

§ 345.22

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affect the bank's ability to provide retail lending, retail banking services and retail banking products, community development loans, community development investments, or community development services;

(2) Any information regarding the bank's past performance;

(3) Demographic data on income levels and income distribution, nature of housing stock, housing costs, economic climate, or other relevant data;

(4) Any information about retail banking and community development needs and opportunities provided by the bank or other relevant sources, including, but not limited to, members of the community, community organizations, State, local, and tribal governments, and economic development agencies;

(5) Data and information provided by the bank regarding the bank's business strategy and product offerings;

(6) The bank's public file, as provided in §345.43, including any written comments about the bank's CRA performance submitted to the bank or the FDIC and the bank's responses to those comments; and

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

(e) *Conclusions and ratings*—(1) *Conclusions*. The FDIC assigns conclusions to a large bank's or limited purpose bank's performance on the applicable tests described in paragraph (a) of this section pursuant to §345.28 and appendix C to this part. The FDIC assigns conclusions to a small bank's or intermediate bank's performance on the applicable tests described in paragraph (a) of this section pursuant to §345.28 and appendices C and E to this part. The FDIC assigns conclusions to a bank that has an approved strategic plan pursuant to §345.28 and paragraph g of appendix C to this part.

(2) *Ratings*. The FDIC assigns an overall CRA performance rating to a bank in each State or multistate MSA, as applicable, and for the institution pursuant to §345.28 and appendices D and E to this part.

(f) *Safe and sound operations*. The CRA and this part do not require a bank to originate or purchase loans or investments or to provide services that are inconsistent with safe and sound

banking practices, including underwriting standards. Banks are permitted to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income individuals, small businesses or small farms, and low- or moderate-income census tracts, only if consistent with safe and sound operations.

§ 345.22 Retail lending test.

(a) *Retail Lending Test*—(1) *In general*. Pursuant to §345.21, the Retail Lending Test evaluates a bank's record of helping to meet the credit needs of its entire community through the bank's origination and purchase of home mortgage loans, multifamily loans, small business loans, and small farm loans.

(2) *Automobile loans*. The Retail Lending Test evaluates a bank's record of helping to meet the credit needs of its entire community through the bank's origination and purchase of automobile loans if the bank is a majority automobile lender. A bank that is not a majority automobile lender may opt to have automobile loans evaluated under this section.

(b) *Methodology overview*—(1) *Retail Lending Volume Screen*. The FDIC evaluates whether a bank meets or surpasses the Retail Lending Volume Threshold in each facility-based assessment area pursuant to the Retail Lending Volume Screen as provided in paragraph (c) of this section.

(2) *Retail lending distribution analysis*. Except as provided in paragraph (b)(5) of this section, the FDIC evaluates the geographic and borrower distributions of each of a bank's major product lines in each Retail Lending Test Area, as provided in paragraphs (d) and (e) of this section.

(3) *Retail Lending Test recommended conclusions*. Except as provided in paragraph (b)(5) of this section, the FDIC develops a Retail Lending Test recommended conclusion pursuant to paragraph (f) of this section for each Retail Lending Test Area.

(4) *Retail Lending Test conclusions*. Except as provided in paragraph (b)(5) of this section, the FDIC's determination of a bank's Retail Lending Test conclusion for a Retail Lending Test Area is informed by the bank's Retail Lending

Test recommended conclusion for the Retail Lending Test Area, performance context factors provided in §345.21(d), and the additional factors provided in paragraph (g) of this section.

(5) *Exceptions*—(i) *No major product line*. If a bank has no major product line in a facility-based assessment area, the FDIC assigns the bank a Retail Lending Test conclusion for that facility-based assessment area based upon its performance on the Retail Lending Volume Screen pursuant to paragraph (c) of this section, performance context factors provided in §345.21(d), and the additional factors provided in paragraph (g) of this section.

(ii) *Banks that lack an acceptable basis for not meeting the Retail Lending Volume Threshold*. The FDIC assigns a Retail Lending Test conclusion for a facility-based assessment area in which a bank lacks an acceptable basis for not meeting the Retail Lending Volume Threshold as provided in paragraph (c)(3)(iii) of this section.

(c) *Retail Lending Volume Screen*—(1) *Retail Lending Volume Threshold*. A bank meets or surpasses the Retail Lending Volume Threshold in a facility-based assessment area if the bank has a Bank Volume Metric of 30 percent or greater of the Market Volume Benchmark for that facility-based assessment area. The FDIC calculates the Bank Volume Metric and the Market Volume Benchmark pursuant to section I of appendix A to this part.

(2) *Banks that meet or surpass the Retail Lending Volume Threshold in a facility-based assessment area*. If a bank meets or surpasses the Retail Lending Volume Threshold in a facility-based assessment area pursuant to paragraph (c)(1) of this section, the FDIC develops a Retail Lending Test recommended conclusion for the facility-based assessment area pursuant to paragraphs (d) through (f) of this section.

(3) *Banks that do not meet the Retail Lending Volume Threshold in a facility-based assessment area*—(i) *Acceptable basis factors*. If a bank does not meet the Retail Lending Volume Threshold in a facility-based assessment area pursuant to paragraph (c)(1) of this section, the FDIC determines whether the bank has an acceptable basis for not

meeting the Retail Lending Volume Threshold in the facility-based assessment area by considering:

(A) The bank's dollar volume of non-automobile consumer loans;

(B) The bank's institutional capacity and constraints, including the financial condition of the bank;

(C) The presence or lack of other lenders in the facility-based assessment area;

(D) Safety and soundness limitations;

(E) The bank's business strategy; and

(F) Any other factors that limit the bank's ability to lend in the facility-based assessment area.

(ii) *Banks that have an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area*. If, after reviewing the factors described in paragraph (c)(3)(i) of this section, the FDIC determines that a bank has an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area, the FDIC develops a Retail Lending Test recommended conclusion for the facility-based assessment area in the same manner as for a bank that meets or surpasses the Retail Lending Volume Threshold under paragraph (c)(2) of this section.

(iii) *Banks that lack an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area*—(A) *Large banks*. If, after reviewing the factors in paragraph (c)(3)(i) of this section, the FDIC determines that a large bank lacks an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area, the FDIC assigns the bank a Retail Lending Test conclusion of "Needs to Improve" or "Substantial Noncompliance" for that facility-based assessment area. In determining whether "Needs to Improve" or "Substantial Noncompliance" is the appropriate conclusion, the FDIC considers:

(1) The bank's retail lending volume and the extent by which it did not meet the Retail Lending Volume Threshold;

(2) The bank's distribution analysis pursuant to paragraphs (d) through (f) of this section;

(3) Performance context factors provided in §345.21(d); and

(4) Additional factors provided in paragraph (g) of this section.

(B) *Intermediate or small banks.* If, after reviewing the factors in paragraph (c)(3)(i) of this section, the FDIC determines that an intermediate bank, or a small bank that opts to be evaluated under the Retail Lending Test, lacks an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area, the FDIC develops a Retail Lending Test recommended conclusion for the facility-based assessment area pursuant to paragraphs (d) through (f) of this section. The FDIC's determination of a bank's Retail Lending Test conclusion for the facility-based assessment area is informed by:

(1) The bank's Retail Lending Test recommended conclusion for the facility-based assessment area;

(2) The bank's retail lending volume and the extent by which it did not meet the Retail Lending Volume Threshold;

(3) Performance context factors provided in §345.21(d); and

(4) Additional factors provided in paragraph (g) of this section.

(d) *Scope of Retail Lending Test distribution analysis*—(1) *Product lines evaluated in a Retail Lending Test Area.* In each applicable Retail Lending Test Area, the FDIC evaluates originated and purchased loans in each of the following product lines that is a major product line, as described in paragraph (d)(2) of this section:

(i) Closed-end home mortgage loans in a bank's facility-based assessment areas and, as applicable, retail lending assessment areas and outside retail lending area;

(ii) Small business loans in a bank's facility-based assessment areas and, as applicable, retail lending assessment areas and outside retail lending area;

(iii) Small farm loans in a bank's facility-based assessment areas and, as applicable, outside retail lending area; and

(iv) Automobile loans in a bank's facility-based assessment areas and, as applicable, outside retail lending area.

(2) *Major product line standards*—(i) *Major product line standard for facility-based assessment areas and outside retail lending areas.* In a facility-based assess-

ment area or outside retail lending area, a product line is a major product line if the bank's loans in that product line comprise 15 percent or more of the bank's loans across all of the bank's product lines in the facility-based assessment area or outside retail lending area, as determined pursuant to paragraph II.b.1 of appendix A to this part.

(ii) *Major product line standards for retail lending assessment areas.* In a retail lending assessment area:

(A) Closed-end home mortgage loans are a major product line in any calendar year in the evaluation period in which the bank delineates a retail lending assessment area based on its closed-end home mortgage loans as determined by the standard in §345.17(c)(1); and

(B) Small business loans are a major product line in any calendar year in the evaluation period in which the bank delineates a retail lending assessment area based on its small business loans as determined by the standard in §345.17(c)(2).

(e) *Retail Lending Test distribution analysis.* The FDIC evaluates a bank's Retail Lending Test performance in each of its Retail Lending Test Areas by considering the geographic and borrower distributions of a bank's loans in its major product lines.

(1) *Distribution analysis in general*—(i) *Distribution analysis for closed-end home mortgage loans, small business loans, and small farm loans.* For closed-end home mortgage loans, small business loans, and small farm loans, respectively, the FDIC compares a bank's geographic and borrower distributions to performance ranges based on the applicable market and community benchmarks, as provided in paragraph (f) of this section and section V of appendix A to this part.

(ii) *Distribution analysis for automobile loans.* For automobile loans, the FDIC compares a bank's geographic and borrower distributions to the applicable community benchmarks, as provided in paragraph (f) of this section and section VI of appendix A to this part.

(2) *Categories of lending evaluated*—(i) *Geographic distributions.* For each major product line in each Retail Lending

Test Area, the FDIC evaluates the geographic distributions separately for the following categories of census tracts:

- (A) Low-income census tracts; and
- (B) Moderate-income census tracts.

(ii) *Borrower distributions.* For each major product line in each Retail Lending Test Area, the FDIC evaluates the borrower distributions separately for, as applicable, the following categories of borrowers:

- (A) Low-income borrowers;
- (B) Moderate-income borrowers;
- (C) Businesses with gross annual revenues of \$250,000 or less;
- (D) Businesses with gross annual revenues greater than \$250,000 but less than or equal to \$1 million;
- (E) Farms with gross annual revenues of \$250,000 or less; and
- (F) Farms with gross annual revenues greater than \$250,000 but less than or equal to \$1 million.

(3) *Geographic distribution measures.* To evaluate the geographic distributions in a Retail Lending Test Area, the FDIC considers the following measures:

(i) *Geographic Bank Metric.* For each major product line, a Geographic Bank Metric, calculated pursuant to paragraph III.a of appendix A to this part;

(ii) *Geographic Market Benchmark.* For each major product line except automobile loans, a Geographic Market Benchmark, calculated pursuant to paragraph III.b of appendix A to this part for facility-based assessment areas and retail lending assessment areas, and paragraph III.d of appendix A to this part for outside retail lending areas; and

(iii) *Geographic Community Benchmark.* For each major product line, a Geographic Community Benchmark, calculated pursuant to paragraph III.c of appendix A to this part for facility-based assessment areas and retail lending assessment areas, and paragraph III.e of appendix A to this part for outside retail lending areas.

(4) *Borrower distribution measures.* To evaluate the borrower distributions in a Retail Lending Test Area, the FDIC considers the following measures:

(i) *Borrower Bank Metric.* For each major product line, a Borrower Bank Metric, calculated pursuant to paragraph IV.a of appendix A to this part;

(ii) *Borrower Market Benchmark.* For each major product line except automobile loans, a Borrower Market Benchmark, calculated pursuant to paragraph IV.b of appendix A to this part for facility-based assessment areas and retail lending assessment areas, and paragraph IV.d of appendix A to this part for outside retail lending areas; and

(iii) *Borrower Community Benchmark.* For each major product line, a Borrower Community Benchmark, calculated pursuant to paragraph IV.c of appendix A to this part for facility-based assessment areas and retail lending assessment areas, and paragraph IV.e of appendix A to this part for outside retail lending areas.

(f) *Retail Lending Test recommended conclusions—(1) In general.* Except as described in paragraphs (b)(5)(i) and (c)(3)(iii)(A) of this section, the FDIC develops a Retail Lending Test recommended conclusion for each of a bank's Retail Lending Test Areas based on the distribution analysis described in paragraph (e) of this section and using performance ranges, supporting conclusions, and product line scores as provided in sections V through VII of appendix A to this part. For each major product line, the FDIC develops a separate supporting conclusion for each category of census tracts and each category of borrowers described in paragraphs V.a and VI.a of appendix A to this part.

(2) *Geographic distribution supporting conclusions—(i) Geographic distribution supporting conclusions for closed-end home mortgage loans, small business loans, and small farm loans.* To develop supporting conclusions for geographic distributions of closed-end home mortgage loans, small business loans, and small farm loans, the FDIC evaluates the bank's performance by comparing the Geographic Bank Metric to performance ranges, based on the Geographic Market Benchmark, the Geographic Community Benchmark, and multipliers, as described in paragraphs V.b and V.c of appendix A to this part.

(ii) *Geographic distribution supporting conclusions for automobile loans.* To develop supporting conclusions for geographic distributions for automobile loans, the FDIC evaluates the bank's

performance by comparing the Geographic Bank Metric to the Geographic Community Benchmark, as described in paragraph VI.b of appendix A to this part.

(3) *Borrower distribution supporting conclusions*—(i) *Borrower distribution supporting conclusions for closed-end home mortgage loans, small business loans, and small farm loans.* To develop supporting conclusions for borrower distributions of closed-end home mortgage loans, small business loans, and small farm loans, the FDIC evaluates the bank's performance by comparing the Borrower Bank Metric to performance ranges, based on the Borrower Market Benchmark, Borrower Community Benchmark, and multipliers, as described in paragraphs V.d and V.e of appendix A to this part.

(ii) *Borrower distribution supporting conclusions for automobile loans.* To develop supporting conclusions for borrower distributions for automobile loans, the FDIC evaluates the bank's performance by comparing the Borrower Bank Metric to the Borrower Community Benchmark, as described in paragraph VI.c of appendix A to this part.

(4) *Development of Retail Lending Test recommended conclusions*—(i) *Assignment of performance scores.* For each supporting conclusion developed pursuant to paragraphs (f)(2) and (3) of this section, the FDIC assigns a corresponding performance score as described in sections V and VI of appendix A to this part.

(ii) *Combination of performance scores.* As described in section VII of appendix A to this part, for each Retail Lending Test Area, the FDIC:

(A) Combines the performance scores for each supporting conclusion for each major product line into a product line score; and

(B) Calculates a weighted average of product line scores across all major product lines.

(iii) *Retail Lending Test recommended conclusions.* For each Retail Lending Test Area, the FDIC develops the Retail Lending Test recommended conclusion that corresponds to the weighted average of product line scores developed pursuant to paragraph (f)(4)(ii)(B)

of this section, as described in section VII of appendix A to this part.

(g) *Additional factors considered when evaluating retail lending performance.* The factors in paragraphs (g)(1) through (7) of this section, as appropriate, inform the FDIC's determination of a bank's Retail Lending Test conclusion for a Retail Lending Test Area:

(1) Information indicating that a bank purchased closed-end home mortgage loans, small business loans, small farm loans, or automobile loans for the sole or primary purpose of inappropriately enhancing its retail lending performance, including, but not limited to, information indicating subsequent resale of such loans or any indication that such loans have been considered in multiple depository institutions' CRA evaluations, in which case the FDIC does not consider such loans in the bank's performance evaluation;

(2) The dispersion of a bank's closed-end home mortgage lending, small business lending, small farm lending, or automobile lending within a facility-based assessment area to determine whether there are gaps in lending that are not explained by performance context;

(3) The number of lenders whose home mortgage loans, multifamily loans, small business loans, and small farm loans and deposits data are used to establish the applicable Retail Lending Volume Threshold, geographic distribution market benchmarks, and borrower distribution market benchmarks;

(4) Missing or faulty data that would be necessary to calculate the relevant metrics and benchmarks or any other factors that prevent the FDIC from calculating a Retail Lending Test recommended conclusion. If unable to calculate a Retail Lending Test recommended conclusion, the FDIC assigns a Retail Lending Test conclusion based on consideration of the relevant available data;

(5) Whether the Retail Lending Test recommended conclusion does not accurately reflect the bank's performance in a Retail Lending Test Area in which one or more of the bank's major product lines consists of fewer than 30 loans;

(6) A bank's closed-end home mortgage lending, small business lending, small farm lending, or automobile lending in distressed or underserved nonmetropolitan middle-income census tracts where a bank's nonmetropolitan facility-based assessment area or nonmetropolitan retail lending assessment area includes very few or no low- and moderate-income census tracts; and

(7) Information indicating that the credit needs of the facility-based assessment area or retail lending assessment area are not being met by lenders in the aggregate, such that the relevant benchmarks do not adequately reflect community credit needs.

(h) *Retail Lending Test performance conclusions and ratings*—(1) *Conclusions*—(i) *In general*. Pursuant to § 345.28, section VIII of appendix A to this part, and appendix C to this part, the FDIC assigns conclusions for a bank's Retail Lending Test performance in each Retail Lending Test Area, State, and multistate MSA, as applicable, and for the institution.

(ii) *Retail Lending Test Area conclusions*. The FDIC assigns a Retail Lending Test conclusion for each Retail Lending Test Area based on the Retail Lending Test recommended conclusion, performance context factors provided in § 345.21(d), and the additional factors provided in paragraph (g) of this section, except as provided in paragraphs (h)(1)(ii)(A) and (B) of this section:

(A) *Facility-based assessment areas with no major product line*. The FDIC assigns a Retail Lending Test conclusion for a facility-based assessment area in which a bank has no major product line based on the bank's performance on the Retail Lending Volume Screen pursuant to paragraph (c) of this section, performance context information provided in § 345.21(d), and the additional factors provided in paragraph (g) of this section.

(B) *Facility-based assessment areas in which a bank lacks an acceptable basis for not meeting the Retail Lending Volume Threshold*. The FDIC assigns a Retail Lending Test conclusion for a facility-based assessment area in which a bank lacks an acceptable basis for not meeting the Retail Lending Volume Threshold as provided in paragraph (c)(3)(iii) of this section.

(2) *Ratings*. Pursuant to § 345.28 and appendix D to this part, the FDIC incorporates a bank's Retail Lending Test conclusions into its State or multistate MSA ratings, as applicable, and its institution rating.

EFFECTIVE DATE NOTE: At 89 FR 7206, Feb. 1, 2024, § 345.22 was amended by removing the term "Businesses" from paragraphs (e)(2)(ii)(C) and (D) and adding in its place "Small businesses", and removing the term "Farms" from paragraphs (e)(2)(ii)(E) and (F) and adding in its place "Small farms", effective date delayed indefinitely.

§ 345.23 Retail services and products test.

(a) *Retail Services and Products Test*—(1) *In general*. Pursuant to § 345.21, the Retail Services and Products Test evaluates the availability of a bank's retail banking services and retail banking products and the responsiveness of those services and products to the credit needs of the bank's entire community, including low- and moderate-income individuals, families, or households, low- and moderate-income census tracts, small businesses, and small farms. The FDIC evaluates the bank's retail banking services, as described in paragraph (b) of this section, and the bank's retail banking products, as described in paragraph (c) of this section.

(2) *Main offices*. For purposes of this section, references to a branch also include a main office that is open to, and accepts deposits from, the general public.

(3) *Exclusion*. If the FDIC considers services under the Community Development Services Test in § 345.25, the FDIC does not consider those services under the Retail Services and Products Test.

(b) *Retail banking services*—(1) *Scope of evaluation*. To evaluate a bank's retail banking services, the FDIC considers a bank's branch availability and services provided at branches, remote service facility availability, and digital delivery systems and other delivery systems, as follows:

(i) *Branch availability and services*. The FDIC considers the branch availability and services provided at branches of banks that operate one or more branches pursuant to paragraph (b)(2) of this section.