

education,” as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

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

§ 25.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank's or savings association's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's or savings association's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's or savings association's business, the appropriate Federal banking agency will evaluate the bank's or savings association's consumer lending in one or more of the following categories: motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a bank's or savings association's option, the appropriate Federal banking agency will

evaluate one or more categories of consumer lending, if the bank or savings association has collected and maintained, as required in § 25.42(c)(1), the data for each category that the bank or savings association elects to have the appropriate Federal banking agency evaluate.

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

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

(b) *Performance criteria.* The appropriate Federal banking agency evaluates a bank's or savings association's lending performance pursuant to the following criteria:

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

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

(i) The proportion of the bank's or savings association's lending in the bank's or savings association's assessment area(s);

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

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's or

§ 25.23

12 CFR Ch. I (1–1–23 Edition)

savings association's assessment area(s);

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

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

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

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

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

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

(5) *Innovative or flexible lending practices.* The bank's or savings association's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a bank's or savings association's option, the appropriate Federal banking agency will consider loans by an affiliate of the bank or savings association, if the bank or savings association provides data on the affiliate's loans pursuant to § 25.42.

(2) The appropriate Federal banking agency considers affiliate lending subject to the following constraints:

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

(ii) If a bank or savings association elects to have the appropriate Federal banking agency consider loans within a particular lending category made by one or more of the bank's or savings association's affiliates in a particular

assessment area, the bank or savings association shall elect to have the appropriate Federal banking agency consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the bank's or savings association's affiliates.

(3) The appropriate Federal banking agency does not consider affiliate lending in assessing a bank's or savings association's performance under paragraph (b)(2)(i) of this section.

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

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

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

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

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

(e) *Lending performance rating.* The appropriate Federal banking agency rates a bank's or savings association's lending performance as provided in appendix A of this part.

§ 25.23 Investment test.

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

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