

institution's operations. However, the purpose of the consultation is for the institution to develop the fullest possible information about the needs of its community and how these needs might be met. The institution nevertheless makes all decisions regarding how it plans to help meet those needs. In reviewing the public participation, the agencies will not consider whether community organizations unanimously support the plan, but whether the institution made an appropriate investigation to determine the needs of its community, and whether the goals of the plan serve those needs.

As a technical clarification, the final rule provides that an institution may impose a reasonable charge for copying or mailing a plan but may not charge for reviewing the plan.

Assessment of performance under the plan. Under the final rule, as under the 1994 proposal, the agencies will generally rate an institution's performance under an approved plan solely in relation to goals set out in the plan. An institution has the option, however, to elect in its plan to be subject to the standard tests should it fail to meet substantially its "satisfactory" goals under the plan. The final rule makes this election clear. An institution operating under an approved plan would, during the period of the plan, not be subject to assessment under the standard tests, unless the institution so chose. In considering whether an institution has substantially met plan goals, an agency will give consideration to circumstances beyond the institution's control, such as economic conditions, that have affected its ability to perform.

Confidential information. A number of industry commenters indicated that the possibility of public disclosure of confidential information presented a major disincentive to their use of the strategic plan alternative. In response to similar comments on the 1993 proposal, the 1994 proposal would have permitted institutions to submit additional information to the relevant agency on a confidential basis. The final rule includes this provision, which adequately addresses confidentiality concerns.

Data collection and reporting responsibilities. Despite industry comments to the contrary, the final rule provides that approval of a plan does not affect an institution's data collection

responsibilities. These data are useful to the agencies in assessing overall lending in communities, and would also be of value to the public. Since the institution's plan will be in its public file, the public will have the appropriate context in which to evaluate the lending data.

#### Assigned Ratings

In the final rule, as under the 1994 proposal, an institution will be assigned one of the four assigned ratings required by the statute: "outstanding," "satisfactory," "needs to improve," or "substantial noncompliance." (12 U.S.C. 2906(b)(2)) For institutions that are evaluated under the community development test for wholesale or limited purpose institutions, the small institution performance standards, or an approved strategic plan, the rating on these tests will be the institution's assigned rating with adjustment for any evidence of discrimination. Retail institutions that are evaluated under the lending, investment and service tests will be assigned a rating based upon the assigned rating principles and the matrix that implements these principles, also with adjustment for any evidence of discrimination.

Ratings principles and matrix. A number of comments discussed the principles and methodology by which an assigned rating would be given to retail institutions evaluated under the lending, investment and service tests. The 1994 proposal set forth five principles that governed the assignment of this rating. The methodology for calculating the assigned rating was described in Appendix A. The proposal would have required that an institution's rating on the lending test count for at least 50 percent of its assigned rating. Furthermore, an institution would have been required to achieve a "satisfactory" rating on the lending test in order to receive an assigned rating of "satisfactory." In addition, the 1994 proposal would have allowed investment and service performance to raise a institution's assigned rating if it had earned at least a "satisfactory" rating on the lending test. Poor performance on either the investment or service test also could have negatively affected an institution's assigned rating. The proposal would have required the agencies to adjust ratings for all institutions, regardless of which test the agencies used to evaluate their performance, to take into

consideration evidence of discriminatory or other illegal credit practices. Finally, an institution that otherwise would have received a "needs to improve" rating would have been rated as "substantial noncompliance" if it received no better than a "needs to improve" rating on each of its two previous examinations.

Commenters generally supported the 1994 proposal's emphasis on lending performance, but a number were concerned about several apparently anomalous ratings that would have resulted from applying the rating principles and the matrix in the appendix. Several commenters, particularly community groups, were concerned that an institution could receive an assigned rating of "satisfactory" even if it received a rating of "substantial noncompliance" on both the investment and service tests, if its rating on the lending test was at least a "high satisfactory." In addition, an institution with a rating of "substantial noncompliance" on either the service or investment test could get an "outstanding" composite rating if its rating on the lending and the third test was "outstanding." These commenters suggested revising the rating principles and matrix to avoid these anomalous results.

After considering the comments, the agencies have revised the final rule to eliminate these anomalies. The agencies eliminated the principle that an "outstanding" rating on the lending test and either the service or investment test would mean an "outstanding" assigned rating even if the rating on the third test was "substantial noncompliance." The agencies also eliminated the principle that an institution's rating on the lending test would count for at least 50 percent of its assigned rating. This change does not alter the agencies' emphasis on the primacy of lending when evaluating CRA performance, because no institution may receive an assigned rating of "satisfactory" unless it receives a rating of at least "low satisfactory" on the lending test.

In light of the comments, the matrix that sets forth the methodology for aggregating an institution's scores on the lending, service and investment tests to arrive at an assigned rating has also been revised. The number of points to be given for each rating on the lending, service and investment tests remains unchanged as shown in the following table.