

describes the geographic area within which the specific performance criteria in the rule will be assessed. Based on the continuing criticisms of the "delineated community" in the current regulation and the "service area" in both the 1993 and 1994 proposals, the agencies have decided to place a different emphasis on the institution's specific delineation and the methods used by the institution to establish that delineation. The agencies do not expect that, simply because a census tract or block numbering area is within an institution's assessment area, the institution must lend to that census tract or block numbering area. The capacity and constraints of the institution, its business decisions about how it can best help to meet the needs of its assessment area, including those of low- and moderate-income neighborhoods, and other aspects of the performance context, would be relevant to explain why the institution is not serving portions of the assessment area(s).

The rule also clarifies that an institution's delineation of its assessment area(s) is not separately evaluated as an aspect of CRA performance, although the delineation will be reviewed for compliance with the assessment area requirements of the rule. If, for example, an institution delineated the entire county in which it is located as its assessment area but could have delineated its assessment area as only a portion of the county, it will not be penalized for lending only in that portion of the county, so long as that portion does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies.

Assessment area boundaries. The 1994 proposal would have prohibited a financial institution, other than a wholesale or limited purpose institution, from delineating a service area that extends substantially across boundaries of a metropolitan statistical area (MSA) or state boundaries, unless the service area was located in a multistate MSA. Further, the proposal would have prohibited an institution's service area from reflecting illegal discrimination or arbitrarily excluding low- and moderate-income geographies (taking into account the institution's size and financial condition).

The final rule states that an institution shall not delineate an assessment area extending substantially across the boundaries of a consolidated metropolitan statistical area (CMSA). An institution shall delineate separate assessment areas for the areas inside and outside the CMSA and for different CMSAs. The 1994 proposal expressed these limitations in terms of MSAs

rather than CMSAs. The change in the final rule has been made to address a technical shortcoming in the 1994 proposal, but does not change its substance. The final rule retains the provision from both the 1993 and 1994 proposals that an assessment area not extend substantially across state boundaries unless the assessment area is located in a multistate MSA. The final rule applies these limitations to wholesale and limited purpose institutions as well as other institutions because of changes made to the community development test.

To simplify the process of delineating an assessment area, the final rule encourages institutions to establish assessment area boundaries that coincide with the boundaries of one or more MSAs or one or more contiguous political subdivisions, such as counties, cities, or towns. An institution is permitted, but is not required, to adjust the boundaries of its assessment area(s) so as to include only the portion of a political subdivision it reasonably can be expected to serve. This provision gives institutions some flexibility in their delineations, particularly in the case of an area that would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers. As with the 1994 proposal, however, such adjustments may not arbitrarily exclude low- and moderate-income geographies from the institution's assessment area(s). For purposes of assessment area delineation, an institution should use the MSA and CMSA boundaries in effect on January 1 of the calendar year in which the institution is making the delineation.

Equidistance principle. The 1994 proposal would have adopted the effective lending territory principle from the current regulations in slightly modified form. The 1994 proposal would have explicitly linked an institution's CRA obligations to the areas around its branches and deposit-taking ATMs, rather than its other non-deposit taking offices. The service area delineated by the institution would have had to include all geographies around its branches in which the institution originated or had outstanding during the previous year a significant number and amount of home mortgage, small business and small farm, and consumer loans and any other geographies equidistant from its branches and deposit-taking ATMs.

The final rule eliminates the equidistance principle as a required part of the delineation of an assessment area. This change provides institutions greater flexibility in their delineations. Several commenters suggested that, in

certain circumstances, the equidistance requirement could be inappropriate, because institutions do not routinely serve areas that are uniformly equidistant from their deposit-taking offices. The final rule retains the requirement that an assessment area not arbitrarily exclude low- or moderate-income geographies.

Wholesale and limited purpose institutions. The final rule requires that the assessment area(s) for a wholesale or limited purpose institution must generally consist of one or more MSAs or one or more contiguous political subdivisions in which the institution has its main office, branches, and deposit-taking ATMs. This requirement is substantively consistent with the 1994 proposed delineation of service area for wholesale and limited purpose institutions, but the final rule differs from the 1994 proposal in two ways. First, the final rule specifies that the assessment area must generally consist of one or more MSAs or contiguous political subdivisions; the 1994 proposal would have required the institution to delineate "an area or areas around its offices." Second, the assessment area has been modified to conform to changes made to the scope of the community development test. The community development test permits consideration of community development activities that are outside of an institution's assessment area, but that are in a broader statewide or regional area that includes the institution's assessment area. As a result, an institution need not delineate a statewide or regional, rather than local, assessment area in order to receive consideration for these activities.

Use of assessment area. In response to comments indicating concern that examiners might modify the area delineated by the institution, the final rule explicitly provides that the agencies will use the assessment area delineated by the institution, unless they determine that the assessment area does not comply with the requirements for assessment areas set forth in the final rule. If the assessment area fails to comply with the rule's requirements, the examiner will designate an area that does comply and will use that area in evaluating the institution's performance.

Technical changes and clarifications. The final rule includes other technical changes to provide clarification. For example, some commenters interpreted the use of the phrase "significant number and amount of loans" in the 1994 proposal to have a different meaning than the phrase "substantial portion of its loans" in the current