

investments, but the weight accorded a grant is determined under the performance criteria in the investment test.³

Small institution. Under the 1994 proposal, institutions would have been considered small institutions if they had total assets of less than \$250 million and were either independent institutions or affiliates of holding companies with less than \$250 million in total assets. This definition of "small institution" received numerous comments. Industry commenters generally believed that the asset level for holding companies should be raised or eliminated entirely, although some indicated that the \$250 million asset level for small institutions would be satisfactory. Some commenters representing institutions with assets below \$250 million affiliated with a larger holding company indicated that their institutions typically operated independently from the holding company in complying with CRA obligations. They stated that it would be unfair for them to be evaluated under the assessment tests for a larger institution merely because of their ownership structure. On the other hand, community and consumer groups often commented that small institutions should not be treated differently, or that only institutions with fewer than \$50 million in assets should be considered small institutions for purposes of the CRA rule.

The final rule modifies the definition of "small institution" in light of these comments. In the final rule, for any

independent institution to be considered a small institution, it must have total assets of less than \$250 million. Moreover, an institution with total assets of less than \$250 million that is owned by a holding company would be considered a small institution if the total bank and thrift assets of its holding company are less than \$1 billion. The agencies were persuaded that some smaller holding companies may be unable to provide support to their subsidiary banks and thrifts for CRA compliance. Larger holding companies have the ability to provide support to their subsidiary banks and thrifts, so small institutions owned by these holding companies will not be unfairly burdened by evaluation under the lending, investment, and service tests used in the assessments of larger institutions. The choice of the \$1 billion level reflects the weight of the comments that suggested raising the asset level and the agencies' judgment regarding the size at which a holding company should be expected to support the compliance activities of its bank and thrift subsidiaries. The agencies estimate that this change will add only a limited number of institutions, with average assets of about \$100 million, to those eligible under the small bank performance standards.

Many commenters also asked the agencies to clarify the date on which the determination will be made whether an institution is a small institution. The agencies have amended the definition of "small institution" to clarify that an institution will be considered a small institution throughout any calendar year if, as of December 31 of either of the prior two calendar years, the total assets of the institution (and, if applicable, its holding company) fell below the asset limits set out earlier for a small institution. This definition ensures some stability in whether an institution is classified as a small institution and minimizes the chance that an institution's status will change repeatedly from year to year. The definition also ensures that institutions that exceed the asset limits have adequate time to prepare to meet the requirements applicable to larger institutions.

Small business loan and small farm loan. The agencies made no substantive changes to the definitions of "small business loan" and "small farm loan." The final rule cross-references the Call Reports and TFR definitions rather than restating the substance of the definitions as the 1994 proposal would have done. The definitions are based on the size of the loans. Some commenters urged that the definitions be based on the asset size

of the business or the farm, as was originally proposed in 1993. The agencies have concluded that, although defining small business and small farm loans by the size of the loan may not be as precise as definitions based on business or farm asset size, following the approach used in the Call Report and TFR will appreciably reduce the burden of compliance for institutions and their borrowers. Also, the Call Report and TFR definitions minimize the need for institutions to collect additional information. The danger of inaccuracy is limited, because loan size roughly correlates with the size of a business or farm borrower. Furthermore, the agencies have retained the proposed requirement that institutions indicate whether a small business or small farm loan is to a business or farm with gross annual revenues of \$1 million or less. This requirement will provide additional information to identify loans to small entities.

Several commenters requested that the agencies clarify whether the definitions of small business and small farm loans include loans made to nonprofit organizations as described in the Internal Revenue Code at 26 U.S.C. 501(c)(3). Loans made to nonprofit organizations are included to the same extent they are included under the Call Report and TFR definitions of small business and small farm loans. Loans to nonprofits that are reported as small business or small farm loans cannot also be reported as community development loans, except by wholesale and limited purpose institutions.

Performance Tests, Standards and Ratings in General

Several changes have been made to the section of the 1994 proposal on assessment tests, standards, and ratings. As an initial matter, the terms "performance tests," "performance standards," and "performance criteria" have been substituted for the terms "assessment tests," "assessment standards," and "assessment criteria" to reflect more accurately the final rule's focus on performance rather than process. The agencies have also changed the term "assessment context" to "performance context" because the latter term better describes the role of this information in the CRA evaluation process.

Performance context. An institution's performance under the tests and standards in the rule is judged in the context of information about the institution, its community, its competitors, and its peers. Examiners will consider the following information, as appropriate, in order to assist in

³ Examples of qualified investments include, but are not limited to, investments, grants, deposits or shares; in or to financial intermediaries (including, but not limited to CDFIs, CDCs, minority- and women-owned financial institutions, and low-income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation; in support of organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing; in support of organizations promoting economic development by financing small businesses, including Small Business Investment Companies (SBICs) and specialized SBICs; to support or develop facilities that promote community development in low- and moderate-income areas for low- and moderate-income individuals, such as day care facilities; in projects eligible for low-income housing tax credits; in state and municipal obligations that specifically support affordable housing or other community development; to not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as home-ownership counseling, home maintenance counseling, credit counseling, and other financial services education; and in or to organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development.