

(iii) In the case of a law graduate, he or she has filed a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative and that he or she is appearing without direct or indirect remuneration from the alien he or she represents;

(iv) An attorney or accredited representative physically accompanies the law student or law graduate who is appearing. The accompanying attorney or accredited representative must be authorized to practice before EOIR and be prepared to proceed with the case at all times; and

(v) All filings by law students and law graduates are made through an EOIR-registered attorney or accredited representative.

\* \* \* \* \*

**James R. McHenry,**

*Director, Executive Office for Immigration Review, Department of Justice.*

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Parts 24, 25, 35, and 192

[Docket ID OCC-2020-0025]

RIN 1557-AE96

### Community Reinvestment Act Regulations

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is issuing a notice of proposed rulemaking to request comment on the OCC's proposed approach to determine the Community Reinvestment Act (CRA) evaluation measure benchmarks, retail lending distribution test thresholds, and community development minimums under the general performance standards. The proposal further explains how the OCC would assess significant declines in CRA activities levels in connection with performance context following the initial establishment of the benchmarks, thresholds, and minimums. Finally, the proposed rule would make clarifying and technical amendments to the CRA final rule.

**DATES:** Comments must be received on or before February 2, 2021.

**ADDRESSES:** Commenters are encouraged to submit comments through the Federal

eRulemaking Portal, if possible. Please use the title "Community Reinvestment Act Regulations" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta**  
*Regulations.gov Classic:* Go to <https://www.regulations.gov/>. Enter "Docket ID OCC 2020-0025" in the Search Box and click "Search." Click on "Comment Now" to submit public comments. For help with submitting effective comments please click on "View Commenter's Checklist." Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

- **Regulations.gov Beta:** Go to <https://beta.regulations.gov/> or click "Visit New Regulations.gov Site" from the *Regulations.gov* classic homepage. Enter "Docket ID OCC-2020-0025" in the Search Box and click "Search." Public comments can be submitted via the "Comment" box below the displayed document information or click on the document title and click the "Comment" box on the top-left side of the screen. For help with submitting effective comments please click on "Commenter's Checklist." For assistance with the *Regulations.gov* Beta site please call (877)-378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or email to [regulations@erulemakinghelpdesk.com](mailto:regulations@erulemakinghelpdesk.com).

- **Mail:** Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

**Instructions:** You must include "OCC" as the agency name and "Docket ID OCC-2020-0025" in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this

rulemaking action by the following method:

- **Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta:**

*Regulations.gov Classic:* Go to <https://www.regulations.gov/>. Enter "Docket ID OCC-2020-0025" in the Search box and click "Search." Click on "Open Docket Folder" on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on "View all documents and comments in this docket" and then using the filtering tools on the left side of the screen. Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

*Regulations.gov Beta:* Go to <https://beta.regulations.gov/> or click "Visit New Regulations.gov Site" from the *Regulations.gov* classic homepage. Enter "Docket ID OCC-2020-0025" in the Search Box and click "Search." Click on the "Comments" tab. Comments can be viewed and filtered by clicking on the "Sort By" drop-down on the right side of the screen or the "Refine Results" options on the left side of the screen. Supporting Materials can be viewed by clicking on the "Documents" tab and filtered by clicking on the "Sort By" drop-down on the right side of the screen or the "Refine Results" options on the left side of the screen." For assistance with the *Regulations.gov* Beta site please call (877)-378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or email to [regulations@erulemakinghelpdesk.com](mailto:regulations@erulemakinghelpdesk.com).

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

**FOR FURTHER INFORMATION CONTACT:** Ioan Voicu, Director, Compliance Risk Analysis Division, at (202) 649-5550; or Daniel Borman, Senior Attorney, Daniel Sufanski, Attorney, or Jean Xiao, Attorney, Chief Counsel's Office, (202) 649-5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

On June 5, 2020, the OCC published a final rule in the **Federal Register** (2020 final rule) to update the regulatory framework implementing the Community Reinvestment Act of 1977 (CRA)<sup>1</sup> for national banks and savings

<sup>1</sup> Community Reinvestment Act of 1977, Public Law 95-128, 91 Stat. 1147 (1977), codified at 12 U.S.C. 2901 *et seq.*

associations (collectively, banks).<sup>2</sup> The 2020 final rule was the culmination of a multi-year process of engagement with various stakeholders to ensure that the CRA remains a relevant and powerful tool for encouraging insured depository institutions to serve the needs of their entire communities, including low- and moderate-income (LMI) neighborhoods. The 2020 final rule strengthened and modernized the implementation of the CRA by making the regulatory framework more objective, transparent, consistent in application, and reflective of changes in the banking industry and how consumers bank. The OCC's goal in implementing the 2020 final rule was to make the CRA framework a better tool to encourage banks to engage in more activities to serve the needs of their communities, particularly in LMI and other historically underserved communities. These goals are consistent with the statutory purpose of the CRA to encourage insured depository institutions<sup>3</sup> to help meet the credit needs of the local communities in which they are chartered, including LMI neighborhoods, consistent with banks' safe and sound operations.

The 2020 final rule made changes in four areas of the historical CRA framework. Specifically, the 2020 final rule: (1) Clarified and expanded the bank lending, investment, and services that qualify for CRA consideration (collectively, qualifying activities or CRA activities); (2) updated how banks delineate the assessment areas in which they are evaluated; (3) provided additional methods for evaluating CRA performance in a consistent and objective manner; and (4) required reporting that is timely and transparent.

The new framework incentivizes banks to achieve specific performance goals. Timely and transparent CRA data, including CRA performance evaluations, will provide meaningful information to all stakeholders.

The 2020 final rule made changes to aspects of the historical CRA framework that had unintentionally inhibited

banks' CRA activities by creating uncertainty about which activities would qualify and how much those activities would contribute to banks' CRA ratings. Through hearings, outreach, and public comments during the rulemaking process, the OCC learned that many banks engaged only in CRA activities for which they previously received CRA consideration and committed capital and credit only to activities for which they were confident that they would receive consideration—at the cost of innovation and responsiveness. In addition, the historical framework lacked consistent and objective evaluations and timely and transparent reporting, which inhibited the public's ability to understand how and to what extent banks were meeting community credit needs.

By moving to a system that is primarily objective and transparent under the 2020 final rule, CRA ratings will be more consistent, reproducible, and comparable over time. The agency's 2020 final rule was designed so that similar circumstances will be evaluated in a similar manner from bank to bank.

In the 2020 final rule, the OCC finalized the framework for the general performance standards (*i.e.*, the CRA evaluation measure, retail lending distribution tests, community development (CD) minimums, and the percentage of assessment areas for which a bank must receive a satisfactory or outstanding assigned rating to achieve a bank presumptive rating of satisfactory or outstanding); however, the OCC decided not to adopt the specific CRA evaluation measure benchmarks, retail lending distribution test thresholds, and CD minimums as initially proposed. As noted in the preamble of the 2020 final rule, the OCC believes that it is appropriate to gather more information and further calibrate these measures, and the agency stated that it would issue a proposal that would explain the process the OCC will use to more precisely calibrate the benchmark, threshold, and minimum values.<sup>4</sup>

This proposal seeks comment on the approach the OCC would use to set these benchmarks, thresholds, and minimums. As described further in this **SUPPLEMENTARY INFORMATION** section, the OCC is separately seeking data through an Information Collection Survey from banks subject to the general performance standards.<sup>5</sup> Once the OCC

analyzes the public comments on this proposal and the data it receives, the OCC plans to issue a final rule that will adopt an approach for setting the benchmark, threshold, and minimum values that correspond to the presumptive ratings<sup>6</sup> (*i.e.*, outstanding, satisfactory, needs to improve, and substantial noncompliance) for banks assessed under the general performance standards. In addition, once the OCC has determined the specific benchmarks, thresholds, and minimums according to the selected approach, the agency will take the appropriate steps to publicize the standards and engage stakeholders regarding the specific benchmarks, thresholds, and minimums. Once finalized, the OCC expects to periodically review and adjust these benchmarks, thresholds, and minimums, as necessary, to ensure that these measures are incentivizing banks to engage in appropriate levels of CRA activities, while taking into consideration market conditions and changes in economic cycles. The OCC also expects to take the appropriate steps to publicize the future adjustments to the benchmarks, thresholds, and minimums and engage stakeholders on these adjustments.

## II. Background

The OCC's 2020 final rule incorporates many of the measures and methods the OCC historically has used to assess CRA performance, but it also provides clarity about how the OCC will use those mechanisms to assess a bank's CRA performance. Among other things, the 2020 final rule describes what activities will qualify for CRA credit and how they will be measured to assess CRA performance. Further, the 2020 final rule explains that banks are expected to meet specific benchmarks, thresholds, and minimums in order to achieve presumptive CRA ratings.

evaluated under a strategic plan and that are not wholesale or limited purpose banks. Under § 25.10(b) of the 2020 final rule, small, intermediate, wholesale, and limited purpose banks can opt into and elect to be evaluated under the general performance standards. For purposes of the Information Collection Survey, the OCC is not collecting data from any small, intermediate, wholesale, and limited purpose banks.

<sup>6</sup> Under § 25.13 of the 2020 final rule, banks assessed under the general performance standards receive presumptive ratings at both the bank and assessment area level based on their performance on objective criteria (*i.e.*, the CRA evaluation measure, retail lending distribution test performance, CD minimum calculation, and the percentage of assessment areas in which the bank received a satisfactory or outstanding assigned rating). Those presumptive ratings are adjusted for performance context and evidence of discriminatory or other illegal credit practices to determine the assigned rating pursuant to § 25.19 of the 2020 final rule.

<sup>2</sup> 85 FR 34734 (June 5, 2020). As used throughout this notice, the term "bank" or "banks" also includes uninsured Federal branches that result from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)). The rulemaking authority of the Office of Thrift Supervision (OTS) and the Director of the OTS, respectively, relating to savings associations was transferred to the OCC in Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376, 1522 (2010). As a result, the OCC has CRA rulewriting authority for both Federal and state savings associations, as well as for national banks. The OCC also has rulewriting authority for Federal and state savings associations for purposes of the CRA specifically pursuant to 12 U.S.C. 2905.

<sup>3</sup> 12 U.S.C. 1813(c)(2).

<sup>4</sup> 85 FR at 34774.

<sup>5</sup> Twelve CFR 25.10(a) of the 2020 final rule applies the general performance standards to banks with more than \$2.5 billion in assets that are not

Under the 2020 final rule, banks assessed under the general performance standards will be evaluated based on (1) the distribution of their retail loans (*i.e.*, home mortgage loans, small loans to businesses, small loans to farms, and consumer loans) (retail lending distribution tests); (2) the dollar value of qualifying retail loans and CD activities and the distribution of their branches in each assessment area and at the bank level (CRA evaluation measure); and (3) the level of their CD activities in each assessment area and at the bank level (CD minimum calculation).

Twelve CFR 25.13 of the 2020 final rule provides the general performance standards and describes how they are applied to determine bank and assessment area presumptive ratings. Section 25.13(d) of the 2020 final rule states that a bank's presumptive assessment area rating is based on its CRA evaluation measure, CD minimum calculation, and performance on the retail lending distribution tests. Section 25.13(c) of the 2020 final rule states that the bank-level presumptive rating is based on the CRA evaluation measure, CD minimum calculation, and assigned ratings in its assessment areas. Sections 25.11 and 25.13 of the 2020 final rule require a bank to determine its CRA evaluation measure and CD minimum calculation in each assessment area and at the bank level. As described in § 25.11 of the 2020 final rule, the CRA evaluation measure is the sum of the bank's annual qualifying activities values (including any applicable multipliers<sup>7</sup>) divided by its annual

<sup>7</sup> The purpose of multipliers is to incentivize banks to engage in activities that are particularly valuable and important from a CRA perspective by giving banks additional credit towards their CRA evaluation measures and CD minimum calculations for these activities. Under § 25.08 of the 2020 final rule, banks may be eligible for multipliers for the following: (1) Activities provided to or that support minority depository institutions, women's depository institutions, Community Development Financial Institutions, and low-income credit unions, except activities related to mortgage-backed securities; (2) other CD investments, except CD investments in mortgage-backed securities and municipal bonds; (3) other CD services; (4) other affordable housing-related CD loans; (5) retail loans generated by branches in LMI census tracts; and (6) qualifying activities in CRA deserts. Pursuant to § 25.08(b)(4) of the 2020 final rule, qualifying activities that receive a multiplier may be eligible for an additional multiplier based on the OCC's determination of the activity's responsiveness, innovativeness, or complexity. Further, to ensure that the use of multipliers does not reduce the level of CD activities that banks conduct, a bank is not eligible for multipliers until the quantified dollar values of its current period CD activities are approximately equal to the quantified dollar values of CD activities in its prior evaluation period. As described below, this proposal would make clarifying edits to the multiplier for activities that are determined to be particularly responsive, innovative, or complex. Additionally, as discussed

average quarterly retail domestic deposits value plus the percentage of the bank's branches in certain areas of need multiplied by .02, subject to a cap on the value of branches of one percentage point. The bank's average annual CRA evaluation measure at both the assessment area level and at the bank level will be compared to a specific quantitative benchmark, which is to be determined by the OCC.

Under § 25.13 of the 2020 final rule, the CD minimum calculation is determined by dividing the total quantified dollar value of a bank's CD loans and CD investments, including any applicable multipliers, by the bank's average quarterly retail domestic deposits value. The bank's CD minimum calculations at both the assessment area level and at the bank level will be compared to the CD minimums to be determined by the OCC.

Section 25.12 of the 2020 final rule describes the application of the retail lending distribution tests. The retail lending distribution tests evaluate the geographic and borrower distributions of a bank's major retail lending product lines in assessment areas in which the bank has originated 20 or more loans in those product lines per year during an evaluation period. The geographic distribution test evaluates the percentage of a bank's retail loan originations in LMI census tracts, and the borrower distribution test evaluates the percentage of a bank's retail loan originations to LMI borrowers, CRA-eligible businesses, and CRA-eligible farms, as applicable. Section 25.13 of the 2020 final rule requires a bank to pass both the geographic and borrower distribution tests for each applicable product line to receive a presumptive rating of satisfactory or outstanding in an assessment area. Section 25.12 of the 2020 final rule allows a bank to pass each test based on its performance relative to either the demographic comparator, which is based on the demographics of a given assessment area, or the peer comparator, which is based on peer performance in a given assessment area. The OCC will determine the thresholds to pass the borrower distribution test and geographic distribution test for both the demographic and peer comparators.

Although performance on the retail lending distribution tests is only

below, this proposal would clarify that to be eligible for the multipliers described in § 25.08, the quantified dollar value of a bank's current evaluation period CD loans, CD investments, and CD services must be "approximately equal to or greater than" the quantified dollar value of these activities considered in the bank's prior evaluation period.

evaluated at the assessment area level, § 25.13 of the 2020 final rule provides that in order to achieve a satisfactory or outstanding presumptive rating at the bank level, a bank with more than five assessment areas must receive an assigned rating of at least satisfactory or outstanding, respectively, in: (1) 80 percent of its assessment areas; and (2) assessment areas from which the banks receives 80 percent of its retail domestic deposits that it receives from its assessment areas. For a bank with five or fewer assessment areas to achieve a satisfactory or outstanding presumptive rating at the bank level, the bank must receive an assigned rating of at least satisfactory or outstanding, respectively, in: (1) 50 percent of its assessment areas; and (2) assessment areas from which the bank receives 80 percent of its retail domestic deposits that it receives from its assessment areas. Banks that do not meet these standards or the bank-level CD minimum requirement will receive a presumptive rating of needs to improve or substantial noncompliance, depending on the bank-level CRA evaluation measure.

In the preamble to the 2020 final rule, the OCC indicated that it would set the objective CRA evaluation measure benchmarks, retail lending distribution test thresholds, and CD minimums for the level of performance necessary to achieve each presumptive rating category at a later date, and that it would apply these benchmarks, thresholds, and minimums as of January 1, 2023, which is the compliance date applicable to banks subject to the general performance standards.<sup>8</sup> This proposal suggests an approach to determine those objective benchmarks, thresholds, and minimums.

### III. Information Collection Survey

Separate from this proposal, the OCC will issue an Information Collection Survey to obtain bank-specific information from banks subject to the general performance standards, which will assist the OCC in determining the CRA evaluation measure benchmarks, retail lending distribution test thresholds, and CD minimums under the 2020 final rule that will correspond to the presumptive ratings. This information collection will supplement existing OCC data and facilitate a broader review of the framework going forward, which may inform additional revisions in future years.

<sup>8</sup> 85 FR at 34736. The OCC would also apply these benchmarks, thresholds, and minimums for banks that opt into the general performance standards at the time of opt in.

Specifically, the OCC will request four types of bank data or information. First, the OCC will collect data on banks' main office presence, branch presence, deposit-taking facility presence, retail domestic deposit data at the county level, and what banks' facility-based and deposit-based assessment areas would have been under the standards in § 25.09. This data will assist the OCC in determining how banks would have performed under the general performance standards and the banks' presumptive ratings under §§ 25.10 through 25.13 of the 2020 final rule. Second, the OCC will collect data on what would have been the quantified dollar value of banks' CRA qualifying activities under the 2020 final rule to determine what banks' performance would have been on the CRA evaluation measure under § 25.11 of the 2020 final rule and the CD minimum under § 25.13(c) and (d) of the 2020 final rule. Third, the OCC will collect data on retail loan applications and on what would have been the quantified dollar value of banks' CRA qualifying retail loan originations to determine the CRA evaluation measure under § 25.11 of the 2020 final rule. Obtaining information on retail loan applications and originations will, in the near term, help inform the OCC about banks' credit supply decisions across geographies and, over time, assist the OCC in refining and improving the CRA framework.<sup>9</sup> Finally, the OCC will collect information on banks' branch locations to determine what would have been the branch distribution component of the CRA evaluation measure under § 25.11 of the 2020 final rule.

#### IV. Description of Proposed Rule

##### A. Proposed Approach for Setting the Benchmarks, Thresholds, and Minimums

The OCC is seeking to set CRA evaluation measure benchmarks, retail lending distribution test thresholds, and CD minimums that provide objectivity and transparency for banks evaluated under the general performance standards, while also encouraging banks

to engage in CRA activities at a level no less than the status quo.<sup>10</sup> To accomplish these goals, the OCC is proposing to establish benchmarks, thresholds, and minimums that correspond to a proportion of banks that would have received a hypothetical bank-level presumptive CRA rating of outstanding and satisfactory that is no greater than the historical proportion of banks that have received a bank-level assigned CRA rating of outstanding and satisfactory.<sup>11</sup>

Using banks' responses to the information collection, the OCC would calculate CRA evaluation measures and CD minimum calculations for each bank's assessment areas, as well as a bank-level CRA evaluation measure and CD minimum calculation for each bank. Similarly, for each major retail lending product line, the OCC would calculate the numerator used in determining each bank's retail lending distribution test ratios for each bank's assessment areas. After combining data from the Census and Dun and Bradstreet files of businesses, the OCC would then calculate the demographic comparator under the borrower and geographic distribution tests for each retail lending product line, if applicable, for every bank's assessment areas. Similarly, the OCC would use data collected from all banks subject to the general performance standards to calculate the peer comparator under the borrower and geographic distribution tests for each retail lending product line, if applicable, for every bank's assessment areas. Each bank's numerators under the borrower and geographic distribution tests would be divided by the applicable demographic and peer comparators to calculate each bank's retail lending distribution test ratios for each bank's assessment areas. These calculations would result in (1) bank-level distributions of the CRA evaluation measure and CD minimum calculation and (2) assessment area-level distributions of the CRA evaluation measure, CD minimum calculation, and the borrower and geographic distribution test ratios.

Using the dataset described above, possibly combined with other datasets,

the OCC would examine possible combinations of benchmark, threshold, and minimum values. For each set of benchmarks, thresholds, and minimums, the OCC would iteratively calculate the proportion of assessment areas that would pass for each bank. Subsequently, the OCC would determine the proportion of banks that would meet or exceed the bank-level CD minimum and the bank-level CRA evaluation measure benchmark. The OCC would compare the results to the historical proportion of outstanding ratings under the prior CRA framework to ensure that the chosen set of benchmarks, thresholds, and minimums yields a proportion of outstanding ratings that is no greater than the historical proportion. The OCC would determine the appropriate set of benchmarks, thresholds, and minimums for a satisfactory rating using the same approach. In the OCC's analysis, the banks that do not meet or exceed the benchmarks, thresholds, or minimums for satisfactory and outstanding ratings would receive a needs to improve or substantial noncompliance rating, depending on the criteria outlined in the 2020 final rule.

If the OCC identifies multiple combinations of benchmarks, thresholds, and minimums that result in a similar proportion of banks that pass, the OCC would consider additional criteria, such as incentives to further increase CRA activities that benefit LMI individuals and distressed or underserved areas, to identify the most appropriate set of performance standard values.

To maintain flexibility, the OCC would not require any of the benchmark, threshold, or minimum values to be similar to each other. That is, the information collection may reveal that distributions of the various CRA performance standards differ across retail lending product lines and aggregation levels. For example, the distribution of the mortgage product line may be significantly different from that of the automobile loan or small loan to a business product lines. Similarly, the distribution of the CRA evaluation measure at the assessment area level may differ from that at the bank level. As such, the OCC anticipates that there may be as many as 26 different calibrated benchmark, threshold, and minimum values under the general performance standards. Specifically, the retail lending distribution tests reflect six retail lending product lines for the borrower distribution test, three retail lending product lines for the geographic distribution test, and involve two different comparisons under each test,

<sup>9</sup> See various studies using application information to understand credit supply such as: Antoniadis, A. 2016. "Liquidity Risk and the Credit Crunch of 2007–2008: Evidence from Micro-Level Data on Mortgage Loan Applications." *Journal of Financial and Quantitative Analysis* 51(6): 1795–1822; Mian, Atif, and Amir Sufi. 2009. "The Consequences of Mortgage Credit Expansion: Evidence from the U.S. Mortgage Default Crisis." *The Quarterly Journal of Economics* 124(4): 1449–1496; Puri, Manju, Jorg Rocholl, and Sascha Steffen. 2011. "Global Retail Lending in the Aftermath of the US Financial Crisis: Distinguishing Between Supply and Demand Effects." *Journal of Financial Economics* 100(3): 556–578.

<sup>10</sup> Stakeholders can make only educated guesses about the current level of bank CRA activities because there is no standardized set of data or information about the actual levels of bank CRA activities. The Information Collection Survey will assist the OCC in making a more informed estimate of the current level of bank CRA activities.

<sup>11</sup> The population of banks being analyzed under this approach is the same population of banks subject to the Information Collection Survey (*i.e.*, banks with assets of \$2.5 billion or more that are subject to the general performance standards under the 2020 final rule).

thus yielding up to 18 different threshold values. The CRA evaluation measure would involve six different benchmark values (one at the bank level and one at the assessment area level for needs to improve, satisfactory, and outstanding presumptive ratings, respectively), while the CD minimum would involve two values, one at the bank level and one at the assessment area level.

#### *B. Alternatives Considered to the Proposed Approach for Setting the Benchmarks, Thresholds, and Minimums*

The OCC recognizes that some extent of normative judgment is necessary for any approach the OCC chooses. The OCC considered proposing an alternative where instead of the proposed approach, the OCC would choose a set of benchmarks, thresholds, and minimums without reference to the historical distribution of ratings. The OCC chose not to propose this approach because the OCC believes that setting benchmarks, thresholds, and minimums in relation to the historic status quo minimizes the degree of normative judgment and provides a useful starting point for determining an expected distribution of CRA ratings.

The OCC also considered proposing using the information collection to calculate the historical aggregate distribution and dollar amount of CRA activities for the components of the general performance standards to set benchmarks, thresholds, and minimums. This approach would consider the CRA activities, branches, and retail domestic deposits of all banks as if they were the CRA activities, branches, and retail domestic deposits of a single hypothetical bank in order to set the thresholds, benchmarks, and minimums that correspond to the desirable level of CRA activity.

The OCC chose not to propose this approach because of the additional assumptions and constraints it would entail. First, the OCC views this approach as unworkable for the retail lending distribution tests. Consolidating all banks would prevent the calculation of the peer comparator because the hypothetical, aggregate bank has no peers. For the demographic comparator, this approach would require either using nationwide demographics (*i.e.*, the proportion of LMI families, LMI tracts, or owner-occupied units in LMI tracts in the entire United States) or assuming how the hypothetical aggregate bank would delineate its assessment areas. Because each bank's lending activities likely do not cover all areas in which LMI families reside or all

the LMI tracts nationwide, and individual banks delineate their own assessment areas pursuant to § 25.09 of the 2020 final rule, it is unclear whether this approach would be appropriate. Second, without further data analysis, the approach may be disproportionately influenced by the activities of the largest banks assessed under the general performance standards, which are responsible for the majority of CRA activities and deposits. Lastly, the OCC does not believe that this approach would sufficiently capture the interaction between the benchmarks, thresholds, and minimums, making it difficult to predict a resulting distribution of presumptive ratings for a set of chosen values.

Having considered different approaches to setting the benchmarks, thresholds, and minimums, the OCC is proposing an approach that would set robust benchmarks, thresholds, and minimums. The OCC believes that the proposed approach will effectively achieve the agency's goals of providing objectivity and transparency in the performance standards, while also encouraging banks to engage in CRA activities at an aggregate level that is no less than the status quo.

#### *C. Proposed Approach for Treating Declines in CRA Performance Following the Initial Establishment of the Benchmarks, Thresholds, and Minimums*

The OCC is proposing to amend § 25.16 of the 2020 final rule to state that banks whose performance precipitously decreases by ten percent<sup>12</sup> or more on the general performance standards after the establishment of the initial benchmarks, thresholds, and minimums without an adequate explanation under the performance context criteria, including consideration of market conditions, risk having their assigned ratings adversely impacted.

The OCC recognizes that for any well-defined set of benchmarks, thresholds, minimums, and CRA presumptive ratings, the current CRA activities of some banks will fall below, while the current CRA activities of other banks will exceed, the chosen set of benchmarks, thresholds, and minimums. The former set of banks would be expected to increase CRA activities, whereas the latter set of banks could potentially decrease CRA activities while maintaining the same rating or achieving a better rating under

the new benchmarks, thresholds, and minimums. This potential decrease in CRA activities by some banks may negate any increase in CRA activities that would result from other banks increasing their CRA activities to meet the new benchmarks, thresholds, and minimums. Therefore, with the proposed approach and alternative approaches considered, the OCC recognizes the need to evaluate precipitous declines in CRA activity under performance context as banks adapt to the new benchmarks, thresholds, and minimums.

As a general matter, it is appropriate for banks to adjust their CRA activities over time in response to regulatory requirements. This is normal and acceptable. That said, precipitous declines of ten percent or more in a bank's performance on the general performance standards as calculated based on historical data, between the establishment of the objective benchmarks, thresholds, and minimums and the bank's first evaluation under the general performance standards, that cannot be explained by market conditions or other performance context criteria may result in the bank receiving an assigned rating that is no higher than needs to improve at the assessment area level as well as at the overall bank level.

### **V. 2020 Final Rule Clarifying and Technical Amendments**

Following publication of the 2020 final rule, the OCC engaged in a review process with the goal of providing additional clarity to 12 CFR part 25, effective October 1, 2020. The OCC seeks comment on revisions to aspects of the 2020 final rule, including compliance dates, some definitions, multipliers, the general performance standards opt out, the aggregate disclosure statement, and references to the FDIC. In addition, the proposal contains various technical, clarifying, and conforming amendments.

#### *A. Compliance Dates for Banks Evaluated Under a Strategic Plan*

Under the 2020 final rule, all banks have the option to be evaluated under a strategic plan, including banks that meet the small or intermediate bank definitions. The 2020 final rule also sets forth compliance dates for certain sections of the rule based on bank type. Section 25.01(c)(4)(i) of the 2020 final rule states that “[b]anks other than small, intermediate, wholesale, and limited purpose banks must comply with §§ 25.07—25.13, 25.21, 25.25, and 25.26 by January 1, 2023.” This provision was intended to apply to banks evaluated under a strategic plan,

<sup>12</sup> This proposed ten percent figure is based on the expert judgment of the OCC Economics Department and is a reasonable representation of what the OCC currently considers to be a precipitous decrease in a bank's CRA activities.

and the sections referenced in this paragraph are applicable to banks evaluated under a strategic plan or the general performance standards (e.g., § 25.21 includes the data collection requirements for banks evaluated under the general performance standards or a strategic plan). In contrast, § 25.01(c)(4)(iii) of the 2020 final rule includes the compliance dates applicable to small and intermediate banks. To eliminate any potential confusion regarding which compliance dates apply to banks evaluated under a strategic plan that also meet either the small bank or intermediate bank definition, the proposal would revise § 25.01(c)(4)(i) to clarify that banks other than those evaluated under the performance standards applicable to small, intermediate, wholesale, and limited purpose banks must comply with the applicable sections by January 1, 2023.

#### B. Definitions

In § 25.03 of the 2020 final rule, the definition of “compensation” refers to “median hourly compensation value (i.e., total salaries and benefits divided by full-time equivalent employees).” It also describes the calculation as being based on aggregate Call Report data on median salaries and benefits and the median number of full-time equivalent employees. The OCC determined that the two descriptions are inconsistent and may result in different compensation levels. The OCC intended for the definition of “compensation” to reflect the median hourly compensation value based on each bank’s total salaries and benefits and its full-time equivalent employees. Therefore, the proposed rule would revise the definition of “compensation” to clarify this approach for determining compensation value. Under the 2020 final rule’s definitions of “partially” and “primarily,” it is possible that an activity could meet both definitions if the activity has an express, bona fide intent, purpose, or mandate, consistent with a criterion in § 25.04(c) of the 2020 final rule. To eliminate the potential overlap in the definitions, the proposal would revise the definition of “partially” to clarify that the definition applies to activities that do not have an express, bona fide intent, purpose, or mandate consistent with a criterion in § 25.04(c) of the 2020 final rule. The proposal also would revise the definitions of “partially” and “primarily” to clarify that the terms apply to activities involving “families, businesses, or farms” to ensure consistency with the qualifying activities criteria that use those terms.

#### C. Multiplier Clarifications

Section 25.08(b) of the 2020 final rule includes multipliers for some qualifying activities, including a multiplier for activities that are determined to be particularly responsive, innovative, or complex. The proposal would clarify that this multiplier is applicable to any activity that received one of the other multipliers provided for in the 2020 final rule and that the maximum total upward adjustment considering all multipliers is four times the quantified dollar value of the qualifying activity. Section 25.08(b)(1) also provides that to be eligible for the multipliers in sections 25.08(b)(2) and (b)(3) of the 2020 final rule, the quantified dollar value of a bank’s current evaluation period CD loans, CD investments, and CD services must be “approximately equal to” the quantified dollar value of these activities considered in the bank’s prior evaluation period. The proposal would clarify that the quantified dollar value of a bank’s current evaluation period CD loans, CD investments, and CD services must be “approximately equal to or greater than” the quantified dollar value of these activities considered in the bank’s prior evaluation period.

#### D. General Performance Standards Opt Out

Section 25.10(b) of the 2020 final rule permits a small, intermediate, wholesale, or limited purpose bank that opted into the general performance standards a single opportunity to opt out of evaluation under those standards. The 2020 final rule stated that banks that elected to opt out of evaluation under the general performance standards would “revert” to being evaluated according to the small and intermediate performance standards or the wholesale and limited purpose performance standards. This provision may lead to confusion in circumstances where a bank meets a different bank size or type definition when it opts into the general performance standards than it does when it elects to opt out. The proposal would revise the opt out provision to clarify that banks are subject to the applicable performance standards based on the bank’s size or type when it opts out.

#### E. References to the Federal Deposit Insurance Corporation (FDIC)

The 2020 final rule integrates 12 CFR part 195 into 12 CFR part 25 and eliminates the former part 195. As of October 1, 2020, national banks and Federal savings associations supervised by the OCC and state savings associations supervised by the FDIC will

be evaluated under part 25. The proposal would add references to the FDIC where they were inadvertently omitted in the 2020 final rule.

#### F. Aggregate CRA Disclosure Statement

Section 25.27(b) of the 2020 final rule provides for public disclosure of the retail loan origination data reported to the OCC that is necessary to evaluate banks’ performance under the retail lending distribution tests. The OCC intended to include all data reported to the OCC regarding retail loan originations in the aggregate disclosure statement but inadvertently omitted disclosure of banks’ number of home mortgage loans in LMI census tracts. The proposal would add this disclosure requirement to the rule.

#### G. Other Revisions

In addition to the revisions discussed above, the proposal would make several non-substantive technical, clarifying, and conforming revisions throughout the 2020 final rule to improve clarity and consistency. The OCC is also proposing revisions to regulations that include cross references to the CRA implementing regulations in effect prior to October 1, 2020, including 12 CFR part 24, 12 CFR part 35, and 12 CFR part 192. These revisions update the cross references to be consistent with the 2020 final rule and include transition provisions as appropriate.

### VI. Request for Comments

The OCC requests comment on all aspects of the proposed rule. The OCC specifically requests comments on the approach the OCC would use to determine the CRA evaluation measure benchmarks, retail lending distribution test thresholds, and CD minimums under the Community Reinvestment Act’s general performance standards. The OCC also seeks comment on its proposal to amend the 2020 final rule to consider, under performance context, declines of ten percent or greater on a bank’s performance under the general performance standards following the establishment of the benchmarks, thresholds, and minimums.

### VII. Regulatory Analyses

#### A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC has reviewed the notice of proposed rulemaking and

determined that it would not introduce any new or revise any existing collection of information pursuant to the PRA. Therefore, no submission will be made to OMB for review.

#### B. Regulatory Flexibility Act

In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration for purposes of the RFA to include commercial banks and savings institutions with total assets of \$600 million or less and trust companies with total assets of \$41.5 million or less). However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises approximately 1,067 insured depository institutions, of which 1,030 may be impacted by the proposed rule. Moreover, 745 of the institutions are small entities.<sup>13</sup> The OCC estimates that the proposed rule's technical amendments and updated cross references may impact approximately 708 of these small entities, which is a significant number.<sup>14</sup> However, because the OCC estimates the costs, if any, associated with the proposal would be *de minimis*, the proposed rule would not have a significant economic impact on any small OCC-regulated entities. Additionally, the other sections of the proposed rule do not impose new mandates and primarily request comment on the OCC's proposed approach for setting the benchmarks, thresholds, and minimums as well as how the OCC would consider decreases in CRA activities following the establishment of these standards.<sup>15</sup>

<sup>13</sup> Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an institution as a small entity. The OCC used December 31, 2019, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.

<sup>14</sup> The OCC excluded entities with a CRA examination type of "exempt" in an OCC supervisory information system.

<sup>15</sup> As noted above, these sections of the proposal are relevant to banks subject to the general performance standards, which generally only apply to institutions that have more than \$2.5 billion in

Therefore, the OCC believes the costs associated with the proposal, if any, would be *de minimis*. For these reasons, the OCC certifies that, if adopted, the proposed rule would not have a significant economic impact on a substantial number of small entities regulated by the OCC. Accordingly, an Initial Regulatory Flexibility Analysis is not required.

#### C. Unfunded Mandates Reform Act of 1995

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.* Under this analysis the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (\$157 million as adjusted annually for inflation). The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

As discussed above, the proposed rule, if implemented, would not impose new mandates. The OCC concludes that if implemented, the proposed rule would not result in an expenditure of \$157 million or more annually by State, local, and tribal governments, or by the private sector. Therefore, the OCC finds that the proposed rule does not trigger the UMRA cost threshold. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

#### D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCRDRIA), 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC will consider, consistent with principles of safety and soundness and the public interest: (1) Any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of the proposed rule. The OCC requests comment on any administrative burdens that the proposed rule would place on depository institutions,

assets that are not evaluated under a strategic plan and that are not wholesale or limited purpose banks.

including small depository institutions, and their customers, and the benefits of the proposed rule that the OCC should consider in determining the effective date and any administrative compliance requirements for a final rule.

#### List of Subjects

##### 12 CFR Part 24

Community development, Credit, Investments, Low- and moderate-income housing, National banks, Reporting and recordkeeping requirements, Rural areas, Small businesses.

##### 12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements, Savings associations.

##### 12 CFR Part 35

Community development, Credit, Freedom of information, Investments, National banks, Reporting and recordkeeping requirements.

##### 12 CFR Part 192

Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons set out in the preamble, the OCC proposes to amend 12 CFR chapter I as follows:

#### PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

- 1. The authority citation for part 24 continues to read as follows:

**Authority:** 12 U.S.C. 24(Eleventh), 93a, 481 and 1818.

##### § 24.2 [Amended]

- 2. In § 24.2 amend paragraph (f) by removing "12 CFR 25.12(m)" and adding in its place "12 CFR 25.03".

##### § 24.3 [Amended]

- 3. Section 24.3 is amended by removing the phrase "12 CFR 25.23 as a "qualified investment."" and adding in its place the phrase "12 CFR 25.04 as a "community development investment.""

##### § 24.7 [Amended]

- 4. In § 24.7 amend (paragraph (b) by removing "12 CFR 25.23" and adding in its place "12 CFR 25.04".

**PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS**

■ 5. The authority citation for part 25 continues to read as follows:

**Authority:** 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1814, 1816, 1828(c), 1835a, 2901 through 2908, 3101 through 3111, and 5412(b)(2)(B).

■ 6. Section 25.01 amended by:

- a. In paragraph (b)(1) adding the phrase “or the Federal Deposit Insurance Corporation (FDIC)” after “(OCC)”;
- b. In paragraph (b)(2) adding the phrase “or FDIC” after “OCC”;
- c. In paragraph (c)(1) removing “§ 25.03” and adding “§ 25.03,” in its place;
- d. Revising paragraph (c)(4)(i); and
- e. In paragraph (c)(5):
  - i. Removing “October 1, 2020.” and adding “October 1, 2020,” in its place;
  - ii. Adding the phrase “or FDIC” after “OCC” in the introductory text; and
  - iii. Removing the word “element” and adding in its place the word “elements” in the introductory text.

The revision reads as follows:

**§ 25.01 Authority, purposes, scope, and severability.**

\* \* \* \* \*

(c)\* \* \*

(4) *Compliance dates.* (i) Banks other than banks evaluated under the performance standards applicable to small, intermediate, wholesale, and limited purpose banks must comply with §§ 25.07–25.13, 25.21, 25.25, and 25.26, as applicable, by January 1, 2023.

\* \* \* \* \*

**§ 25.02 [Amended]**

- 7. Section 25.02 is amended by:
  - a. Adding the phrase “or FDIC” after “OCC” in paragraph (a) introductory text;
  - b. Adding the phrase “or FDIC” after “OCC” in the second sentence of paragraph (b); and
  - c. In paragraph (c):
    - i. Adding the phrase “or FDIC” after “OCC”; and
    - ii. Removing the phrase “OCC’s procedures set forth in part 5 of this chapter” and adding in its place the phrase “applicable comment procedures”.
- 8. Section 25.03 is amended by:
  - a. In the definition of *Affiliate* removing the phrase “October 1, 2020” and adding the phrase “October 1, 2020,” in its place;
  - b. In the definition of *Automated teller machine (ATM)* removing the phrase “cash dispersed” and adding the phrase “cash is disbursed” in its place;

- c. Revising the definition of *Compensation*;
- d. In the definition of *Essential community facility* removing the word “means” and adding the word “means” in its place;
- e. In the definition of *Essential infrastructure*:
  - i. Removing the word “means” and adding the word “means” in its place; and
  - ii. Adding the word “and” before the word “tunnels” in paragraph (1);
- f. Moving the definition of *Low-income credit union* to follow the definition of *Limited purpose bank*;
- g. In the definition of *Metropolitan division* adding the word “the” before the phrase “successor publication thereof”;
- h. In the definition of *Metropolitan statistical area* adding the word “the” before the phrase “successor publication thereof”;
- i. Revising the definition of *Partially*;
- j. In the definition of *Primarily* removing the phrase “individuals or census tracts” from paragraph (1) and adding in its place the phrase “individuals, families, businesses, farms, or census tracts”;
- k. In the definition of *Retail domestic deposit*:
  - i. Removing “FDIA” in the introductory text and adding in its place the phrase “Federal Deposit Insurance Act” in the first sentence of the definition;
  - ii. Removing “FDIA” and adding in its place “Federal Deposit Insurance Act” in paragraph (2)(i)(A); and
  - iii. Adding quotation marks to the phrase “reciprocal deposit” in paragraph (2)(ii);
- l. In the definition of *Metropolitan division* removing the phrase “the center of the census tract if the census tract” in paragraph (2)(i)(D) and adding in its place the word “the center of the census tract if it”; and
- m. In the definition of *Wholesale bank* adding the word “loans” after the word “mortgage”.

The revisions read as follows:

**§ 25.03 Definitions.**

\* \* \* \* \*

*Compensation* means the median hourly compensation value (where compensation value equals total salaries and benefits divided by full-time equivalent employees) for the banking industry based on Call Report data for—

- (1) Salaries and employee benefits from Schedule RI, Item 7.a; and
- (2) Number of full-time equivalent employees from Schedule RI, Memorandum Item 5.

\* \* \* \* \*

*Partially* means 50 percent or less of the dollar value of the activity or of the individuals, families, businesses, farms, or census tracts served by the activity, if the activity does not have an express, bona fide intent, purpose, or mandate consistent with a criterion in § 25.04(c).

\* \* \* \* \*

**§ 25.04 [Amended]**

■ 9. In § 25.04 amend paragraph (a)(3) by removing the phrase “on the date” and adding in its place the word “conducted”;

**§ 25.06 [Amended]**

- 10. In § 25.06 amend paragraph (c)(2) by removing the word “activity” and adding in its place the word “area”.
- 11. Section 25.08 is amended by:
  - a. Adding the phrase “or greater than” after the phrase “approximately equal to” in the first sentence of paragraph (b)(1);
  - b. Removing the word “conducted” in the second sentence of paragraph (b)(1) and adding “conducted,”;
  - c. Removing the word “activity” and adding in its place the word “activities” in paragraph (b)(2); and
  - d. Revising paragraph (b)(4).

The revision reads as follows:

**§ 25.08 Qualifying activities value.**

\* \* \* \* \*

(b)\* \* \*

(4) The quantified dollar value of qualifying activities that receive a multiplier under paragraphs (b)(2) or (b)(3) of this section may also be subject to an additional upward adjustment, for a maximum total upward adjustment of up to 4 times the quantified dollar value of the qualifying activity based on the OCC’s or FDIC’s determination of the activity’s responsiveness, innovativeness, or complexity.

\* \* \* \* \*

**§ 25.09 [Amended]**

- 12. Section 25.09 is amended by:
  - a. Adding the phrase “or FDIC” after “OCC” wherever it appears in paragraph (a);
  - b. Removing the word “it” from paragraph (c)(2)(v) and adding in its place the phrase “the bank”;
  - c. In paragraph (e):
    - i. Removing the phrase “will consist” from the first sentence and adding in its place the word “consists”; and
    - ii. Adding the phrase “assessed under the general performance standards in § 25.13” after the word “bank” in the second sentence; and
  - d. Adding the phrase “or FDIC” after “OCC” wherever it appears in paragraph (g)
- 13. Section 25.10 is amended by:

- a. Adding the phrase “or FDIC” after “OCC” in paragraph (a) introductory text;
- b. Adding the phrase “or FDIC” after “OCC” in paragraph (a)(1)(i);
- c. Adding the phrase “or FDIC” after “OCC” in paragraph (a)(1)(ii);
- d. Adding the phrase “or FDIC” after “OCC” in paragraph (a)(1)(iii);
- e. Adding the phrase “or FDIC” after “OCC” in paragraph (a)(2)(i);
- f. Adding the phrase “or FDIC” after “OCC” in paragraph (a)(2)(ii);
- g. Adding the phrase “or FDIC” after “OCC” in paragraph (a)(2)(iii);
- h. Adding the phrase “or FDIC” after “OCC” in paragraph (a)(3)(i);
- i. Adding the phrase “or FDIC” after “OCC” in paragraph (a)(3)(ii);
- j. Adding the phrase “or FDIC” after “OCC” wherever it appears in paragraph (a)(4);
- k. Revising the last sentence of paragraph (b); and
- l. Removing the word “anticipates” and adding the phrase “and FDIC anticipate” in paragraph (c).

The revision reads as follows:

#### § 25.10 Performance standards and ratings, in general.

\* \* \* \* \*

(b)\* \* \* A small, intermediate, wholesale, or limited purpose bank that opts out from the general performance standards will be evaluated according to the performance standards described in paragraphs (a)(2) and (a)(3) of this section, as applicable, unless the bank is evaluated under an approved strategic plan as described under (a)(4) of this section.

\* \* \* \* \*

#### § 25.11 [Amended]

- 14. Section 25.11 is amended by removing “§ 25.08(c);” in paragraph (c)(1) and adding “§ 25.08(c)” in its place.

#### § 25.12 [Amended]

- 15. Section 25.12 is amended by:
  - a. Adding the phrase “or FDIC” after “OCC” in paragraph (a) introductory text;
  - b. Adding the phrase “or FDIC” after “OCC” in paragraph (b)(1) introductory text;
  - c. Adding the phrase “or FDIC” after “OCC” in paragraph (b)(2) introductory text;
  - d. Adding the phrase “or FDIC” after “OCC” in paragraph (b)(3) introductory text;
  - e. Adding the phrase “or FDIC” after “OCC” in paragraph (c)(1) introductory text;
  - f. In paragraph (c)(2):
  - i. Adding the phrase “or FDIC” after “OCC”; and

- ii. Removing the phrase “demographic borrower comparator or the associated” and adding in its place “borrower demographic comparator or the associated borrower”;
- g. In paragraph (c)(3):
- i. Adding the phrase “or FDIC” after “OCC”; and
- ii. Removing the phrase “demographic borrower comparator or the associated” and adding in its place “borrower demographic comparator or the associated borrower”;
- h. In paragraph (c)(4) introductory text:
  - i. Adding the phrase “or FDIC” after “OCC”; and
  - ii. Removing the phrase “demographic borrower comparator or the associated” and adding in its place “borrower demographic comparator or the associated borrower”.
- 16. Section 25.13 is amended by:
  - a. Removing the word “in” and adding in its place “in—” in paragraph (c)(1)(ii)(B) introductory text;
  - b. Removing the word “in” and adding in its place “in—” in paragraph (c)(2)(ii)(A) introductory text;
  - c. Removing the word “in” and adding in its place “in—” in paragraph (c)(2)(ii)(B) introductory text;
  - d. Removing the phrase “divided by” in paragraph (c)(2)(iii) and adding “divided by” in its place;
  - e. Removing the phrase “substantial noncompliance standard” in paragraph (c)(4) and adding in its place the phrase “substantial noncompliance performance standard”;
  - f. Removing the phrase “average assessment area CRA evaluation measure” in paragraph (d)(2)(ii) and adding in its place the phrase “average annual assessment area CRA evaluation measure”;
  - g. Removing the phrase “average assessment area CRA evaluation measure” in paragraph (d)(3) and adding in its place the phrase “average annual assessment area CRA evaluation measure”;
  - h. Removing the phrase “average assessment area CRA evaluation measure” in paragraph (d)(4) and adding in its place the phrase “average annual assessment area CRA evaluation measure”; and
  - i. Adding paragraph (e).

The addition reads as follows:

#### § 25.13 General performance standards and presumptive rating.

\* \* \* \* \*

(e) *OCC approach to setting CRA evaluation measure benchmarks, retail lending distribution test thresholds, and community development minimums.* Based on the activity data collected

from banks that are subject to the general performance standards, the OCC will calculate historic CRA activity levels and corresponding performance ratings under the general performance standards had they been in place. Based on this analysis, the OCC will set the CRA evaluation measure benchmarks, retail lending distribution test thresholds, and community development minimums such that the proportion of banks receiving hypothetical presumptive ratings of outstanding and satisfactory is no greater than the historical proportion of banks that received assigned ratings of outstanding and satisfactory.

#### § 25.14 [Amended]

- 17. Section 25.14 is amended by:
  - a. Adding the phrase “or FDIC” after “OCC” in paragraph (a)(1);
  - b. Adding the phrase “or FDIC” after “OCC” in paragraph (a)(2); and
  - c. Adding the phrase “or FDIC” after “OCC” in paragraph (d).

#### § 25.15 [Amended]

- 18. Section 25.15 is amended by:
  - a. Adding the phrase “or FDIC” after “OCC” in paragraph (a);
  - b. Adding the phrase “or FDIC” after “OCC” wherever it appears in paragraph (b);
  - c. Adding the phrase “or FDIC” after “OCC” in paragraph (c) introductory text;
  - d. Adding the phrase “or FDIC” after “OCC” in paragraph (d)(1);
  - e. Adding the phrase “or FDIC” after “OCC” in paragraph (d)(2); and
  - f. Adding the phrase “or FDIC” after “OCC” in paragraph (e).
- 19. Section 25.16 is amended by:
  - a. Adding the phrase “or FDIC” after “OCC” in paragraph (a) introductory text;
  - b. Adding the phrase “or FDIC” after “OCC” in paragraph (b) introductory text;
  - c. Removing the period at the end of paragraph (b)(3) and adding in its place a semicolon;
  - d. Adding the phrase “or FDIC” after “OCC” in paragraph (b)(4);
  - e. Adding the phrase “or FDIC” after “OCC” in paragraph (b)(5);
  - f. Removing the phrase “including for each assessment area.” in paragraph (c) and adding in its place the phrase “including for each assessment area.”; and
  - g. Adding paragraph (d).

The addition reads as follows:

#### § 25.16 Consideration of performance context.

\* \* \* \* \*

(d) *Declines in CRA performance.* In assessing a bank’s performance, the OCC

considers whether there has been a decline of 10% or greater in a bank's performance on the general performance standards as calculated based on historical data between the establishment of the objective benchmarks, thresholds, and minimums and the bank's first evaluation under the general performance standards. Declines that cannot be explained by market conditions or other factors under paragraph (b) of this section may warrant a downward adjustment in determining the bank's assigned rating.

#### § 25.17 [Amended]

- 20. Section 25.17 is amended by:
  - a. Adding the phrase "or FDIC's" after "OCC's" in paragraph (a) introductory text; and
  - b. Adding the phrase "or FDIC" after "OCC" in paragraph (b).

#### § 25.18 [Amended]

- 21. Section 25.18 is amended by:
  - a. Adding the phrase "or FDIC" after "OCC" in paragraph (a) introductory text;
  - b. Adding the phrase "or FDIC" after "OCC" in paragraph (a)(1);
  - c. Adding the phrase "or FDIC" after "OCC" in paragraph (a)(2);
  - d. Adding the phrase "or FDIC" after "OCC" in paragraph (b)(2);
  - e. In paragraph (c):
    - i. Adding the phrase "or FDIC's" after "OCC's";
    - ii. Adding the phrase "or FDIC" after "OCC" wherever it appears;
  - f. Adding the phrase "or FDIC" after "OCC" in paragraph (d)(1);
  - g. Adding the phrase "or FDIC" after "OCC" in paragraph (e) introductory text;
  - h. Adding the phrase "or FDIC's" after "OCC's" in paragraph (e)(1);
  - i. Adding the phrase "or FDIC" after "OCC" wherever it appears in paragraph (f);
  - j. Adding the phrase "or FDIC" after "OCC" wherever it appears in paragraph (g)(3);
  - k. Adding the phrase "or FDIC" after "OCC" wherever it appears in paragraph (g)(4);
  - l. Adding the phrase "or FDIC" after "OCC" wherever it appears in paragraph (h)(1);
  - m. Adding the phrase "or FDIC" after "OCC" in paragraph (h)(2);
  - n. Adding the phrase "or FDIC" after "OCC" in paragraph (h)(3); and
  - o. Adding the phrase "or FDIC" after "OCC" wherever it appears in paragraph (i).
- 22. Section 25.19 is amended by:
  - a. Adding the phrase "or FDIC" after "OCC" and removing the comma after "\$ 25.16" in paragraph (a)(1); and

- b. Revising paragraphs (a)(2) and (b). The revisions read as follows:

#### § 25.19 Assigned ratings.

- (a)\* \* \*
- (2) *Assessment area assigned rating(s)*. The OCC or FDIC determines the assessment area assigned rating(s) for a bank evaluated under § 25.13 based on its assessment area presumptive rating(s) under § 25.13, adjusted for performance context under § 25.16 and consideration of discriminatory or other illegal credit practices under § 25.17.
- (b) *Strategic plans assigned rating(s)*. A bank operating under a strategic plan will receive, as applicable, an assigned rating, assessment area assigned rating(s), and state-level and multistate metropolitan statistical area assigned rating(s) of satisfactory or outstanding if it has met the measurable goals in the plan that correspond to those ratings after considering performance context under § 25.16 and discriminatory or other illegal credit practices under § 25.17.

#### § 25.20 [Amended]

- 23. Section 25.20 is amended by:
  - a. Removing the phrase "assigned rating" from the heading and adding in its place the phrase "assigned rating(s)"; and
  - b. Adding the phrase "or FDIC" after "OCC".

#### § 25.21 [Amended]

- 24. Section 25.21 is amended by:
  - a. Adding the phrase "or FDIC" after "OCC" in paragraph (a);
  - b. Removing the phrase "evaluated in the assessment area" and adding in its place the phrase "evaluated in each assessment area" in paragraph (b)(1);
  - c. Removing the phrase "paragraph (c)(8) of this section" in paragraph (c)(1) introductory text and adding in its place the phrase "paragraph (c)(9) of this section";
  - d. In paragraph (c)(7):
    - i. Redesignating paragraphs (c)(7)(iii) through (viii) as paragraphs (c)(7)(iv) through (ix); and
    - ii. Redesignating the second instance of paragraph (c)(7)(ii) as paragraph (c)(7)(iii);
  - e. Removing the phrase "qualifies under § 25.04(a)(1)(3)" in paragraph (c)(9) introductory text and adding in its place the phrase "qualifies under § 25.04(a)(3)"; and
  - f. Removing the phrase "on the date" in paragraph (c)(9)(vii) and adding in its place the word "conducted".

#### § 25.23 [Amended]

- 25. Section 25.23 is amended by:
  - a. Removing the phrase "community development service required" in the

paragraph (b) heading and adding in its place "community development service data required"; and

- b. Removing the phrase "qualifies under § 25.04(d)" in paragraph (b)(4) introductory text and adding in its place the phrase "qualifies under § 25.04(a)(3)".

#### § 25.25 [Amended]

- 26. Section 25.25 is amended by adding the phrase "or FDIC" after "OCC".

#### § 25.26 [Amended]

- 27. Section 25.26 is amended by:
  - a. Adding the phrase "or FDIC" after "OCC" in paragraph (a);
  - b. Adding the phrase "or FDIC" after "OCC" in paragraph (b)(1)(i) introductory text;
  - c. Adding the phrase "or FDIC" after "OCC" in paragraph (b)(1)(ii) introductory text;
  - d. Adding the phrase "or FDIC" after "OCC" in paragraph (b)(1)(iii);
  - e. In paragraph (c):
    - i. Adding the phrase "or FDIC" after "OCC"; and
    - ii. Removing "§ 25.21(e)" and adding in its place "§ 25.23(d)".
- 28. Section 25.27 is amended in paragraph (b) by:
  - a. Removing in the introductory text the phrase "subject to reporting under this part" and adding in its place the phrase "evaluated under § 25.13";
  - b. Redesignating paragraphs (b)(2) through (10) as paragraphs (b)(3) through (11); and adding a new paragraph (b)(2).

The addition reads as follows:

#### § 25.27 Public disclosures.

- \* \* \* \* \*
- (b) \* \* \*
- (2) The number of home mortgage loans in low- and moderate-income census tracts;
- \* \* \* \* \*

#### § 25.28 [Amended]

- 29. Section 25.28 is amended by:
  - a. Adding the phrase "or FDIC" after "OCC" wherever it appears in paragraph (a)(2); and
  - b. Adding the phrase "or FDIC" after "OCC" in paragraph (b)(1).

#### § 25.29 [Amended]

- 30. Section 25.29 is amended by adding the phrase "or FDIC" after "OCC".

#### Appendix A to Part 25 [Amended]

- 31. Appendix A to part 25 is amended by:
  - a. Adding the phrase "or FDIC" after "OCC" in paragraph (a);

- b. Adding the phrase “or FDIC” after “OCC” in paragraph (b)(1)(i) introductory text;
  - c. Adding the phrase “or FDIC” after “OCC” in paragraph (b)(2)(i);
  - d. Adding the phrase “or FDIC” after “OCC” in paragraph (b)(2)(ii);
  - e. Adding the phrase “or FDIC” after “OCC” in paragraph (b)(3)(ii)(B);
  - f. Removing the phrase “assigned rating” after “substantial noncompliance” in paragraph (b)(3)(iii);
  - g. Adding the phrase “or FDIC” after “OCC” in paragraph (c) introductory text;
  - h. Adding the phrase “or FDIC” after “OCC” in paragraph (c)(1) introductory text;
  - i. Adding the phrase “or FDIC” after “OCC” in paragraph (c)(2) introductory text;
  - j. Adding the phrase “or FDIC” after “OCC” in paragraph (c)(3) introductory text; and
  - k. Adding the phrase “or FDIC” after “OCC” in paragraph (c)(4) introductory text.
- 32. Revise appendix B to part 25 to read as follows:

#### **Appendix B to Part 25—Community Reinvestment Act Notice**

Under the Federal Community Reinvestment Act (CRA), the [Office of the Comptroller of the Currency (OCC) or Federal Deposit Insurance Corporation (FDIC)] evaluates our record of helping to meet the credit needs of this community, consistent with safe and sound operations. The [OCC or FDIC] also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the [OCC or FDIC]; and comments received from the public relating to assessment area needs and opportunities, as well as our responses to those comments. You may review this information today by reviewing the public file which is available at (web address and/or physical address at which the public file can be reviewed and copied).

You may also have access to the following additional information, which we will make available to you after you make a request to us: (1) A map showing the assessment area containing a select branch, which is the area in which the [OCC or FDIC] evaluates our CRA

performance for that particular community; (2) branch addresses and associated branch facilities and hours in any assessment area; (3) a list of services we provide at those locations; (4) our most recent rating in the assessment area; and (5) copies of all written comments received by us that specifically relate to the needs and opportunities of a given assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

At least 30 days before the beginning of each quarter, the [OCC or FDIC] publishes a nationwide list of the (entity type) that are scheduled for CRA examination in that quarter. This list is available from the [OCC Deputy Comptroller (address) or FDIC appropriate regional director (address)]. You may send written comments regarding the needs and opportunities of any of the (entity type)'s assessment area(s) to (name, address, and email address of official at bank) and [OCC Deputy Comptroller (address and email address) or FDIC appropriate regional director (address and email address)]. Your comments, together with any response by us, will be considered by the [OCC or FDIC] in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the [OCC Deputy Comptroller or FDIC appropriate regional director]. You may also request from the [OCC Deputy Comptroller or FDIC appropriate regional director] an announcement of our applications covered by the CRA filed with the [OCC or FDIC]. [(We are an affiliate of (name of holding company), a (entity type) holding company. You may request from the (title of responsible official), Federal Reserve Bank of \_\_\_\_\_ (address) an announcement of applications covered by the CRA filed by (entity type) holding companies.)]

#### **Appendix C to Part 25 [Amended]**

- 33. Appendix C to part 25 is amended by:
  - a. Removing the phrase “pursuant part 1003 of this title” in § 25.43(b)(2) and adding in its place the phrase “pursuant to part 1003 of this title”; and
  - b. Removing the phrase “pursuant part 1003 of this title” in § 195.43(b)(2) and adding in its place the phrase “pursuant to part 1003 of this title”.

#### **PART 35—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS**

- 34. The authority citation for part 35 continues to read as follows:

**Authority:** 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 1831y, and 5412(b)(2)(B).

#### **§ 35.1 [Amended]**

- 35. Section 35.1 is amended by removing the phrase “or part 195 (Community Reinvestment)” from paragraph (c).

- 36. Section 35.4 is amended by revising paragraph (a)(2).

The revision reads as follows:

#### **§ 35.4 Fulfillment of the CRA.**

(a)\* \* \*

(2) *Activities given favorable CRA consideration.* Performing any of the following activities if the activity is of the type that is likely to receive favorable consideration by a Federal banking agency in evaluating the performance under the CRA of the insured depository institution that is a party to the agreement or an affiliate of a party to the agreement—

(i) Retail loans, community development loans, community development investments, and community development services, as described in § 25.04 (12 CFR 25.04) or 12 CFR part 25, Appendix C, § 25.22 or § 25.23, as applicable;

(ii) Delivering retail banking services, as described in 12 CFR part 25, Appendix C, § 25.24(d);

(iii) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making community development investments, or providing community development services, as described in § 25.15(c) (12 CFR 25.15(c)) or 12 CFR part 25, Appendix C, § 25.25(c), as applicable;

(iv) In the case of a small insured depository institution, any lending or other activity described in § 25.14(a) (12 CFR 25.14(a)) or 12 CFR part 25, Appendix C, § 25.26(a), as applicable; or

(v) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in § 25.18(g) (12 CFR 25.18(g)) or 12 CFR part 25, Appendix C, § 25.27(f), as applicable.

\* \* \* \* \*

- 37. Effective January 1, 2024, revise paragraph (a)(2) to read as follows:

#### **§ 35.4 Fulfillment of the CRA.**

(a)\* \* \*

(2) *Activities given favorable CRA consideration.* Performing any of the following activities if the activity is of the type that is likely to receive favorable consideration by a Federal banking agency in evaluating the performance under the CRA of the insured depository institution that is a party to the agreement or an affiliate of a party to the agreement—

(i) Retail loans, community development loans, community development investments, and community development services, as described in § 25.04 (12 CFR 25.04);

(ii) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making community development investments, or providing community development services, as described in § 25.15(c) (12 CFR 25.15(c));

(iii) In the case of a small insured depository institution, any lending or other activity described in § 25.14(a) (12 CFR 25.14(a)); or

(iv) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in § 25.18(g) (12 CFR 25.18(g)).

\* \* \* \* \*

#### § 35.6 [Amended]

■ 38. Section 35.6 is amended by removing the phrase “set forth in § 25.43 (12 CFR 25.43)” in paragraph (b)(7) and adding in its place “set forth in § 25.28 (12 CFR 25.28) or 12 CFR part 25, Appendix C, § 25.43, as applicable”.

#### § 35.11 [Amended]

■ 39. Section 35.11 is amended by removing the phrase “described in § 25.43 (12 CFR 25.43)” in paragraph (d) and adding in its place the phrase “described in § 25.28 (12 CFR 25.28) or 12 CFR part 25, Appendix C, § 25.43, as applicable”.

### PART 192—CONVERSIONS FROM MUTUAL TO STOCK FORM

■ 40. The authority citation for part 192 continues to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901 *et seq.*, 5412(b)(2)(B); 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

#### § 192.200 [Amended]

■ 41. Section 192.200 is amended by removing the phrase “under 12 CFR part

195” in paragraph (c) introductory text and adding in its place “under part 25”.

**Brian P. Brooks,**

*Acting Comptroller of the Currency.*

[FR Doc. 2020–26394 Filed 12–3–20; 8:45 am]

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### NATIONAL CREDIT UNION ADMINISTRATION

#### 12 CFR Part 741

[NCUA 2020–0114]

RIN 3133–AF30

#### Capitalization of Interest in Connection With Loan Workouts and Modifications

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA Board (Board) seeks public comment on a proposed rule to amend its regulations by removing the prohibition on the capitalization of interest in connection with loan workouts and modifications. The Board has determined that the current prohibition on authorizing additional advances to finance unpaid interest may be overly burdensome and, in some cases, hamper a federally insured credit union’s (FICU’s) good-faith efforts to engage in loan workouts with borrowers facing difficulty because of the economic disruption that the COVID–19 pandemic has caused. Advancing interest may avert the need for alternative actions that would be more harmful to borrowers. The proposed rule would establish documentation requirements to help ensure that the addition of unpaid interest to the principal balance of a mortgage loan does not hinder the borrower’s ability to become current on the loan. The proposed change would apply to workouts of all types of member loans, including commercial and business loans. The Board has also taken this opportunity to make several technical changes to the Appendix to improve its clarity and update certain references. For the convenience of readers, the Board is republishing the Appendix in its entirety so that the changes may be viewed in the context of the full document.

**DATES:** Comments must be received on or before February 2, 2021.

**ADDRESSES:** You may submit written comments, identified by RIN 3133–AF30, by any of the following methods (*Please send comments by one method only*):

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the

instructions for submitting comments for NCUA 2020–0114.

• *Fax:* (703) 518–6319. Include “[Your Name]—Comments on ‘Proposed Rule: Capitalization of Interest in Connection with Loan Workouts and Modifications’” in the transmittal.

• *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

*Public Inspection:* You may view all public comments on the Federal eRulemaking Portal (<http://www.regulations.gov>) as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA’s law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

#### FOR FURTHER INFORMATION CONTACT:

Scott Neat, Associate Director of the Office of Examination and Insurance, at (703) 518–6360; and Ariel Pereira and Gira Bose, Staff Attorneys, Office of General Counsel, at (703) 518–6540.

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Legal Authority
- III. Summary of the Proposed Rule
- IV. Regulatory Procedures

#### I. Background

##### A. May 2012 Adoption of the Loan Workout and Accrual and TDR Requirements

In May 2012, the Board published a final rule on loan workout policies and monitoring requirements that applies to all FICUs. The rule also established requirements for nonaccrual policies, and for regulatory reporting of troubled debt restructurings (TDRs).<sup>1</sup> The Board noted that the May 2012 final rule was similar to guidance set forth in an interagency policy statement issued by the banking agencies of the Federal Financial Institutions Examination Council (FFIEC) on June 12, 2000,<sup>2</sup> though the NCUA did not join the agencies in issuing the statement.

The May 2012 final rule, codified in Appendix B to Part 741 of the NCUA’s

<sup>1</sup> 77 FR 31993 (May 31, 2012).

<sup>2</sup> FFIEC, Uniform Retail Credit Classification and Account Management Policy, 65 FR 36903 (June 12, 2000).