

(2) The OTS 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 savings association elects to have the OTS consider loans within a particular lending category made by one or more of the savings association's affiliates in a particular assessment area, the savings association shall elect to have the OTS 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 savings association's affiliates.

(3) The OTS does not consider affiliate lending in assessing a 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 savings association participates or by a third party in which the savings association has invested:

(1) Will be considered, at the savings association's option, if the savings association reports the data pertaining to these loans under § 563e.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 OTS rates a savings association's lending performance as provided in Appendix A of this part.

#### § 563e.23 Investment test.

(a) *Scope of test.* The investment test evaluates a 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 state-

wide or regional area that includes the savings association's assessment area(s).

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

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

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the savings association 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.

(e) *Performance criteria.* The OTS evaluates the investment performance of a savings association pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The OTS rates a savings association's investment performance as provided in Appendix A of this part.

#### § 563e.24 Service test.

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

(b) *Area(s) benefitted.* Community development services must benefit a savings association's assessment area(s) or a broader statewide or regional area

that includes the savings association's assessment area(s).

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

(d) *Performance criteria—retail banking services.* The OTS evaluates the availability and effectiveness of a savings association's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the savings association's branches among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the savings association's branches, the savings association's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) 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 savings association, 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

(4) 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.

(e) *Performance criteria—community development services.* The OTS evaluates community development services pursuant to the following criteria:

(1) The extent to which the savings association provides community development services; and

(2) The innovativeness and responsiveness of community development services.

(f) *Service performance rating.* The OTS rates a savings association's service performance as provided in Appendix A of this part.

**§ 563e.25 Community development test for wholesale or limited purpose savings associations.**

(a) *Scope of test.* The OTS assesses a wholesale or limited purpose savings association'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.

(b) *Designation as a wholesale or limited purpose savings association.* In order to receive a designation as a wholesale or limited purpose savings association, a savings association shall file a request, in writing, with the OTS, at least three months prior to the proposed effective date of the designation. If the OTS approves the designation, it remains in effect until the savings association requests revocation of the designation or until one year after the OTS notifies the savings association that the OTS has revoked the designation on its own initiative.

(c) *Performance criteria.* The OTS evaluates the community development performance of a wholesale or limited purpose savings association pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the savings association, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) 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

(3) The savings association's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a savings association's option, the OTS will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the savings association,