanded access to banking services for low- to moderate- and underbanked individuals and geographies.

Explicitly Reference State CRA Laws and Regulations for Interstate Branches

The Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994 enabled banks to merge and branch across state lines. In doing so, Congress clarified that

[7] 2009 FDIC's National Survey of Unbanked and Underbanked Households.

a bank that branched into a state other than its home state had to comply with state consumer protection laws. 12 U.S.C. 36(f)(1)(a) states that, unless preempted:

> The laws of the host State regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches shall apply to any branch in the host State of an out-of-State national bank to the same extent as such State laws apply to a branch of a bank chartered by that State.

Massachusetts is one of a handful of states that has an active CRA examination program. Many other states have CRA laws on their books. However, there is nothing in the CRA regulations to acknowledge that banks with interstate branches must comply with such laws, nor do the interagency examination procedures require examiners to check for compliance with such state laws. I encourage the federal agencies to amend the CRA regulations to explicitly include a requirement that banks with out-of-state branches comply with the CRA laws and regulations in the host states in which they do business.

Changes to Geographic Coverage

As I noted earlier, in implementing CRA-type requirements for certain mortgage lenders, the Division has eliminated the requirement to define a specific assessment area. Rather, the Division assesses the mortgage lender's lending and services in all areas of the state to ensure that low- and moderate-income neighborhoods are adequately served and not arbitrarily excluded. This may be a good model for certain banks with no or limited physical presence in areas where it does business, including Internet-based lenders.

Require Large Banks to Report Consumer Loan Data

The current CRA regulations allow a bank, at its option, to report consumer loan data to the federal agencies, including motor vehicle, credit card, and home equity loans. Consumer loan products, especially credit cards and installment loans have become a significant portion of some institution's income stream. High interest rates and fees associated with these loans and loan products have a major impact on consumers. The types of products and level of activity should be reflected in public evaluations when such activity has a large impact on consumers. I encourage the federal agencies to consider amending the CRA regulations to require large banks, which originate a disproportionately large proportion of credit card and other consumer loans, to report their consumer loan activity. In addition, any adverse fair lending or unfair or deceptive acts or practices in the area of consumer lending should negatively impact the institutions' overall CRA rating.

Conclusion

I commend the agencies for taking the time to consider how CRA can be strengthened and expanded. We have witnessed significant changes since CRA's passage and the last round of significant amendments to its implementing regulations in 1995. Given these changes, I believe now is the right time to modernize the regulations by expanding CRA's coverage and enforcement, and by ensuring that loans made in low- and moderate-income communities are sustainable. Thank you for the opportunity to testify today. I look forward to answering any questions you may have.

Exhibit A – 209 CMR 46.00 Community Reinvestment

Exhibit B – 209 CMR 54.00 Mortgage Lender Community Investment

Exhibit A

209 CMR 46.00: COMMUNITY REINVESTMENT

Section

46.11: Authority, Purposes, and Scope

(1) Authority. The Commissioner issues 209 CMR 46.00 pursuant to authority granted by M.G.L. c. 167, § 14, as most recently amended by St. 1996, c. 238.

(2) Purposes. 209 CMR 46.00 is intended to carry out the purposes of the Community Reinvestment Act (CRA) by establishing the framework and criteria by which the Commissioner assesses an institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution, and by providing that the Commissioner takes that record into account in considering certain applications pursuant to 209 CMR 46.29.

(3) Scope.

(a) General. 209 CMR 46.00 applies to all institutions as defined in 209 CMR 46.12.

(b) Foreign institution acquisitions and national banking associations. 209 CMR 46.00 also applies to a Massachusetts branch of a bank chartered by another state, the federal government, or a foreign country that results from an acquisition. Enforcement of 209 CMR 46.00 relative to out-of-state national banking associations with a branch in the Commonwealth shall be the responsibility of the Office of the Comptroller of the Currency, pursuant to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Public Law 103-123).

(c) Advisory rulings. Each official interpretation by the Federal Financial Institutions Examination Council (FFIEC) or appropriate Federal banking regulatory agency of the regulations issued under the Community Reinvestment Act (12 USC 2901 et seq.) that is similar in substance to a provision of 209 CMR 46.00 shall, until rescinded by the FFIEC, be deemed by the Commissioner to be an advisory ruling issued under M.G.L. c. 30A, § 8; provided, however, that the Commissioner may reject an interpretation of the FFIEC or appropriate Federal banking regulatory agency.

46.12: Definitions

For purposes of 209 CMR 46.00, the following definitions apply:

Affiliate, any company that controls, is controlled by, or is under common control with another company. The term "control" has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

Area median income, area median income means:

(a) the median family income for the MSA/CBSA, if a person or geography is located in an MSA/CBSA; or
(b) the statewide nonmetropolitan median family income, if a person or geography is located outside an MSA/CBSA.

Assessment area, a geographic area delineated in accordance with 209 CMR 46.41 or another delineation for certain credit unions made pursuant to 209 CMR 46.41(8).

Automated teller machine (ATM), an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the institution at which deposits are received, cash dispersed, or money lent.

Branch, a staffed banking facility established or acquired as a branch under Massachusetts law.

CBSA, a core based statistical area as defined by the Director of the Office of Management and Budget.

CMSA, a consolidated metropolitan statistical area as defined by the Director of the Office of Management and Budget.

Commissioner, the Commissioner of Banks.

Community development, community development means:

(a) affordable housing (including multifamily rental housing) for low- and moderate-income individuals;
(b) community services targeted to low- and moderate-income individuals;
(c) activities that promote economic development by financing businesses or farms that

meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or
(d) activities that revitalize or stabilize the fishing industry.
(e) Activities that revitalize or stabilize -
(1) Low- or moderate-income geographies;
(2) Designated disaster areas; or
(3) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency; or
(4) Any other such area as determined by the Commissioner based on -

(A) Rates of poverty, unemployment, and population loss; or
(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

Community development loan, a loan that:

(a) has as its primary purpose community development; and
(b) except in the case of a wholesale or limited purpose institution:

1. has not been reported or collected by the institution or an affiliate for consideration in the institution's assessment as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan (as described in Appendix A to 12 CFR 203, the Board of Governors of the Federal Reserve System's implementing regulations for the Home Mortgage Disclosure Act); and

2. benefits the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s).

Community development service, a service that:

(a) has as its primary purpose community development;
(b) is related to the provision of financial services; and
(c) has not been considered in the evaluation of the institution's retail banking services under 209 CMR 46.24(5).

Consumer loan, a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(a) Motor vehicle loan, a consumer loan extended for the purchase of and secured by a motor vehicle;
(b) Credit card loan, a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a "credit card," as this term is defined in 209 CMR 32.02;
(c) Home equity loan, a consumer loan secured by a residence of the borrower;
(d) Other secured consumer loan, a secured consumer loan that is not included in one of the other categories of consumer loans; and

(e) Other unsecured consumer loan, an unsecured consumer loan that is not included in one of the other categories of consumer loans.

Credit Union, a corporation chartered under M.G.L. c. 171. A credit union is also an "institution" as defined in 209 CMR 46.00, except where otherwise specified by the provisions of 209 CMR 46.00.

Geography, a census tract or a block numbering area delineated by the United States Bureau of the Census in the most recent decennial census.

Home mortgage loan, a "home improvement loan" or a "home purchase loan" as defined in 12 CFR 203.2 (the Home Mortgage Disclosure Act).

Income level, income level includes:

(a) Low-income, an individual income that is less than 50% of the area median income, or a median family income that is less than 50%, in the case of a geography.
(b) Moderate-income, an individual income that is at least 50% and less than 80% of the area median income, or a median family income that is at least 50% and less than 80%, in the case of a geography.
(c) Middle-income, an individual income that is at least 80% and less than 120% of the area median income, or a median family income that is at least 80% and less than 120%, in the case of a geography.
(d) Upper-income, an individual income that is 120% or more of the area median income, or a median family income that is 120% or more, in the case of a geography.

Institution, a bank or credit union chartered under the laws of the Commonwealth or an out-of-state bank, an out-of-state national bank or a foreign bank with a branch office in the Commonwealth; provided, however, this definition shall not include a credit union where otherwise specified under 209 CMR 46.00.

Limited purpose institution, an institution that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose institution is in effect, in accordance with 209 CMR 46.25(2).

Loan location, a loan is located as follows:

(a) a consumer loan is located in the geography where the borrower resides;
(b) a home mortgage loan is located in the geography where the property to which the loan relates is located; and
(c) a small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

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

MSA, a metropolitan statistical area or a primary metropolitan statistical area as defined by the Director of the Office of Management and Budget.

Qualified investment, a lawful investment, deposit, membership share, or grant that has as its primary purpose community development, and lawful investments in the following:

(a) corporations for the purpose of micro-lending in the area of small business, small farms, and the fishing industry;
(b) corporations for the purpose of providing technical assistance to nonprofit housing corporations, small businesses and farms for the purpose of establishing creditworthiness;
(c) contributions to any private nonprofit organization organized for improving the social and economic conditions, such as community development programs, small business technical assistance, and educational institutions, in communities in which the institution has an office;
(d) contributions for the purpose of relieving suffering or distress resulting from disaster or other calamity, such as hurricane or flood, occurring in any part of the Commonwealth; and
(e) the small business capital access program (CAP), pursuant to M.G.L. c. 23A, § 57.

Small institution, (1) Definition - an institution that, as of December 31 of either of the prior two calendar years, had total assets of less than $1 billion. Intermediate small institution means a small institution 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.

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

Small business loan, a loan included in "loans to small businesses" as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

Small farm loan, a loan included in "loans to small farms" as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

Wholesale institution, an institution that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale institution is in effect, in accordance with 209 CMR 46.25(2).

46.21: Performance Tests, Standards, and Ratings, in General

(1) Performance tests and standards. The Commissioner assesses the CRA performance of an institution in an examination as follows:

(a) Lending, investment, and service tests. The Commissioner applies the lending, investment, and service tests, as provided in 209 CMR 46.22 through 46.24, in evaluating the performance of an institution, except as provided in 209 CMR 46.21(1)(b), (1)(c), (1)(d), and (1)(e).
(b) Community development test for wholesale or limited purpose institutions. The Commissioner applies the community development test for a wholesale or limited purpose institution, as provided in 209 CMR 46.25, except as provided in 209 CMR 46.21(1)(d).
(c) Small institution performance standards. The Commissioner applies the small institution performance standards as provided in 209 CMR 46.26 in evaluating the performance of a small institution or an institution that was a small institution during the prior calendar year, unless the institution elects to be assessed as provided in 209 CMR 46.21 (1)(a), (1)(b), or (1)(d). However,

credit unions which are small institutions will be evaluated in the context of their membership by-law provisions, as prescribed under M.G.L. c. 171, § 9. An institution may elect to be assessed as provided in 209 CMR 46.21(1)(a) only if it collects and reports the data required for other institutions under 209 CMR 46.42.
(d) Strategic plan. The Commissioner evaluates the performance of an institution under a strategic plan if the institution submits, and the Commissioner approves, a strategic plan as provided in 209 CMR 46.27.
(e) Credit union performance standards. The Commissioner applies the lending and service tests, as provided in 209 CMR 46.22 and 46.24 in evaluating the performance of a credit union, except as provided in 209 CMR 46.21(1)(c) and (1)(d). The investment test does not apply to credit unions. However, a credit union that achieves at least a "satisfactory" rating under the lending and service tests may warrant consideration for an overall rating of "high satisfactory" or "outstanding" depending on the credit union's performance in making qualified investments and community development loans to the extent authorized under law, in accordance with 209 CMR 46.61(6)(c).

(2) Performance context. The Commissioner applies the tests and standards in 209 CMR 46.21(1) and also considers whether to approve a proposed strategic plan in the context of:

(a) demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to an institution's assessment area(s);
(b) any information about lending, investment, and service opportunities in the institution's assessment area(s) maintained by the institution or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;
(c) the institution's product offerings and business strategy as determined from data provided by the institution;
(d) institutional capacity and constraints, including the size and financial condition of the institution, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the institution's ability to provide lending, investments, or services in its assessment area(s);
(e) the institution's past performance and the performance of similarly situated lenders;
(f) the institution's public file, as described in 209 CMR 46.43, and any written comments about the institution's CRA performance submitted to the institution or the Commissioner;
(g) the credit union's defined membership by-law provisions, as prescribed in M.G.L. c. 171, § 9, and the lending and investment authority restrictions under M.G.L. c. 171; and
(h) any other information deemed relevant by the Commissioner.

(3) Assigned ratings. The Commissioner assigns to an institution one of the following five ratings pursuant to 209 CMR 46.28 and 46.61: "outstanding"; "high satisfactory"; "satisfactory"; "needs to improve"; or "substantial noncompliance" as provided in M.G.L. c. 167, § 14. The rating assigned by the Commissioner reflects the institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution.

(4) Safe and sound operations. This regulation and the CRA do not require an institution to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the Commissioner anticipates institutions can meet the standards of this part with safe and sound loans, investments, and services on which the institutions expect to make a profit. Institutions are permitted and encouraged to develop and apply flexible underwriting

standards for loans that benefit low- and moderate-income geographies or individuals, only if consistent with safe and sound operations.

46.22: Lending Test

(1) Scope of test.

(a) The lending test evaluates an institution's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering an institution's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of an institution's business, the Commissioner will evaluate the institution's consumer lending in one or more of the following categories: motor vehicle, credit card, home equity, other secured, and other unsecured loans. In addition, at an institution's option, the Commissioner will evaluate one or more categories of consumer lending, if the institution has collected and maintained, as required in 209 CMR 46.42(3)(a), the data for each category that the institution elects to have the Commissioner evaluate.

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

(c) An institution may ask the Commissioner to consider loans originated or purchased by consortia in which the institution participates or by third parties in which the institution has invested only if the loans meet the definition of community development loans and only in accordance with 209 CMR 46.22(4). The Commissioner will not consider these loans under any criterion of the lending test except the community development lending criterion.

(2) Performance Criteria. The Commissioner evaluates an institution's lending performance pursuant to the following criteria:

(a) Lending activity. The number and amount of the institution's home mortgage, small business, small farm, and consumer loans, if applicable, in the institution's assessment area(s);
(b) Geographic distribution. The geographic distribution of the institution's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

1. the proportion of the institution's lending in the institution's assessment area(s);
2. the dispersion of lending in the institution's assessment area(s); and
3. the number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the institution's assessment area(s);

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

1. home mortgage loans to low-, moderate-, middle-, and upper-income individuals, including loans to assist existing low- and moderate-income residents to be able to remain in affordable housing in their neighborhoods;
2. small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

3. small business and small farm loans by loan amount at origination; and
4. consumer loans, if applicable, to low-, moderate-, middle-, and upper- income individuals.

(d) Community development lending. The institution's community development lending, including the number and amount of community development loans, and their complexity and innovativeness;
(e) Innovative or flexible lending practices. The institution's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies;
(f) Fair lending. The institution's performance relative to fair lending policies and practices pursuant to written policies and directives issued by the Commissioner; and
(g) Loss of affordable housing. The institution's number and amount of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units.

(3) Affiliate lending.

(a) At an institution's option, the Commissioner will consider loans by an affiliate of the institution, if the institution provides data on the affiliate's loans pursuant to 209 CMR 46.42.
(b) The Commissioner considers affiliate lending subject to the following constraints:

1. no affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and
2. if an institution elects to have the Commissioner consider loans within a particular lending category made by one or more of the institution's affiliates in a particular assessment area, the institution shall elect to have the Commissioner consider, in accordance with 209 CMR 46.22(3)(a), all the loans within that lending category in that particular assessment area made by all of the institution's affiliates.

(c) The Commissioner does not consider affiliate lending in assessing an institution's performance under 209 CMR 46.22(2)(b)(1).

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

(a) will be considered, at the institution's option, if the institution reports the data pertaining to these loans under 209 CMR 46.42; and
(b) may be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

1. may claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or
2. may claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(5) Lending performance rating. The Commissioner rates an institution's lending performance as provided in 209 CMR 46.61 (Ratings).

46.23: Investment Test

(1) Scope of test. The investment test evaluates an institution's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). A credit union will not be evaluated under the investment test except as provided under 209 CMR 46.61(6)(c).

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

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

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

(5) Performance criteria. The Commissioner evaluates the investment performance of an institution pursuant to the following criteria:

(a) the dollar amount of qualified investments;
(b) the innovativeness or complexity of qualified investments;
(c) the responsiveness of qualified investments to credit and community development needs
(d) the degree to which the qualified investments assist existing low- and moderate-income residents to be able to remain in affordable housing in their neighborhoods; and
(d) the degree to which the qualified investments are not routinely provided by private investors.

(6) Investment performance rating. The Commissioner rates an institution's investment performance as provided in 209 CMR 46.61 (Ratings).

46.24: Service Test

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

(2) Area(s) benefited. Community development services must benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s).

(3) Affiliate service. At an institution's option, the Commissioner will consider, in its assessment of an institution's service performance, a community development service provided by an affiliate of the institution, if the community development service is not claimed by any other institution.

(4) Performance criteria -- retail banking services. The Commissioner evaluates the availability and effectiveness of an institution's systems for delivering retail banking services, pursuant to the following criteria:

(a) the current distribution of the institution's branches among low-, moderate-, middle-, and upper-income geographies;
(b) in the context of its current distribution of the institution's branches, the institution's record of opening and closing branches, particularly branches located in low- and moderate-income geographies or primarily serving low- and moderate- income individuals;
(c) the availability and effectiveness of alternative systems for delivering retail banking services (e.g., ATMs, ATMs not owned or operated by or exclusively for the institution, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and
(d) the range of services provided in low-, moderate-, middle-, and upper- income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(5) Performance criteria -- community development services. The Commissioner evaluates community development services pursuant to the following criteria:

(a) the extent to which the institution provides community development services; and
(b) the innovativeness and responsiveness of community development services.

(6) Service performance rating. The Commissioner rates an institution's service performance as provided in 209 CMR 46.61 (Ratings).

46.25: Community Development Test for Wholesale or Limited-Purpose Institutions

(1) Scope of test. The Commissioner assesses a wholesale or limited purpose institution's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(2) Designation as a wholesale or limited purpose institution. In order to receive a designation as a wholesale or limited purpose institution, an institution shall file a request, in writing, with the Commissioner, at least three months prior to the proposed effective date of the designation. If the Commissioner approves the designation, it remains in effect until the institution requests revocation of the designation or until one year after the Commissioner notifies the institution that the Commissioner has revoked the designation on his/her own initiative.

(3) Performance criteria. The Commissioner evaluates the community development performance of a wholesale or limited purpose institution pursuant to the following criteria:

(a) the number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the institution, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;
(b) the use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and
(c) the institution's responsiveness to credit and community development needs.

(4) Indirect activities. At an institution's option, the Commissioner will consider in its community development performance assessment:

(a) qualified investments or community development services provided by an affiliate of the institution, if the investments or services are not claimed by any other institution; and
(b) community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in 209 CMR 46.22(3) and (4).

(5) Benefit to assessment area(s).

(a) Benefit inside assessment area(s). The Commissioner considers all qualified investments, community development loans, and community development services that benefit areas within the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s).
(b) Benefit outside assessment area(s). The Commissioner considers the qualified investments, community development loans, and community development services that benefit areas outside the institution's assessment area(s), if the institution has adequately addressed the needs of its assessment area(s).

(6) Community development performance rating. The Commissioner rates an institution's community development performance as provided in 209 CMR 46.61 (Ratings).

46.26: Small Institution Performance Standards

(1) Performance criteria. (a) Small institutions with assets of less than $250 million. The Commissioner evaluates the record of a small institution that is not, or that was not during the prior calendar year, an intermediate small institution, of helping to meet the credit needs of its assessment area pursuant to the criteria set forth in paragraph (2) of this section. (b) Intermediate small institutions. The Commissioner evaluates the record of a small institution that is, or that was during the prior calendar year, an intermediate small institution, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (2) and (3) of this section. A credit union that is, or that was during the prior calendar year an intermediate small institution will be evaluated pursuant to the criteria set forth in paragraph (2) of this section and under the service test as provided in 209 CMR 46.24.

(2) Lending test. A small institution's lending performance is evaluated pursuant to the following criteria:

(a) the institution's loan-to-deposit ratio, adjusted for seasonal variation and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;
(b) the percentage of loans and, as appropriate, other lending-related activities located in the institution's assessment area(s);
(c) the institution's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;
(d) the geographic distribution of the institution's loans, provided, however that a credit union shall be evaluated in the context of its relevant membership by-law provisions; and
(e) the institution's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s) and its performance with regard to fair lending policies and practices.

(3) Community Development Test An intermediate small institution's community development performance is also evaluated pursuant to the following criteria:

(a) The number and amount of community development loans;

(b) The number and amount of qualified investments;

(c) The extent to which the institution provides community development services; and

(d) The institution's responsiveness through such activities to community development lending, investment, and service needs.

(4) Small institution performance rating. The Commissioner rates the performance of an institution evaluated under 209 CMR 46.26 as provided in 209 CMR 46.61 (Ratings).

46.27: Strategic Plan

(1) Alternative election. The Commissioner will assess an institution's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(a) the institution has submitted the plan to the Commissioner as provided for in 209 CMR 46.27;
(b) the Commissioner has approved the plan;
(c) the plan is in effect; and
(d) the institution has been operating under an approved plan for at least one year.

(2) Data reporting. The Commissioner's approval of a plan does not affect the institution's obligation, if any, to report data as required by 209 CMR 46.42.

(3) Plans in general.

(a) Term. A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the Commissioner will evaluate the institution's performance.

(b) Multiple assessment areas. An institution with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

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

(4) Public participation in plan development. Before submitting a plan to the Commissioner for approval, an institution shall:

(a) informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;
(b) once the institution has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and
(c) during the period of formal public comment, make copies of the plan available for review by

the public at no cost at all offices of the institution in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

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

(6) Plan content.

(a) Measurable goals.

1. An institution shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

2. An institution shall address in its plan all three performance categories and, unless the institution has been designated as a wholesale or limited purpose institution, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the institution's capacity and constraints, product offerings, and business strategy.

(b) Confidential information. An institution may submit additional information to the Commissioner on a confidential basis which shall not be deemed a public record as defined in M.G.L. c. 4, § 7 or be subject to the public disclosure provisions of M.G.L. c. 66, § 10, but the goals stated in the plan must be sufficiently specific to enable the public and the Commissioner to judge the merits of the plan.

(c) Satisfactory and outstanding goals. An institution shall specify in its plan measurable goals that constitute "satisfactory" performance. A plan may specify measurable goals that constitute "outstanding" performance. If an institution submits, and the Commissioner approves, both "satisfactory" and "outstanding" performance goals, the Commissioner will consider the institution eligible for an "outstanding" performance rating.

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

(7) Plan approval.

(a) Timing. The Commissioner will act upon a plan within 60 calendar days after the Commissioner receives the complete plan and other material required under 209 CMR 46.27(5) and (6). If the Commissioner fails to act within this time period, the plan shall be deemed approved unless the Commissioner extends the review period for good cause.

(b) Public participation. In evaluating the plan's goals, the Commissioner considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the institution to public comment on the plan.

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

1. the extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;
2. the amount and innovativeness, complexity, and responsiveness of the institution's qualified investments; and
3. the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.

(8) Plan amendment. During the term of a plan, an institution may request the Commissioner to approve an amendment to the plan on grounds that there has been a material change in circumstances. The institution shall develop an amendment to a previously approved plan in accordance with the public participation requirements of 209 CMR 46.27(4).

(9) Plan assessment. The Commissioner approves the goals and assesses performance under a plan as provided for in 209 CMR 46.61 (Ratings).

46.28: Assigned Ratings

(1) Ratings in general. Subject to 209 CMR 46.28(2) and (3), the Commissioner assigns to an institution a rating of "outstanding," "high satisfactory," "satisfactory," "needs to improve," or "substantial noncompliance" based on the institution's performance under the lending, investment and service tests, the community development test, the small institution performance standards, the intermediate small institution standards, or an approved strategic plan, as applicable.

(2) Lending, investment, and service tests. The Commissioner assigns a rating for an institution assessed under the lending, investment, and service tests in accordance with the following principles:

(a) an institution that receives an "outstanding" rating on the lending test receives an assigned rating of at least "satisfactory";
(b) an institution that receives an "outstanding" rating on both the service test and the investment test and a rating of at least "high satisfactory" on the lending test receives an assigned rating of "outstanding";
(c) no institution may receive an assigned rating of "satisfactory" or higher unless it receives a rating of at least "satisfactory" on the lending test;
(d) an institution that receives a "satisfactory" rating on the lending test and either the service or investment test, and receives a rating of "needs to improve" on the third test, receives an assigned rating of "satisfactory"; and
(e) a credit union that receives a "satisfactory" rating on the lending test and receives a rating of "needs to improve" on the service test, receives an assigned rating of "satisfactory".

(3) Effect of evidence of discriminatory or other illegal credit practices. Evidence of discriminatory or other illegal credit practices adversely affects the Commissioner's evaluation of an institution's performance. In determining the effect on the institution's assigned rating, the Commissioner considers the nature and extent of the evidence, the policies and procedures that the institution has in place to prevent discriminatory or other illegal credit practices, any corrective action that the institution has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, the institution's compliance with written policies and directives with regard to fair lending, and other relevant information.

In connection with any type of lending activity described in §46.22(1)(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes but is not limited to: (i) Discrimination against applicants on a prohibited basis in violation, for example of the Equal Credit Opportunity Act or Fair Housing Act; (ii) Violations of M.G.L. Chapter 183C, Predatory Home Loan Practices; (iii) Violations of section 5 of the Federal Trade Commission Act; (iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and (v) Violations of the provisions of M.G.L. Chapter 140D regarding a consumer's right of rescission or other violations of M.G.L. Chapter 140D and its implementing regulations 209 CMR 32.00.

46.29: Effect of CRA Performance on Applications

(1) CRA performance. Among other factors, the Commissioner takes into account the record of performance under the CRA of each institution submitting applications for the following:

(a) establishment of any branch by all state-chartered institutions;
(b) establishment of Massachusetts branches by out-of-state banks, out-of-state federal banks, and foreign banks;
(c) a merger or consolidation with or the acquisition of assets or assumption of liabilities of any state-chartered institution by a Massachusetts bank or bank holding company, including its subsidiaries;
(d) a merger or consolidation with or the acquisition of assets or assumption of liabilities of a state-chartered institution by an out-of-state bank, an out-of-state federal bank, or an foreign bank or bank holding company, including its subsidiaries;
(e) a wholly-owned subsidiary pursuant to M.G.L. c. 167F, § 2, paragraph 7;
(f) an automated teller machine;
(g) a mobile electronic branch; and
(h) any other approval of the Commissioner, provided that there are no other countervailing financial safety and soundness or other policy considerations.

(2) Interested parties. In considering CRA performance in an application described in 209 CMR 46.29(1), the Commissioner takes into account any views expressed by interested parties that are submitted.

(3) Denial or conditional approval of application. An institution's record of performance may be the basis for denying or conditioning approval of an application listed in 209 CMR 46.29.

(4) Alternative branch opening application procedures. The Commissioner shall establish alternative branch opening application procedures for institutions which received a rating of "outstanding" as of their most recent state or federal examination. These procedures shall include such other standards and procedures as the Commissioner deems appropriate.

46.41: Assessment Area Delineation

(1) In general. An institution shall delineate one or more assessment areas within which the Commissioner evaluates the institution's record of helping to meet the credit needs of its community. The Commissioner does not evaluate the institution's delineation of its assessment area(s) as a separate performance criterion, but the Commissioner reviews the delineation for compliance with the requirements of 209 CMR 46.41.

(2) Geographic area(s) for wholesale or limited purpose institutions. The assessment area(s) for a wholesale or limited purpose institution must consist generally of one or more MSAs/CBSAs (using the MSA/CBSA boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the institution has its main office, branches, and deposit-taking ATMs.

(3) Geographic area(s) for other institutions. The assessment area(s) for an institution other than a wholesale or limited purpose institution or a credit union under 209 CMR 46.41(8) must:

(a) consist generally of one or more MSAs/CBSAs (using the MSA/CBSA boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and
(b) include the geographies in which the institution has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the institution has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the institution chooses, such as those consumer loans on which the institution elects to have its performance assessed).

(4) Adjustments to geographic area(s). An institution may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(5) Limitations on the delineation of an assessment area. Each institution's assessment area(s):

(a) must consist only of whole geographies;
(b) may not reflect illegal discrimination;
(c) may not arbitrarily exclude low- and moderate-income geographies, taking into account the institution's size and financial condition; and
(d) may not extend substantially beyond a CMSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA/CBSA. If an institution serves a geographic area that extends substantially beyond a state boundary, the institution shall delineate separate assessment areas for the areas in each state. If an institution serves a geographic area that extends substantially beyond a CMSA boundary, the institution shall delineate separate assessment areas for the areas inside and outside the CMSA.

(6) Institutions serving military personnel. Notwithstanding the requirements of 209 CMR 46.41, an institution whose business predominantly consists of serving the needs of military personnel

or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its assessment area.

(7) Use of assessment area(s). The Commissioner uses the assessment area(s) delineated by an institution in its evaluation of the institution's CRA performance unless the Commissioner determines that the assessment area(s) do not comply with the requirements of 209 CMR 46.41.

(8) Credit unions not serving defined geographic areas. Notwithstanding the requirements of 209 CMR 46.41, a credit union whose membership by-law provisions are not based on residence may delineate its membership as its assessment area.

46.42: Data Collection, Reporting, and Disclosure

(1) Institutions will comply with all data collection, reporting and disclosure regulations as promulgated by the appropriate Federal banking agencies.

(2) Credit unions are exempted from the data collection, reporting, and disclosure requirements for small business, small farm, and community development loans; provided, however, if the credit union, except a credit union that meets the definition of a small institution, is subject to reporting under the Board of Governors of the Federal Reserve System's implementing regulations for the Home Mortgage Disclosure Act (12 CFR 203), it shall report the location of each home mortgage loan application, origination, or purchase outside the MSAs/CBSA in which the credit union has a home or branch office (or outside any MSA/CBSA) in accordance with the requirements of 12 CFR 203.

(3) Optional data collection and maintenance.

(a) Consumer loans. An institution may collect and maintain in machine readable form (as prescribed by the Commissioner) data for consumer loans originated or purchased by the institution for consideration under the lending test. An institution may maintain data for one or more of the following categories of consumer loans: motor vehicle, credit card, home equity, other secured, and other unsecured. If the institution maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The institution shall maintain data separately for each category, including for each loan:

1. A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
2. The loan amount at origination or purchase;
3. The loan location; and
4. The gross annual income of the borrower that the institution considered in making its credit decision.

(b) Other loan data. At its option, an institution may provide other information concerning its lending performance, including additional loan distribution data.

46.43: Content and Availability of Public File

(1) Information available to the public. An institution shall maintain a public file that includes the following information:

(a) all written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the institution's performance in helping to meet community credit needs, and any response to the comments by the institution, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the institution or publication of which would violate specific provisions of law;

(b) a copy of the public section of the institution's most recent CRA Performance Evaluation prepared by the Commissioner. The institution shall place this copy in the public file within 30 business days after its receipt from the Commissioner;

(c) a list of the institution's branches, their street addresses, and geographies;

(d) a list of branches opened or closed by the institution during the current year and each of the prior two calendar years, their street addresses, and geographies;

(e) a list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the institution's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, an institution may include information regarding the availability of alternative systems for delivering retail banking services (e.g., ATMs, ATMs not owned or operated by or exclusively for the institution, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(f) a map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list, provided however, a map of the assessment area does not need to be maintained if the institution is a credit union whose membership by-law provisions do not correspond to a defined geographic area; and

(g) any other information the institution chooses.

(2) Additional information available to the public.

(a) Institutions other than small institutions. An institution, except a small institution or an institution that was a small institution during the prior calendar year, shall include in its public file the following information pertaining to the institution and its affiliates, if applicable, for each of the prior two calendar years:

1. if the institution has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

a. to low-, moderate-, middle-, and upper-income individuals;
b. located in low-, moderate-, middle-, and upper-income census tracts; and
c. located inside the institution's assessment area(s) and outside the institution's assessment area(s); and

2. the institution's CRA Disclosure Statement. The institution shall place the statement in the public file within three business days of its receipt from the Commissioner.

(b) Institutions required to report Home Mortgage Disclosure Act (HMDA) data. An institution required to report home mortgage loan data pursuant to the implementing regulations for the Home Mortgage Disclosure Act regulations (12 CFR 203) shall include in its public file a copy of the HMDA Disclosure Statement provided by the Federal Financial Institutions Examination

Council pertaining to the institution for each of the prior two calendar years. In addition, an institution that elected to have the Commissioner consider the mortgage lending of an affiliate for any of these years shall include in its public file the affiliate's HMDA Disclosure Statement for those years. The institution shall place the statement(s) in the public file within three business days after its receipt.

(c) Small institutions. A small institution or an institution that was a small institution during the prior calendar year shall include in its public file:

1. the institution's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio; and
2. the information required for other institutions by 209 CMR 46.43(2)(a), if the institution has elected to be evaluated under the lending, investment, and service tests.

(d) Institutions with strategic plans. An institution that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. An institution need not include information submitted to the Commissioner on a confidential basis in conjunction with the plan.

(e) Institutions with less than satisfactory ratings. An institution that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The institution shall update the description quarterly.

(3) Location of public information. An institution shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(a) at the main office and, if an interstate institution, at one branch office in each state, all information in the public file; and
(b) at each branch:

1. a copy of the public section of the institution's most recent CRA Performance Evaluation and a list of services provided by the branch; and
2. within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.

(4) Copies. Upon request, an institution shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The institution may charge a reasonable fee not to exceed the cost of copying and mailing, if applicable.

(5) Updating. Except as otherwise provided in 209 CMR 46.43, an institution shall ensure that the information required by 209 CMR 46.43 is current as of April 1 of each year.

46.44: Public Notice by Institutions

An institution shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in 209 CMR 46.62. Only a branch of an institution having more than one assessment area shall include the bracketed material in the notice for branch offices. Only an institution that is an affiliate of a holding company shall include the next to the last sentence of the notices. An institution shall include the last sentence of the notices only if it is an affiliate of a holding company that is not prevented by statute from acquiring additional institutions.

46.45: Publication of Planned Examination Schedule

The Commissioner publishes at least 30 days in advance of the beginning of each calendar quarter a list of institutions scheduled for CRA examinations in that quarter.

46.46: Alternative Examination Procedures

The Commissioner shall establish alternative examination procedures for institutions which were rated "outstanding" as of their most recent state or federal CRA compliance examination. After January 1, 1998, such alternative examination procedures will also apply to institutions which were rated "high satisfactory" as of their most recent state or federal examination. The purpose of such alternative procedures shall be to reduce the cost to institutions. The alternative procedures shall in no way limit public participation.

46.61: Ratings

(1) Ratings in general.

(a) In assigning a rating, the Commissioner evaluates an institution's performance under the applicable performance criteria in 209 CMR 46.00, in accordance with 209 CMR 46.21, and 209 CMR 46.28, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(b) An institution's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The institution's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(2) Institutions evaluated under the lending, investment, and service tests.

(a) Lending performance rating. The Commissioner assigns each institution's lending performance one of the five following ratings.

1. Outstanding. The Commissioner rates an institution's lending performance "outstanding" if, in general, it demonstrates:

a. Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);
b. A substantial majority of its loans are made in its assessment area(s);
c. An excellent geographic distribution of loans in its assessment area(s);
d. An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the institution;
e. An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, including loans to assist existing low- and moderate-income residents to be able to remain in their neighborhoods, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
f. Extensive use of innovative or flexible lending practices in a safe and sound manner to address

the credit needs of low- and moderate-income individuals or geographies;
g. It is a leader in making community development loans;
h. There is no evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
i. An excellent record relative to fair lending policies and practices.

2. High satisfactory. The Commissioner rates an institution's lending performance "high satisfactory" if, in general, it demonstrates:

a. Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);
b. A high percentage of its loans are made in its assessment area(s);
c. A good geographic distribution of loans in its assessment area(s);
d. A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the institution;
e. A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, including loans to assist existing low- and moderate-income residents to be able to remain in their neighborhoods, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
f. Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies;
g. It has made a relatively high level of community development loans;
h. There is no evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
i. A good record relative to fair lending policies and practices.

3. Satisfactory. The Commissioner rates an institution's lending performance "satisfactory" if, in general, it demonstrates:

a. Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);
b. An adequate percentage of its loans are made in its assessment area(s);
c. An adequate geographic distribution of loans in its assessment area(s);
d. An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the institution;
e. An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, including loans to assist existing low- and moderate-income residents to be able to remain in their neighborhoods, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
f. Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies;
g. It has made an adequate level of community development loans;
h. There is no evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
i. An adequate record relative to fair lending policies and practices.

4. Needs to improve. The Commissioner rates an institution's lending performance "needs to improve" if, in general, it demonstrates:

a. Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);
b. A small percentage of its loans are made in its assessment area(s);
c. A poor geographic distribution of loans, particularly to low- and moderate-income geographies, in its assessment area(s);
d. A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the institution;
e. A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, including loans to assist existing low- and moderate-income residents to be able to remain in their neighborhoods, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
f. Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies;
g. It has made a low level of community development loans;
h. There is possible evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
i. A poor record relative to fair lending policies and practices.

5. Substantial noncompliance. The Commissioner rates an institution's lending performance as being in "substantial noncompliance" if, in general, it demonstrates:

a. A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);
b. A very small percentage of its loans are made in its assessment area(s);
c. A very poor geographic distribution of loans, particularly to low- and moderate-income geographies, in its assessment area(s);
d. A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the institution;
e. A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, including loans to assist existing low- and moderate-income residents to be able to remain in their neighborhoods, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
f. No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies;
g. It has made few, if any, community development loans;
h. Origination of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
i. A very poor record relative to fair lending policies and practices.

(b) Investment performance rating. The Commissioner assigns each institution's investment performance one of the five following ratings.

1. Outstanding. The Commissioner rates an institution's investment performance "outstanding" if, in general, it demonstrates:

a. An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;
b. Extensive use of innovative or complex qualified investments; and
c. Excellent responsiveness to credit and community development needs.

2. High satisfactory. The Commissioner rates an institution's investment performance "high satisfactory" if, in general, it demonstrates:

a. A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;
b. Significant use of innovative or complex qualified investments; and
c. Good responsiveness to credit and community development needs.

3. Satisfactory. The Commissioner rates an institution's investment performance " satisfactory" if, in general, it demonstrates:

a. An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;
b. Occasional use of innovative or complex qualified investments; and
c. Adequate responsiveness to credit and community development needs.

4. Needs to improve. The Commissioner rates an institution's investment performance "needs to improve" if, in general, it demonstrates:

a. A poor level of qualified investments, particularly those that are not routinely provided by private investors;
b. Rare use of innovative or complex qualified investments; and
c. Poor responsiveness to credit and community development needs.

5. Substantial noncompliance. The Commissioner rates an institution's investment performance as being in "substantial noncompliance" if, in general, it demonstrates:

a. Few, if any, qualified investments, particularly those that are not routinely provided by private investors;
b. No use of innovative or complex qualified investments; and
c. Very poor responsiveness to credit and community development needs.

(c) Service performance rating. The Commissioner assigns each institution's service performance one of the five following ratings.

1. Outstanding. The Commissioner rates an institution's service performance "outstanding" if, in general, the institution demonstrates:

a. Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);
b. To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- and moderate-income geographies or to low- and moderate-income individuals;

c. Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- and moderate-income geographies or low- and moderate-income individuals; and
d. It is a leader in providing community development services.

2. High satisfactory. The Commissioner rates an institution's service performance "high satisfactory" if, in general, the institution demonstrates:

a. Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);
b. To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;
c. Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and
d. It provides a relatively high level of community development services.

3. Satisfactory. The Commissioner rates an institution's service performance "satisfactory" if, in general, the institution demonstrates:

a. Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);
b. To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;
c. Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and
d. It provides an adequate level of community development services.

4. Needs to improve. The Commissioner rates an institution's service performance "needs to improve" if, in general, the institution demonstrates:

a. Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- and moderate-income geographies or to low- and moderate-income individuals;
b. To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility its delivery systems, particularly in low- and moderate-income geographies or to low- and moderate- income individuals;
c. Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies or low- and moderate-income individuals; and
d. It provides a limited level of community development services.

5. Substantial noncompliance. The Commissioner rates an institution's service performance as being in "substantial noncompliance" if, in general, the institution demonstrates:

a. Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- and moderate-income geographies or to low- and moderate-income individuals;

b. To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies or to low- and moderate-income individuals;
c. Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- and moderate-income geographies or low- and moderate-income individuals; and
d. It provides few, if any, community development services.

(3) Wholesale or limited purpose institutions. The Commissioner assigns each wholesale or limited purpose institution's community development performance one of the five following ratings.

(a) Outstanding. The Commissioner rates a wholesale or limited purpose institution's community development performance "outstanding" if, in general, it demonstrates:

1. A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
2. Extensive use of innovative or complex qualified investments, community development loans, or community development services; and
3. Excellent responsiveness to credit and community development needs in its assessment area(s).

(b) High Satisfactory. The Commissioner rates a wholesale or limited purpose institution's community development performance "high satisfactory" if, in general, it demonstrates:

1. A significant level of community development loans, community development services or qualified investments, particularly investments that are not routinely provided by private investors;
2. Frequent use of innovative or complex qualified investments, community development loans or community development services; and
3. High responsiveness to credit and community development needs in its assessment area(s).

(c) Satisfactory. The Commissioner rates a wholesale or limited purpose institution's community development performance "satisfactory" if, in general, it demonstrates:

1. An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
2. Occasional use of innovative or complex qualified investments, community development loans, or community development services; and
3. Adequate responsiveness to credit and community development needs in its assessment area(s).

(d) Needs to improve. The Commissioner rates a wholesale or limited purpose institution's community development performance as "needs to improve" if, in general, it demonstrates:

1. A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
2. Rare use of innovative or complex qualified investments, community development loans, or community development services; and
3. Poor responsiveness to credit and community development needs in its assessment area(s).

(e) Substantial noncompliance. The Commissioner rates a wholesale or limited purpose institution's community development performance in "substantial noncompliance" if, in general, it demonstrates:

1. Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
2. No use of innovative or complex qualified investments, community development loans, or community development services; and
3. Very poor responsiveness to credit and community development needs in its assessment area(s).

(4) Institutions evaluated under the small institution performance standards.

(1) Lending test ratings.

(a) Eligibility for a satisfactory rating. The Commissioner rates a small institution's performance "satisfactory" if, in general, the institution demonstrates:

1. A reasonable loan-to-deposit ratio (considering seasonal variations) given the institution's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;
2. A majority of its loans and, as appropriate, other lending-related activities are in its assessment area(s);
3. A distribution of loans to and, as appropriate, other lending related-activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the institution's assessment area(s);
4. A record of taking appropriate action, as warranted, in response to written complaints, if any, about the institution's performance in helping to meet the credit needs of its assessment area(s) and reasonable performance with regard to fair lending policies and practices; and
5. A reasonable geographic distribution of loans given the institution's assessment area(s).

(b) Eligibility for a high satisfactory or an outstanding rating. A small institution that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of "high satisfactory" or "outstanding."

(c) Needs to improve or substantial noncompliance ratings. A small institution also may receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(2) Community development test ratings for intermediate small institutions

(a) Eligibility for a satisfactory community development test rating. The Commissioner rates an intermediate small institution’s community development performance “satisfactory” if the institution demonstrates adequate responsiveness to the community development needs of its assessment area(s) or a broader statewide or regional area that includes the institution’s assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the institution’s response will depend on its capacity for such community development activities, its assessment area’s need for such community development activities, and the availability of such opportunities for community development in the institution's assessment area(s).

(b) Eligibility for an outstanding community development test rating. The Commissioner rates an intermediate small institution's community development performance "outstanding" if the institution 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).

(c) Needs to improve or substantial noncompliance ratings. An intermediate small institution may also receive a community development test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(3) Service test rating for credit unions that are intermediate small institutions

A credit union that is an intermediate small institution will be rated under the service test in accordance with 209 CMR 46.61(2)(c).

(4) Overall rating

(a) Eligibility for a satisfactory overall rating. No intermediate small institution may receive an assigned overall rating of "satisfactory" unless it receives a rating of at least "satisfactory" on both tests.

(b) Eligibility for an outstanding overall rating.

1. An intermediate small institution that receives an "outstanding" rating on one test and at least "satisfactory" on the other test may receive an assigned overall rating of "outstanding."

2. A small institution that is not an intermediate small institution that meets each of the standards for a "satisfactory" rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding." In assessing whether an institution's performance is "outstanding," the Commissioner considers the extent to which the institution exceeds each of the performance standards for a "satisfactory" rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(c) Needs to improve or substantial noncompliance overall ratings. A small institution may also receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(5) Strategic plan assessment and rating.

(a) Satisfactory goals. The Commissioner approves as "satisfactory" measurable goals that adequately help to meet the credit needs of the institution's assessment area(s).

(b) Outstanding goals. If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as "satisfactory," the Commissioner will approve those goals as "outstanding."

(c) Rating. The Commissioner assesses the performance of an institution operating under an approved plan to determine if the institution has met its plan goals:

1. If the institution substantially achieves its plan goals for a satisfactory rating, the Commissioner will rate the institution's performance under the plan as "satisfactory."
2. If the institution achieves all of its goals for a satisfactory rating, and exceeds some or all of its plan goals for a satisfactory rating, the Commissioner will rate the institution under the plan as "high satisfactory."
3. If the institution exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the Commissioner will rate the institution's performance under the plan as "outstanding."
4. If the institution fails to meet substantially its plan goals for a satisfactory rating, the Commissioner will rate the institution as either "needs to improve" or "substantial noncompliance," depending on the extent to which it falls short of its plan goals, unless the institution elected in its plan to be rated otherwise, as provided in 209 CMR 46.27(6)(d).

(6) Credit Unions evaluated under the lending and service tests.

(a) Lending performance rating. The Commissioner assigns each credit union's lending performance one of the five following ratings.

1. Outstanding. The Commissioner rates a credit union's lending performance "outstanding" if, in general, it demonstrates:

a. Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, and consumer loans, if applicable, in its assessment area(s);
b. A substantial majority of its loans are made in its assessment area(s);
c. An excellent geographic distribution of loans in its assessment area(s), provided however, a geographic analysis is relevant in the context of the credit union's membership by-law provisions;
d. An excellent distribution, particularly in its assessment area(s), of loans among members of different income levels, given the product lines offered by the credit union;
e. An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), and low-income members, including loans and other efforts to assist existing low- and moderate-income members to be able to remain in their neighborhoods, consistent with safe and sound operations;
f. Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income members or geographies;
g. There is no evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
h. An excellent record relative to fair lending policies and practices.

2. High satisfactory. The Commissioner rates a credit union's lending performance "high satisfactory" if, in general, it demonstrates:

a. Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, and consumer loans, if applicable, in its assessment area(s);
b. A high percentage of its loans are made in its assessment area(s);
c. A good geographic distribution of loans in its assessment area(s), provided however, a geographic analysis is relevant in the context of the credit union's membership by-law provisions;
d. A good distribution, particularly in its assessment area(s), of loans among members of different income levels, given the product lines offered by the credit union;
e. A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), and low-income members, including loans and other efforts to assist existing low- and moderate-income members to be able to remain in their neighborhoods, consistent with safe and sound operations;
f. Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income members or geographies;
g. There is no evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
h. A good record relative to fair lending policies and practices.

3. <u>Satisfactory</u>. The Commissioner rates a credit union's lending performance "satisfactory" if, in general, it demonstrates:

a. Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, and consumer loans, if applicable, in its assessment area(s);
b. An adequate percentage of its loans are made in its assessment area(s);
c. An adequate geographic distribution of loans in its assessment area(s), provided however, a geographic analysis is relevant in the context of the credit union's membership by-law provisions;
d. An adequate distribution, particularly in its assessment area(s), of loans among members of different income levels, given the product lines offered by the credit union;
e. An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), and low-income members, including loans and other efforts to assist existing low- and moderate-income members to be able to remain in their neighborhoods, consistent with safe and sound operations;
f. Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income members or geographies;
g. There is no evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
h. An adequate record relative to fair lending policies and practices.

4. <u>Needs to improve</u>. The Commissioner rates a credit union's lending performance "needs to improve" if, in general, it demonstrates:

a. Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, and consumer loans, if applicable, in its assessment area(s);
b. A small percentage of its loans are made in its assessment area(s);
c. A poor geographic distribution of loans, particularly to low- and moderate-income geographies, in its assessment area(s), provided however, a geographic analysis is relevant in the context of the credit union's membership by-law provisions;
d. A poor distribution, particularly in its assessment area(s), of loans among members of different income levels, given the product lines offered by the credit union;

e. A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), and low-income members, including loans and other efforts to assist existing low- and moderate-income members to be able to remain in their neighborhoods, consistent with safe and sound operations;
f. Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income members or geographies;
g. There is possible evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
h. A poor record relative to fair lending policies and practices.

5. Substantial noncompliance. The Commissioner rates a credit union's lending performance as being in "substantial noncompliance" if, in general, it demonstrates:

a. A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, and consumer loans, if applicable, in its assessment area(s);
b. A very small percentage of its loans are made in its assessment area(s);
c. A very poor geographic distribution of loans, particularly to low- and moderate-income geographies, in its assessment area(s), provided however, a geographic analysis is relevant in the context of the credit union's membership by-law provisions;
d. A very poor distribution, particularly in its assessment area(s), of loans among members of different income levels, given the product lines offered by the credit union;
e. A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), and low-income members, including loans and other efforts to assist existing low- and moderate-income members to be able to remain in their neighborhoods, , consistent with safe and sound operations;
f. No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income members or geographies;
g. Origination of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
h. A very poor record relative to fair lending policies and practices.

(b) Service performance rating. The Commissioner assigns each credit union's service performance one of the five following ratings.

1. Outstanding. The Commissioner rates a credit union's service performance "outstanding" if, in general, the credit union demonstrates:

a. Its service delivery systems are readily accessible to members and geographies of different income levels in its assessment area(s);
b. To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly to low- and moderate-income members or in low- and moderate-income geographies;
c. Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- and moderate-income members or in low- and moderate-income geographies; and
d. It is a leader in providing community development services.

2. High satisfactory. The Commissioner rates a credit union's service performance "high satisfactory" if, in general, the credit union demonstrates:

a. Its service delivery systems are accessible to members and geographies of different income levels in its assessment area(s);
b. To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly to low- and moderate-income members and in low- and moderate-income geographies;
c. Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income members and low- and moderate-income geographies; and
d. It provides a relatively high level of community development services.

3. Satisfactory. The Commissioner rates a credit union's service performance "satisfactory" if, in general, the credit union demonstrates:

a. Its service delivery systems are reasonably accessible to members and geographies of different income levels in its assessment area(s);
b. To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly to low- and moderate-income members and in low- and moderate-income geographies;
c. Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income members and low- and moderate-income geographies; and
d. It provides an adequate level of community development services.

4. Needs to improve. The Commissioner rates a credit union's service performance "needs to improve" if, in general, the credit union demonstrates:

a. Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- and moderate-income members or to low- and moderate-income geographies;
b. To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility its delivery systems, particularly to low- and moderate-income members or in low- and moderate-income geographies;
c. Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income members or low- and moderate-income geographies; and
d. It provides a limited level of community development services.

5. Substantial noncompliance. The Commissioner rates a credit union's service performance as being in "substantial noncompliance" if, in general, the credit union demonstrates:

a. Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- and moderate-income members or to low- and moderate-income geographies;
b. To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly to low- and moderate-income members or in low- and moderate-income geographies;
c. Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- and moderate-income members or low- and moderate-income geographies; and
d. It provides few, if any, community development services.

(c) Other eligible criteria for a high satisfactory or an outstanding rating. A credit union that achieves at least a "satisfactory" rating under the lending and service tests may warrant consideration for an overall rating of "high satisfactory" or "outstanding." In assessing whether a credit union 's performance is "high satisfactory" or "outstanding," the Commissioner will also consider the credit union's performance in making qualified investments and community development loans to the extent authorized under law.

(7) Component test ratings. The Commissioner shall develop, by written policy or directive, a matrix system which sets forth the methodology for aggregating an institution's scores on the lending, service, and investment tests to arrive at an assigned rating.

46.62: CRA Notice

(1) Notice for main offices.

COMMUNITY REINVESTMENT ACT NOTICE

Under the Community Reinvestment Act (CRA), the Commissioner of Banks (Commissioner) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Commissioner also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the Commissioner; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the Commissioner publishes a list of the institutions that are scheduled for CRA examination by the Commissioner in that quarter. This list is available from the Commissioner of Banks at One South Station, Boston, MA 02110. You may send written comments about our performance in helping to meet community credit needs to (name and address of official at institution) and to the Commissioner of Banks at One South Street, Boston, MA 02110. Your letter, together with any response by us, will be considered by the Commissioner in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Commissioner. You may also request from the Commissioner an announcement of our applications covered by the CRA filed with the Commissioner. We are an affiliate of (name of holding company), a bank holding company. You may request from (title of responsible official), Federal Reserve Bank of _______ (address) an announcement of applications covered by the CRA filed by bank holding companies.

(2) Notice for branch offices.

COMMUNITY REINVESTMENT ACT NOTICE

Under the Community Reinvestment Act (CRA), the Commissioner of Banks (Commissioner) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Commissioner also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by Commissioner, and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) a map showing the assessment area containing this branch, which is the area in which the Commissioner evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire institution is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the Commissioner publishes a list of the institutions that are scheduled for CRA examination by the Commissioner in that quarter. This list is available from the Commissioner of Banks at One South Station, Boston, MA 02110. You may send written comments about our performance in helping to meet community credit needs to (name and address of official at institution) and to the Commissioner of Banks at One South Street, Boston, MA 02110. Your letter, together with any response by us, will be considered by the Commissioner in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Commissioner. You may also request from the Commissioner an announcement of our applications covered by the CRA filed with the Commissioner. We are an affiliate of (name of holding company), a bank holding company. You may request from (title of responsible official), Federal Reserve Bank of _______ (address) an announcement of applications covered by the CRA filed by bank holding companies.

(3) Notwithstanding the requirements of this section, the information and disclosures required under the CRA Notice may be combined with or as an alternative, attached to in the form of an addendum, the information and disclosures required under the Federal Community Reinvestment Act (12 USC 2901 et seq.), or any regulations thereunder.

REGULATORY AUTHORITY

209 CMR 46.00: M.G.L. c. 167, § 14.

Exhibit B

209 CMR 54.00: MORTGAGE LENDER COMMUNITY INVESTMENT

Section

54.11: Authority, Purposes, and Scope

(1) Authority. The Commissioner issues 209 CMR 54.00 pursuant to authority granted by M.G.L. c. 255E, § 8.

(2) Purposes. 209 CMR 54.00 is intended to carry out the Mortgage Lender Community Investment (MLCI) purposes of M.G.L. c. 255E, § 8 by establishing the framework and criteria by which the Commissioner assesses a mortgage lender's record of helping to meet the mortgage credit needs of the Commonwealth, including low- and moderate-income neighborhoods and individuals, consistent with the safe and sound operation of the mortgage lender, and by providing that the Commissioner takes that record into account in considering certain applications pursuant to 209 CMR 54.26.

(3) Scope.

(a) General. 209 CMR 54.00 applies to all mortgage lenders as defined in 209 CMR 54.12.

(b) Advisory rulings. Each official interpretation by the Federal Financial Institutions Examination Council (FFIEC) or appropriate federal banking regulatory agency of the regulations issued under the Community Reinvestment Act (12 USC 2901 et seq.) that is similar in substance to a provision of 209 CMR

54.00 shall, until rescinded by the FFIEC, be deemed by the Commissioner to be an advisory ruling issued under M.G.L. c. 30A, § 8; provided, however, that the Commissioner may reject an interpretation of the FFIEC or appropriate federal banking regulatory agency. The Commissioner may provide such adjustments and exceptions, as necessary, to any interpretation to fit the unique circumstances of licensed mortgage lenders.

54.12: Definitions

For purposes of 209 CMR 54.00, the following definitions apply:

Area median income, area median income means:

(a) the median family income for the MSA, if a person or geography is located in an MSA; or
(b) the statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

Branch, a staffed facility licensed as a branch under G.L. c. 255E and 209 CMR 42.13.

Commissioner, the Commissioner of Banks.

Commonwealth, the Commonwealth of Massachusetts.

Community development, community development means:

(a) Mortgage products and other efforts to assist low- and moderate-income individuals to acquire or remain in affordable housing;
(b) community services targeted to low- and moderate-income individuals;
(c) Activities that revitalize or stabilize -
  (5) Low- or moderate-income geographies;
  (6) Designated disaster areas; or
  (7) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency; or
  (8) Any other such area as determined by the Commissioner based on -
    (C) Rates of poverty, unemployment, and population loss; or
    (D) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community and economic development needs, including needs of low- and moderate-income individuals.

Community development loan, a loan that:

(a) has as its primary purpose community development; and
(b) 1. has not been reported or collected by the mortgage lender for consideration in the mortgage lender's assessment as a home mortgage loan, unless it is a multifamily dwelling loan (as described in Appendix A to 12 CFR 203, the Board of Governors of the Federal Reserve System's implementing regulations for the Home Mortgage Disclosure Act); and 2. benefits the Commonwealth or a broader regional area that includes the Commonwealth.

Community development service, a service that:

(a) has as its primary purpose community development; and
(b) is related to the provision of financial services, including technical services.

Geography, a census tract or a block numbering area delineated by the United States Bureau of the Census in the most recent decennial census.

Home Mortgage Disclosure Act, or HMDA, the Board of Governors of the Federal Reserve System's implementing regulations found at 12 CFR 203.

Home mortgage loan, a "home improvement loan" or a "home purchase loan" as defined in 12 CFR 203.2 (the Home Mortgage Disclosure Act) or a home equity loan or any other extension of credit secured by a residence of the borrower for personal, family, or household purposes.

Highly economically disadvantaged areas, economically distressed areas designated pursuant to 26 USC 1391.

Income level, income level includes:

(a) Low-income, an individual income that is less than 50% of the area median income, or a median family income that is less than 50%, in the case of a geography.
(b) Moderate-income, an individual income that is at least 50% and less than 80% of the area median income, or a median family income that is at least 50% and less than 80%, in the case of a geography.
(c) Middle-income, an individual income that is at least 80% and less than 120% of the area median income, or a median family income that is at least 80% and less than 120%, in the case of a geography.
(d) Upper-income, an individual income that is 120% or more of the area median income, or a median family income that is 120% or more, in the case of a geography.

Loan location, a home mortgage loan is located in the geography where the property to which the loan relates is situated.

Mortgage lender, a mortgage lender, licensed under M.G.L. c. 255E, section 2, that has made 50 or more home mortgage loans in the Commonwealth in the last calendar year reportable under the Home Mortgage Disclosure Act.

MSA, a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

Qualified investment, a lawful investment, deposit, membership share, or grant that has as its primary purpose community development, and lawful investments in the following:

(a) corporations for the purpose of providing technical assistance to nonprofit housing corporations for the purpose of establishing creditworthiness;
(b) contributions to any private nonprofit organization organized for improving the social and economic conditions, such as community development programs, foreclosure prevention initiatives, and educational institutions focusing on financial literacy initiatives, in communities in the Commonwealth;
(c) contributions for the purpose of relieving suffering or distress resulting from disaster or other calamity, such as hurricane or flood, occurring in any part of the Commonwealth; and
(d) contributions to any private nonprofit organization organized for fair housing and fair lending education and training.

54.21: Performance Tests, Standards, and Ratings, in General

(1) Performance tests and standards. The Commissioner assesses the MLCI performance of a mortgage lender in an examination as follows:

(a) Mortgage lender performance standards. The Commissioner applies the lending and service tests, as provided in 209 CMR 54.22 and 54.23 in evaluating the performance of a mortgage lender. However, a mortgage lender that achieves at least a "satisfactory" rating under both the lending and service tests may warrant consideration for an overall rating of "high satisfactory" or "outstanding" depending on the mortgage lender's performance in making qualified investments and community development loans to the extent authorized under law, in accordance with 209 CMR 54.61(2)(c).

(2) Performance context. The Commissioner applies the tests and standards in 209 CMR 54.21(1) in the context of:

(a) demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to the Commonwealth;
(b) any information about lending and service opportunities in the Commonwealth maintained by the mortgage lender or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(c) the mortgage lender’s product offerings and business strategy as determined from data provided by the mortgage lender in the Commonwealth;
(d) the mortgage lender’s capacity and constraints, including the size and financial condition of the mortgage lender, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the mortgage lender’s ability to provide lending or services in the Commonwealth;
(e) the mortgage lender’s past performance and the performance of similarly situated lenders in the Commonwealth; and
(f) any other information deemed relevant by the Commissioner.

(3) Assigned ratings. The Commissioner assigns to a mortgage lender one of the following five ratings pursuant to 209 CMR 54.25 and 54.61: "outstanding"; "high satisfactory"; "satisfactory"; "needs to improve"; or "substantial noncompliance" as provided in M.G.L. c. 255E, s. 8. The rating assigned by the Commissioner reflects the mortgage lender’s record of helping to meet the mortgage credit needs of the Commonwealth, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the mortgage lender.

(4) Safe and sound operations. 209 CMR 54.00 does not require a mortgage lender to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the Commissioner anticipates mortgage lenders can meet the standards of this regulation with safe and sound loans, investments, and services on which the mortgage lender can expect to make a profit. Mortgage lenders are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit and are suitable for low- and moderate-income geographies or individuals, only if consistent with safe and sound operations.

54.22: Lending Test

(1) Scope of test.

(a) The lending test evaluates a mortgage lender’s record of helping to meet the mortgage credit needs of the Commonwealth through its lending activities by considering a mortgage lender’s home mortgage and community development lending.
(b) The Commissioner considers originations and purchases of loans as reported by the mortgage lender under HMDA. The Commissioner will also consider any other loan data the mortgage lender may choose to provide.

(2) Performance Criteria. The Commissioner evaluates a mortgage lender’s performance pursuant to the following criteria:

(a) Geographic distribution. The geographic distribution of the mortgage lender’s home mortgage loans, based on the loan location, including:

1. the dispersion of lending in the Commonwealth and whether lending arbitrarily excludes low- and moderate-income geographies; and
2. the number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the Commonwealth;

(b) Borrower characteristics. The distribution, of the mortgage lender's home mortgage loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals, including loans to assist existing low- and moderate-income residents to be able to acquire or remain in affordable housing in their neighborhoods at rates and terms that are reasonable considering the mortgage lender's history with similarly situated borrowers;

(c) Innovative or flexible lending practices. The mortgage lender's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies, including loans and other products to assist delinquent home mortgage borrowers to be able to remain in their homes. The Commissioner shall also consider the availability of mortgage loan products that are suitable for such low- and moderate-income individuals;

(d) Fair lending. The mortgage lender's performance relative to fair lending policies and practices pursuant to written policies and directives issued by the Commissioner; and

(e) Loss of affordable housing. The mortgage lender's number and amount of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units, including a pattern of early payment defaults.

(3) Third-party lending.

No mortgage lender may include a loan origination or loan purchase for consideration if another mortgage lender or depository institution claims the same loan origination or purchase under 209 CMR 54.00 or the state or federal Community Reinvestment Act.

(4) Lending performance rating. The Commissioner rates a mortgage lender's performance as provided in 209 CMR 54.61 (Ratings).

54.23: Service Test

(1) Scope of test. The service test evaluates a mortgage lender's record of helping to meet the mortgage credit needs in the Commonwealth by analyzing both the availability and effectiveness of a mortgage lender's systems for delivering mortgage loan products, the extent and innovativeness of its community development services, and loss mitigation

services to modify loans or otherwise keep delinquent home loan borrowers in their homes.

(2) Area(s) benefited. Community development services must benefit the Commonwealth or a broader regional area that includes the Commonwealth.

(3) Performance criteria -- mortgage lending services. The Commissioner evaluates the availability and effectiveness of a mortgage lender's systems for delivering mortgage lending services, pursuant to the following criteria:

(a) the availability and effectiveness of systems for delivering mortgage lending services (e.g., Internet, telephone solicitation, direct mail) in low- and moderate-income geographies and to low- and moderate-income individuals, including, to the extent applicable, the current distribution of the mortgage lender's branches among low-, moderate-, middle-, and upper-income geographies;
(b) efforts to work with delinquent home mortgage loan borrowers to facilitate a resolution of the delinquency, including the number of loan modifications, the timeliness of such modifications, and the extent to which such modifications are effective in preventing subsequent defaults or foreclosures; and
(c) the range of services provided in low-, moderate-, middle-, and upper- income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(4) Performance criteria -- community development services. The Commissioner evaluates community development services pursuant to the following criteria:

(a) the extent to which the mortgage lender provides community development services; and
(b) the innovativeness and responsiveness of community development services.

(5) Service performance rating. The Commissioner rates a mortgage lender's service performance as provided in 209 CMR 54.61 (Ratings).

54.24: Reserved

54.25: Assigned Ratings

(1) Ratings in general. Subject to 209 CMR 54.25(2) and (3), the Commissioner assigns to a mortgage lender a rating of "outstanding," "high satisfactory," "satisfactory," "needs to improve," or "substantial noncompliance" based on the mortgage lender's performance under the lending and service tests.

(2) Lending Test. No mortgage lender may receive an assigned overall rating of "satisfactory" or higher unless it receives a rating of at least "satisfactory" on the lending test.

(3) Effect of evidence of discriminatory or other illegal credit practices. Evidence of discriminatory or other illegal credit practices adversely affects the Commissioner's evaluation of mortgage lender's performance. In determining the effect on the mortgage lender's assigned rating, the Commissioner considers the nature and extent of the evidence, the policies and procedures that the mortgage lender has in place to prevent discriminatory or other illegal credit practices, any corrective action that the mortgage lender has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, the mortgage lender's compliance with written policies and directives with regard to fair lending, and other relevant information.

In connection with any type of lending activity described in 209 CMR 54.22, evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes but is not limited to: (i) Discrimination against applicants on a prohibited basis in violation, for example of the Equal Credit Opportunity Act or Fair Housing Act or M.G.L. chapter 151B; (ii) Violations of M.G.L. Chapter 183C, Predatory Home Loan Practices; (iii) Violations of section 5 of the Federal Trade Commission Act or M.G.L. c. 93A, including regulations of the Office of the Attorney General; (iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and (v) Violations of the provisions of M.G.L. Chapter 140D regarding a consumer's right of rescission or other violations of M.G.L. Chapter 140D and its implementing regulations 209 CMR 32.00.

54.26: Effect of MLCI Performance on Applications

(1) MLCI performance. Among other factors, the Commissioner takes into account the record of performance under the MLCI of each mortgage lender submitting applications for the following:

(a) renewal of a license to conduct business in the Commonwealth by all mortgage lenders;

(b) establishment or renewal of any branch by all mortgage lenders;

(c) any merger with or acquisition of a mortgage lender or mortgage broker by a mortgage lender or any other proposed change in control of a mortgage lender; and

(d) any other approval of the Commissioner, provided that there are no other countervailing financial safety and soundness or other policy considerations.

(2) Interested parties. In considering MLCI performance in applications described in 209 CMR 54.26(1), the Commissioner takes into account any views expressed by interested parties that are submitted.

(3) Denial, deferral, or conditional approval of application. A mortgage lender's record of performance may be the basis for denying, deferring, or conditioning approval of an application listed in 209 CMR 54.26(1).

54.41: Reserved

54.42: Data Collection and Reporting

(1) As part of its MLCI examination, the Commissioner shall require a mortgage lender to collect and report for examination purposes additional data fields beyond what is required under HMDA. The mortgage lender shall be expected to test its data collection and reporting, including its HMDA data, as part of its routine internal controls to ensure compliance with all data reporting requirements as well as its own policies and procedures.

(2) Optional data collection and maintenance.

At its option, a mortgage lender may provide other information concerning its lending performance, including additional loan distribution data.

54.43: Content and Availability of Public Information

(1) Information available to the public. A mortgage lender shall maintain the following information to be made available to the public upon request:

(a) all written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the mortgage lender's performance in helping to meet the mortgage credit needs of the Commonwealth, and any response to the comments by the mortgage lender, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the mortgage lender or publication of which would violate specific provisions of law;

(b) a copy of the public section of the mortgage lender's most recent MLCI Performance Evaluation prepared by the Commissioner; and

(c) a copy of the HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council pertaining to the mortgage lender for each of the prior two calendar years.

(2) Copies. Upon request, a mortgage lender shall provide within five business days of the request, copies, either on paper or in another form acceptable to the person making the request, of the information required under 209 CMR 54.43(1). The mortgage lender may charge a reasonable fee not to exceed the cost of copying and mailing, if applicable.

54.44 Reserved

54.45: Publication of Planned Examination Schedule

The Commissioner publishes at least 30 days in advance of the beginning of each calendar quarter a list of mortgage lenders scheduled for MLCI examinations in that quarter.

54.46: Alternative Examination Procedures

The Commissioner shall establish alternative examination procedures for mortgage lenders which were rated "outstanding" or “high satisfactory” as of their most recent MLCI evaluation. The purpose of such alternative procedures shall be to reduce the cost to mortgage lenders. The alternative procedures shall in no way limit public participation.

54.61: Ratings

(1) Ratings in general.

(a) In assigning a rating, the Commissioner evaluates a mortgage lender’s performance under the applicable performance criteria in 209 CMR 54.00, in accordance with 209 CMR 54.21, and 209 CMR 54.25, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(b) A mortgage lender’s performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The mortgage lender’s overall performance, however, must be consistent with safe and sound lending practices and generally with the appropriate rating profile as follows.

(2) Mortgage lenders evaluated under the lending and service tests.

(a) Lending performance rating. The Commissioner assigns each mortgage lender’s lending performance one of the five following ratings.

1. Outstanding. The Commissioner rates a mortgage lender’s performance "outstanding" if, in general, it demonstrates:

a. An excellent geographic distribution of loans in the Commonwealth;
b. An excellent distribution of loans among individuals of different income levels, given the product lines offered by the mortgage lender;
c. An excellent record of serving the mortgage credit needs of highly economically disadvantaged areas in the Commonwealth and low-income individuals, including loans to assist existing low- and moderate-income residents to be able to acquire or remain in affordable housing in their neighborhoods at rates and terms that are reasonable considering the mortgage lender’s history with similarly situated borrowers, consistent with safe and sound operations;

d. Extensive use of innovative or flexible lending practices in a safe and sound manner to address the mortgage credit needs of low- and moderate-income individuals or geographies, including loans and other products to assist delinquent home mortgage borrowers to be able to remain in their homes;
e. Mortgage products demonstrate an excellent suitability for low- and moderate-income individuals;
f. There is no evidence of loans that show an undue concentration and a systematic pattern of lending, including early payment defaults, resulting in the loss of affordable housing units; and
g. An excellent record relative to fair lending policies and practices.

2. High satisfactory. The Commissioner rates a mortgage lender's performance "high satisfactory" if, in general, it demonstrates:

a. A good geographic distribution of loans in the Commonwealth;
b. A good distribution of loans among individuals of different income levels given the product lines offered by the mortgage lender;
c. A good record of serving the mortgage credit needs of highly economically disadvantaged areas in the Commonwealth and low-income individuals, including loans to assist existing low- and moderate-income residents to be able to acquire or remain in affordable housing in their neighborhoods at rates and terms that are reasonable considering the mortgage lender's history with similarly situated borrowers consistent with safe and sound operations;
d. Use of innovative or flexible lending practices in a safe and sound manner to address the mortgage credit needs of low- and moderate-income individuals or geographies, including loans and other products to assist delinquent home mortgage borrowers to be able to remain in their homes;
e. Mortgage products demonstrate a good suitability for low- and moderate-income individuals;
f. There is no evidence of loans that show an undue concentration and a systematic pattern of lending, including early payment defaults, resulting in the loss of affordable housing units; and
g. A good record relative to fair lending policies and practices.

3. Satisfactory. The Commissioner rates a mortgage lender's performance "satisfactory" if, in general, it demonstrates:

a. An adequate geographic distribution of loans in the Commonwealth;
b. An adequate distribution of loans among individuals of different income levels, given the product lines offered by the mortgage lender;
c. An adequate record of serving the mortgage credit needs of highly economically disadvantaged areas in the Commonwealth and low-income individuals, including loans to assist existing low- and moderate-income residents to be able to acquire or remain affordable housing in their

neighborhoods at rates and terms that are reasonable considering the mortgage lender's history with similarly situated borrowers consistent with safe and sound operations;

d. Limited use of innovative or flexible lending practices in a safe and sound manner to address the mortgage credit needs of low- and moderate-income individuals or geographies, including loans and other products to assist delinquent home mortgage borrowers to be able to remain in their homes;

e. Mortgage products demonstrate an adequate suitability for low- and moderate-income individuals;

f. There is no evidence of loans that show an undue concentration and a systematic pattern of lending, including early payment defaults, resulting in the loss of affordable housing units; and

g. An adequate record relative to fair lending policies and practices.

4. Needs to improve. The Commissioner rates a mortgage lender's performance "needs to improve" if, in general, it demonstrates:

a. A poor geographic distribution of loans, particularly to low- and moderate-income geographies, in the Commonwealth;

b. A poor distribution of loans among individuals of different income levels, given the product lines offered by the mortgage lender;

c. A poor record of serving the mortgage credit needs of highly economically disadvantaged areas in the Commonwealth and low-income individuals, including loans to assist existing low- and moderate-income residents to be able to acquire or remain in affordable housing in their neighborhoods at rates and terms that are reasonable considering the mortgage lender's history with similarly situated borrowers consistent with safe and sound operations;

d. Little use of innovative or flexible lending practices in a safe and sound manner to address the mortgage credit needs of low- and moderate-income individuals or geographies, including loans and other products to assist delinquent home mortgage borrowers to be able to remain in their homes;

e. Mortgage products demonstrate a poor suitability for low- and moderate-income individuals;

f. There is possible evidence of loans that show an undue concentration and a systematic pattern of lending, including early payment defaults, resulting in the loss of affordable housing units; and

g. A poor record relative to fair lending policies and practices.

5. Substantial noncompliance. The Commissioner rates a mortgage lender's performance as being in "substantial noncompliance" if, in general, it demonstrates:

a. A very poor geographic distribution of loans, particularly to low- and moderate-income geographies, in the Commonwealth;

b. A very poor distribution of loans among individuals of different income levels given the product lines offered by the mortgage lender;
c. A very poor record of serving the mortgage credit needs of highly economically disadvantaged areas in the Commonwealth and low-income individuals, including loans to assist existing low- and moderate-income residents to be able to acquire or remain in affordable housing in their neighborhoods, at rates and terms that are reasonable considering the mortgage lender's history with similarly situated borrowers consistent with safe and sound operations;
d. No use of innovative or flexible lending practices in a safe and sound manner to address the mortgage credit needs of low- and moderate-income individuals or geographies, including loans and other products to assist delinquent home mortgage borrowers to be able to remain in their homes;
e. Mortgage products are unsuitable for low- and moderate-income individuals;
f. Origination of loans that show an undue concentration and a systematic pattern of lending, including early payment defaults, resulting in the loss of affordable housing units; and
g. A very poor record relative to fair lending policies and practices.

(b) Service performance rating. The Commissioner assigns each mortgage lender's service performance one of the five following ratings.

1. Outstanding. The Commissioner rates a mortgage lender's service performance "outstanding" if, in general, the mortgage lender demonstrates:

a. Its service delivery systems are readily accessible to geographies and individuals of different income levels in the Commonwealth;
b. To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- and moderate-income geographies or to low- and moderate-income individuals;
c. Its services (including, where appropriate, business hours) are tailored to the convenience and needs of the Commonwealth, particularly low- and moderate-income geographies or low- and moderate-income individuals;
d. It plays a leadership role in working with delinquent mortgage loan borrowers to facilitate a successful resolution of the delinquency, including a substantial number of loan modifications in a timely manner and which are effective in preventing subsequent defaults or foreclosures; and
e. It is a leader in providing community development services.

2. High satisfactory. The Commissioner rates a mortgage lender's service performance "high satisfactory" if, in general, the mortgage lender demonstrates:

a. Its service delivery systems are accessible to geographies and individuals of different income levels in the Commonwealth;
b. To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;
c. Its services (including, where appropriate, business hours) do not vary in a way that inconveniences geographies or individuals, particularly low- and moderate-income geographies and low- and moderate-income individuals;
d. Its efforts are substantial in working with delinquent mortgage loan borrowers to facilitate a successful resolution of the delinquency, including frequent and swift loan modifications which are effective in preventing subsequent defaults or foreclosures; and
e. It provides a relatively high level of community development services.

3. Satisfactory. The Commissioner rates a mortgage lender's service performance "satisfactory" if, in general, the mortgage lender demonstrates:

a. Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in the Commonwealth;
b. To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;
c. Its services (including, where appropriate, business hours) do not vary in a way that inconveniences geographies or individuals, particularly low- and moderate-income geographies and low- and moderate-income individuals;
d. Its efforts are adequate in working with delinquent mortgage loan borrowers to facilitate a successful resolution of the delinquency, including an adequate number of loan modifications completed in a prompt manner and which are effective in preventing subsequent defaults or foreclosures; and
e. It provides an adequate level of community development services.

4. Needs to improve. The Commissioner rates a mortgage lender's service performance "needs to improve" if, in general, the mortgage lender demonstrates:

a. Its service delivery systems are unreasonably inaccessible to portions of the Commonwealth, particularly to low- and moderate-income geographies or to low- and moderate-income individuals;
b. To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility of its delivery

systems, particularly in low- and moderate-income geographies or to low- and moderate- income individuals;
c. Its services (including, where appropriate, business hours) vary in a way that inconveniences geographies or individuals, particularly low- and moderate-income geographies or low- and moderate-income individuals;
d. Its efforts are poor in working with delinquent mortgage loan borrowers to facilitate a successful resolution of the delinquency, including slow responses to requests for modification with few loan modifications completed or for which modifications are not effective in preventing subsequent defaults or foreclosures; and
e. It provides a limited level of community development services.

5. Substantial noncompliance. The Commissioner rates a mortgage lender's service performance as being in "substantial noncompliance" if, in general, the mortgage lender demonstrates:

a. Its service delivery systems are unreasonably inaccessible to significant portions of the Commonwealth, particularly to low- and moderate-income geographies or to low- and moderate-income individuals;
b. To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies or to low- and moderate-income individuals;
c. Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences geographies or individuals, particularly low- and moderate-income geographies or low- and moderate-income individuals;
d. It fails to work with delinquent mortgage loan borrowers to facilitate a successful resolution of the delinquency, including no response to requests for loan modifications or modifications which are ineffective in preventing subsequent defaults or foreclosures; and
e. It provides few, if any, community development services.

(c) Other eligible criteria for a high satisfactory or an outstanding rating. A mortgage lender that achieves at least a "satisfactory" rating under both the lending and service tests may warrant consideration for an overall rating of "high satisfactory" or "outstanding." In assessing whether a mortgage lender's performance is "high satisfactory" or "outstanding," the Commissioner will also consider the mortgage lender's performance in making qualified investments and community development loans to the extent authorized under law.

REGULATORY AUTHORITY

209 CMR 54.00: M.G.L. c.255E, s.8.