DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket ID OCC–2022–0002]

RIN 1557–AF15

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1769]

RIN 7100–AG29

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AF81

Community Reinvestment Act

AGENCY: Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of the Comptroller of the Currency, Treasury

ACTION: Joint notice of proposed rulemaking; request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) propose to amend their regulations implementing the Community Reinvestment Act of 1977 (CRA) to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated.

DATES: Comments must be received on or before August 5, 2022.

ADDRESSES: Comments should be directed to:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title ''Community Reinvestment Act'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov:* Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2022–0002'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking 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* site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. EST or email *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–2022–0002'' 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 action by the following method:

- *Viewing Comments Electronically—Regulations.gov:* Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2022–0002'' in the Search Box and click ''Search.'' Click on the ''Documents'' tab and then the document's title. After clicking the document's title, click the ''Browse 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 Documents Results'' options on the left side of the screen.'' For assistance with the *Regulations.gov* site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. EST or email *regulations@erulemakinghelpdesk.com.*

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

Board: You may submit comments, identified by Docket No. R–1769 and RIN 7100–AG29, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

Instructions: All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C Street NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. during Federal business weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: You may submit comments, identified by RIN 3064–AF81, by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow instructions for submitting comments on the Agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–AF81 on the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments RIN 3064–AF81, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

OCC: Heidi Thomas, Special Counsel, or Emily Boyes, Counsel, Chief Counsel's Office, (202) 649–5490; or Vonda Eanes, Director for CRA and Fair Lending Policy, or Karen Bellesi, Director for Community Development, Bank Supervision Policy, (202) 649–5470, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Board: S. Caroline (Carrie) Johnson, Manager, Division of Consumer and Community Affairs, (202) 452–2762; Amal S. Patel, Counsel, Division of Consumer and Community Affairs, (202) 912–7879, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6859; Pamela Freeman, Chief Fair Lending and CRA Examination Section, Division of Depositor and Consumer Protection, (202) 898–3656; Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424; or Sherry Ann Betancourt, Counsel, Legal Division, (202) 898–6560, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: In this Notice of Proposed Rulemaking (NPR or proposal), the OCC, Board, and the FDIC, (together referred to as ''the agencies'') seek feedback on changes to update and clarify the regulations to implement the CRA.[1] The CRA encourages banks[2] to help meet the credit needs of the local communities in which they are chartered, consistent with a bank's safe and sound operations, by requiring the Federal banking regulatory agencies to examine banks' records of meeting the credit needs of their entire community, including low- and moderate-income neighborhoods.

The agencies implement the CRA through their CRA regulations.[3] The CRA regulations establish the framework and criteria by which the agencies assess a bank's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations. Under the CRA regulations, the agencies apply different evaluation standards for banks of different asset sizes and types.

This NPR seeks to update the CRA regulations in adherence with objectives that include the following:

- Update CRA regulations to strengthen the achievement of the core purpose of the statute;
- Adapt to changes in the banking industry, including the expanded role of mobile and online banking;
- Provide greater clarity and consistency in the application of the regulations;
- Tailor performance standards to account for differences in bank size and business models and local conditions;
- Tailor data collection and reporting requirements and use existing data whenever possible;
- Promote transparency and public engagement;
- Confirm that CRA and fair lending responsibilities are mutually reinforcing; and
- Create a consistent regulatory approach that applies to banks regulated by all three agencies.

A key part of the proposal is a new evaluation framework for evaluating CRA performance for banks. The agencies propose an evaluation framework that would establish the following four tests for large banks: Retail Lending Test; Retail Services and Products Test; Community Development Financing Test; and Community Development Services Test. Intermediate banks would be evaluated under the Retail Lending Test and the *status quo* community development test, unless they choose to opt into the Community Development Financing Test. Small banks would be evaluated under the *status quo* small bank lending test, unless they choose to opt into the Retail Lending Test. Wholesale and limited purpose banks would be evaluated under a tailored version of the Community Development Financing Test.

The agencies request feedback on all aspects of the proposal, including but not limited to the specific questions outlined in the **SUPPLEMENTARY INFORMATION**. The agencies are setting forth in this **SUPPLEMENTARY INFORMATION** the proposed rule using common regulation text for ease of commenter review. The agencies are proposing agency-specific amendatory text where necessary to account for differing agency authority and terminology.

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[1] 12 U.S.C. 2901 *et seq.*

[2] For purposes of this **SUPPLEMENTARY INFORMATION**, the term ''bank'' includes insured national and state banks, Federal and state savings associations, Federal branches as defined in 12 CFR part 28, insured State branches as defined in 12 CFR 345.11(c), and state member banks as defined in 12 CFR part 208, except as provided in 12 CFR __.11(c).

[3] *See* 12 CFR part 25 (OCC), 12 CFR part 228 (Regulation BB) (Board), and 12 CFR part 345 (FDIC). For clarity and to streamline references, citations to the agencies' *existing* common CRA regulations are provided in the following format: 12 CFR __.xx; for example, references to 12 CFR 25.12 (OCC), 12 CFR 228.12 (Board), and 12 CFR 345.12 (FDIC) would be streamlined as follows: ''12 CFR __.12.'' Likewise, references to the agencies' *proposed* common CRA regulations are provided in the following format: ''proposed § __.xx.''

I. Introduction

A. Background

The CRA is designed to encourage regulated banks to help meet the credit needs of the local communities in which they are chartered. Specifically, Congress found that ''(1) regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business; (2) the convenience and needs of communities include the need for credit as well as deposit services; and (3) regulated financial institutions have continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.'' [4]

The CRA statute requires the agencies to ''assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution.'' [5] Upon completing this assessment, the statute requires the agencies to ''prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.'' [6] In addition, the statute requires making portions of these written evaluations, referred to by the agencies as performance evaluations, available to the public.[7] The statute further provides that each agency must consider a bank's CRA performance ''in its evaluation of an application for a deposit facility by such institution.'' [8]

Since its enactment, Congress has amended the CRA several times, including through: the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [9] (which required public disclosure of a bank's CRA written evaluation and rating); the Federal Deposit Insurance Corporation Improvement Act of 1991 [10] (which required the inclusion of a bank's CRA examination data in the determination of its CRA rating); the Housing and Community Development Act of 1992 [11] (which included assessment of the record of nonminority-owned and nonwomen-owned banks in cooperating with minority-owned and women-owned banks and low-income credit unions); the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 [12] (which (i) required an agency to consider an out-of-state national bank's or state bank's CRA rating when determining whether to allow interstate branches, and (ii) prescribed certain requirements for the contents of the written CRA evaluation for banks with interstate branches); and the Gramm-Leach-Bliley Act of 1999 [13] (which, among other things, provided regulatory relief for smaller banks by reducing the frequency of their CRA examinations).

Congress directed the agencies to publish regulations to carry out the CRA's purposes,[14] and in 1978 the agencies promulgated the first CRA regulations, which included evidence of prohibited discriminatory or other illegal credit practices as a performance factor.[15] Since then, the agencies have together significantly revised and sought to clarify their CRA regulations twice, in 1995 and 2005—with the most substantive interagency update occurring in 1995. In addition, the agencies have periodically jointly published the Interagency Questions and Answers Regarding Community Reinvestment (Interagency Questions and Answers) [16] to provide guidance on the CRA regulations.

B. The Current CRA Regulations and Guidance for Performance Evaluations

1. CRA Performance Evaluations

The agencies' CRA regulations provide different methods to evaluate a bank's CRA performance depending on its asset size and business strategy.[17] Under the current framework:

- Small banks—currently, those with assets of less than $346 million as of December 31 of either of the prior two calendar years—are evaluated under a lending test and may receive an ''Outstanding'' rating based only on their retail lending performance. Qualified investments, services, and delivery systems that enhance credit availability in a bank's assessment areas may be considered for an ''Outstanding'' rating, but only if the bank meets or exceeds the lending test criteria in the small bank performance standards.
- Intermediate small banks—currently, those with assets of at least $346 million as of December 31 of both of the prior two calendar years and less than $1.384 billion as of December 31 of either of the prior two calendar years—are evaluated under the lending test for small banks and a community development test. The intermediate small bank community development test evaluates all community development activities together.
- Large banks—currently, those with assets of more than $1.384 billion as of December 31 of both of the prior two calendar years—are evaluated under separate lending, investment, and service tests. The lending and service tests consider both retail and community development activities, and the investment test focuses on qualified community development investments. To facilitate the agencies' CRA analysis, large banks are required to report annually certain data on community development loans, small business loans, and small farm loans (small banks and intermediate small banks are not required to report these data unless they opt into being evaluated under the large bank lending test).
- Designated wholesale banks (those engaged in only incidental retail lending) and limited purpose banks (those offering a narrow product line to a regional or broader market) are evaluated under a standalone community development test.
- Banks of any size may elect to be evaluated under a strategic plan that sets out measurable, annual goals for lending, investment, and service activities in order to achieve a ''Satisfactory'' or an ''Outstanding'' rating. A strategic plan must be developed with community input and approved by the appropriate Federal banking agency.

[4] 12 U.S.C. 2901(a).

[5] 12 U.S.C. 2903(a)(1).

[6] 12 U.S.C. 2906(a).

[7] 12 U.S.C. 2906(b).

[8] 12 U.S.C. 2903(a)(2).

[9] Public Law 101–73, 103 Stat. 183 (Aug. 9, 1989).

[10] Public Law 102–242, 105 Stat. 2236 (Dec. 19, 1991).

[11] Public Law 102–550, 106 Stat. 3874 (Oct. 28, 1992).

[12] Public Law 103–328, 108 Stat. 2338 (Sept. 29, 1994).

[13] Public Law 106–102, 113 Stat. 1338 (Nov. 12, 1999).

[14] 12 U.S.C. 2905.

[15] 43 FR 47144 (Oct. 12, 1978). Congress also charged, in addition to the agencies, the Office of Thrift Supervision (OTS) and its predecessor agency, the Federal Home Loan Bank Board, with implementing the CRA. The OTS had CRA rulemaking and supervisory authority for all savings associations. Pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 1522 (2010), the OTS's CRA rulemaking authority for all savings associations transferred to the OCC and the OTS's CRA supervisory authority for State savings associations transferred to the FDIC. As a result, the OCC's CRA regulation applies to both State and Federal savings associations, in addition to national banks, and the FDIC enforces the OCC's CRA regulations with respect to State savings associations.

[16] *See* 81 FR 48506 (July 25, 2016). ''Interagency Questions and Answers'' refers to the ''Interagency Questions and Answers Regarding Community Reinvestment'' guidance in its entirety. ''Q&A'' refers to an individual question and answer within the Interagency Questions and Answers.

[17] *See generally* 12 CFR __.21 through __.27. The agencies annually adjust the CRA asset-size thresholds based on the annual percentage change in a measure of the Consumer Price Index.

The agencies also consider applicable performance context information to inform their analysis and conclusions when conducting CRA examinations. Performance context comprises a broad range of economic, demographic, and bank- and community-specific information that examiners review to calibrate a bank's CRA evaluation to its local communities.

2. Assessment Areas

The existing CRA regulations require a bank to delineate one or more assessment areas in which its record of meeting its CRA obligations will be evaluated.[18] The regulations require a bank to delineate assessment areas consisting of geographic areas (metropolitan statistical areas (MSAs) or metropolitan divisions) or political subdivisions[19] in which its main office, branches, and deposit-taking automated teller machines (ATMs) are located, as well as the surrounding geographies (*i.e.,* census tracts)[20] where a substantial portion of its loans are originated or purchased.

The assessment area requirements and emphasis on branches reflects the prevailing business model for financial service delivery when the CRA was enacted. The statute instructs the agencies to assess a bank's record of meeting the credit needs of its ''entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution, and to take such record into account in its evaluation of an application for a deposit facility by such institution.''[21] The statute does not prescribe the delineation of assessment areas, but they are an important aspect of the regulation because they define ''community'' for purposes of the evaluation of a bank's CRA performance.

3. Qualifying Activities

The CRA regulations and the Interagency Questions and Answers provide detailed information, including applicable definitions and descriptions, respectively, regarding activities that are eligible for CRA consideration in the evaluation of a bank's CRA performance. Banks that are evaluated under a performance test that includes a review of their retail activities are assessed in connection with retail lending activity (as applicable, home mortgage loans, small business loans, small farm loans, and consumer loans)[22] and, where applicable, retail banking service activities (*e.g.,* the current distribution of a bank's branches in geographies of different income levels, and the availability and effectiveness of the bank's alternative systems for delivering banking services to low- and moderate-income geographies and individuals).[23]

Banks evaluated under a performance test that includes a review of their community development activities are assessed with respect to community development lending, qualified investments, and community development services, which by definition must have a primary purpose of community development.[24]

4. Guidance for Performance Evaluations

In addition to information included in their CRA regulations, the agencies also provide information to the public regarding how CRA performance tests are applied, where CRA activities are considered, and what activities are eligible through publicly available CRA performance evaluations,[25] the Interagency Questions and Answers, interagency CRA examination procedures,[26] and interagency instructions for writing performance evaluations.[27]

C. Stakeholder Feedback and Recent Rulemaking

The financial services industry has undergone transformative changes since the CRA statute was enacted, including the removal of national bank interstate branching restrictions and the expanded role of mobile and online banking. To better understand how these developments impact both consumer access to banking products and services and a bank's CRA performance, the agencies have reviewed feedback from the banking industry, community groups, academics, and other stakeholders on several occasions.

1. Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA)

From 2013 to 2016, the agencies solicited feedback on the CRA as part of the EGRPRA review process.[28] Stakeholders raised issues related to assessment area definitions; incentives for banks to serve low- and moderate-income, unbanked, underbanked, and rural individuals and communities; recordkeeping and reporting requirements; the need for clarity regarding performance measures and better examiner training to ensure consistency in examinations; and refinement of CRA ratings.[29]

2. OCC CRA Advance Notice of Proposed Rulemaking and Federal Reserve Outreach Sessions

On September 5, 2018, the OCC published an Advance Notice of Proposed Rulemaking (ANPR) to solicit ideas for a new CRA regulatory framework.[30] More than 1,500 comment letters were submitted in response. To augment that input, the Federal Reserve System (the Board and the Federal Reserve Banks) held about 30 outreach meetings with representatives of banks, community organizations, and the other agencies.[31]

3. OCC–FDIC CRA Notice of Proposed Rulemaking and OCC CRA Final Rule

On December 12, 2019, the FDIC and the OCC issued a joint NPR to revise and update their CRA regulations.[32] In response, the FDIC and the OCC received over 7,500 comment letters.

On May 20, 2020, the OCC issued a CRA final rule (OCC 2020 CRA final rule), retaining the most fundamental elements of the proposal but also making adjustments to reflect stakeholder input.[33] The OCC deferred establishing the metrics-framework for evaluating banks' CRA performance until it was able to assess additional data,[34] with the final rule having an

[18] 12 CFR __.41.

[19] Political subdivisions include cities, counties, towns, townships, and Indian reservations. *See* Q&A § __.41(c)(1)–1.

[20] 12 CFR __.12(k).

[21] 12 U.S.C. 2903(a).

[22] 12 CFR__.12(j), (l), (v), and (w).

[23] *See generally* 12 CFR __.21 through __.27 and __.24(d).

[24] *See generally* 12 CFR __.12(g), (h), (i), and (t) and 12 CFR __.21 through __.27.

[25] *See, e.g., https://apps.occ.gov/crasearch/default.aspx* (OCC); *https://www.federalreserve.gov/apps/CRAPubWeb/CRA/BankRating* (Board); *https://crapes.fdic.gov/* (FDIC).

[26] *See, e.g.,* Federal Financial Institutions Examination Council (FFIEC), ''Community Reinvestment Act: CRA Examinations,'' *https://www.ffiec.gov/cra/examinations.htm.*

[27] *Id.*

[28] *See, e.g.,* 80 FR 7980 (Feb. 13, 2015).

[29] *See* FFIEC, Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act, 82 FR 15900 (Mar. 30, 2017), *https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.*

[30] 83 FR 45053 (Sept. 5, 2018).

[31] For a summary of the Federal Reserve outreach session feedback, *see* ''Perspectives from Main Street: Stakeholder Feedback on Modernizing the Community Reinvestment Act'' (June 2019), *https://www.federalreserve.gov/publications/files/stakeholder-feedback-on-modernizing-the-community-reinvestment-act-201906.pdf.*

[32] 85 FR 1204 (Jan. 9, 2020).

[33] 85 FR 34734 (June 5, 2020).

[34] *See* OCC, News Release 2020–63, ''OCC Finalizes Rule to Strengthen and Modernize Community Reinvestment Act Regulations'' (May

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October 1, 2020 effective date and January 1, 2023 and January 1, 2024 compliance dates for certain provisions.[35]

4. Board CRA Advance Notice of Proposed Rulemaking

On September 21, 2020, the Board issued a CRA ANPR (Board CRA ANPR) requesting public comment on an approach to modernize the CRA regulations by strengthening, clarifying, and tailoring them to reflect the current banking landscape and better meet the core purpose of the CRA.[36] The Board CRA ANPR sought feedback on ways to evaluate how banks meet the needs of low- and moderate-income communities and address inequities in credit access. The Board received over 600 comment letters on this ANPR.

5. Recent Developments

On July 20, 2021, the agencies issued an interagency statement indicating their commitment to working collectively to, in a consistent manner, strengthen and modernize their CRA regulations.[37] On the same day, the OCC stated its intention to rescind the OCC 2020 CRA final rule.[38] Subsequently, on September 8, 2021, the OCC issued a notice of proposed rulemaking to rescind the OCC 2020 CRA final rule and replace it with CRA regulations based on those that the agencies jointly issued in 1995, as amended.[39] On December 15, 2021, the OCC issued a final rule completing the rescission and replacement effective January 1, 2022. The final rule also integrated the OCC's CRA regulation for savings associations into its national bank CRA regulation at 12 CFR part 25.[40]

D. CRA, Illegal Discrimination, and Fair Lending

The CRA was one of several laws enacted in the 1960s and 1970s to address fairness and financial inclusion in access to housing and credit. During this period, Congress passed the Fair Housing Act (FHA) in 1968,[41] to prohibit discrimination in renting or buying a home,[42] and the Equal Credit Opportunity Act (ECOA) in 1974 [43] (amended in 1976), to prohibit creditors from discriminating against an applicant in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age. These fair lending laws provide the legal basis for prohibiting discriminatory lending practices based on race and ethnicity.[44]

Prior to passage of these laws, inequitable access to credit and other financial services—due in large part to a practice known as ''redlining''—along with a lack of public and private investment, greatly contributed to the economic distress experienced by lower-income and minority communities. The former Federal Home Owners' Loan Corporation (HOLC), established in 1933, employed color-coded maps [45] to designate its perception of the relative risk of lending in a range of neighborhoods, with ''hazardous'' (the highest risk) areas coded in red often with reference to the racial makeup of the neighborhood.[46] In addition to referring to HOLC maps, the term redlining has also been used to more broadly describe excluding neighborhoods or areas from provision of credit or other financial services on account of the race or ethnicity of residents in those areas. As Senator William Proxmire, who authored the CRA legislation, testified when discussing its purpose:

> By redlining let me make it clear what I am talking about. I am talking about the fact that banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood.[47]

Even with the implementation of the CRA and the other complementary laws, the wealth gap and disparities in other financial outcomes remain persistent. For example, ''data from the 2019 Survey of Consumer Finances (SCF) show that long-standing and substantial wealth disparities between families in different racial and ethnic groups were little changed since the last survey in 2016; the typical White family has eight times the wealth of the typical Black family and five times the wealth of the typical Hispanic family.'' [48]

The Board CRA ANPR discussed this history of redlining and racial discrimination prior to the enactment of these laws and asked for feedback on the following question: ''In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?'' [49] The Board received comments from a number of stakeholders on this question, providing feedback across different topics.

As has been the case since the first regulations were issued by the agencies, the agencies continue to recognize that CRA and fair lending are mutually reinforcing. In this NPR, the agencies propose to retain the conditions that bank assessment areas are prohibited from reflecting illegal discrimination or arbitrarily excluding low- or moderate-income census tracts. The agencies also propose to retain the regulatory provision that CRA ratings can be downgraded as a result of discriminatory practices, among other practices. The agencies are committed to upholding their regulatory responsibilities for both fair lending and CRA examinations, and the agencies seek to coordinate those examinations where feasible to do so.

In furtherance of the agencies' objective to promote transparency, the agencies propose providing additional information to the public in CRA performance evaluations for large banks related to the distribution by borrower

20, 2020), *https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-63.html; see also* 85 FR at 34736.

[35] 85 FR at 34784.

[36] 85 FR 66410 (Oct. 19, 2020).

[37] *See* Interagency Statement on Community Reinvestment Act, Joint Agency Action (July 20, 2021), *https://www.occ.gov/news-issuances/news-releases/2021/nr-ia-2021-77.html* (OCC); *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20210720a.htm* (Board); *https://www.fdic.gov/news/press-releases/2021/pr21067.html* (FDIC).

[38] *See* OCC, News Release 2021–76, Statement on Rescinding its 2020 Community Reinvestment Act Rule (July 20, 2021), *https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-76.html.*

[39] 86 FR 52026 (Sept. 17, 2021).

[40] 86 FR 71328 (Dec. 15, 2021).

[41] 42 U.S.C. 3601 *et seq.*

[42] 42 U.S.C. 3604 through 3606.

[43] 15 U.S.C. 1691 *et seq.*

[44] *See* Interagency Fair Lending Examination Procedures (Aug. 2009), *available at https://www.ffiec.gov/pdf/fairlend.pdf.*

[45] *See* University of Richmond's Digital Scholarship Lab, ''Mapping Inequality: Redlining in New Deal America,'' *https://dsl.richmond.edu/panorama/redlining/#loc=5/39.1/*-94.58 (archive of HOLC maps).

[46] *See, e.g.,* Daniel Aaronson, Daniel Hartley, and Bhashkar Mazumder, Federal Reserve Bank of Chicago, ''The Effects of the 1930s HOLC 'Redlining' Map'' (Revised Aug. 2020), *https://www.chicagofed.org/publications/working-papers/2017/wp2017-12,* p.1 (''Neighborhoods were classified based on detailed risk-based characteristics, including housing age, quality, occupancy, and prices. However, non-housing attributes such as race, ethnicity, and immigration status were influential factors as well. Since the lowest rated neighborhoods were drawn in red and often had the vast majority of African American residents, these maps have been associated with the so-called practice of 'redlining' in which borrowers are denied access to credit due to the demographic composition of their neighborhood.'').

[47] 123 Cong. Rec. 17630 (June 6, 1977).

[48] Neil Bhutta et al., ''Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances'' (Sept. 28, 2020), *https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm.*

[49] 85 FR at 66413.

race and ethnicity of the bank's home mortgage loan originations and applications in each of the bank's assessment areas. This disclosure would leverage existing data available under the Home Mortgage Disclosure Act (HMDA). As discussed in Section XIX of this **SUPPLEMENTARY INFORMATION**, providing the data in this disclosure would have no independent impact on the conclusions or ratings of the bank and would not on its own reflect any fair lending finding or violation. Instead, this proposal is intended to provide transparent information to the public.

II. Overview of Proposed Rule

This **SUPPLEMENTARY INFORMATION** includes a detailed discussion of the proposed rule, including on the following topics:

Community Development Definitions. Section III discusses the following proposed definitions for community development activities: Affordable housing; economic development that supports small businesses and small farms; community supportive services; revitalization activities; essential community facilities; essential community infrastructure; recovery activities in designated disaster areas; disaster preparedness and climate resiliency activities; activities with minority depository institutions (MDIs), women's depository-institutions (WDIs), low-income credit unions (LICUs), and Community Development Financial Institutions (CDFIs) certified by the U.S. Department of the Treasury (Treasury Department), referred to as Treasury Department-certified CDFIs; financial literacy; and qualifying activities in Native Land Areas. The agencies propose using a *primary purpose* standard for determining eligibility of the above activities, with *pro rata* consideration for certain affordable housing activities.

Qualifying Activities Confirmation and Illustrative List of Activities. Section IV describes the agencies' proposal to maintain a publicly available illustrative, non-exhaustive list of activities eligible for CRA consideration. In addition, the agencies propose a process, open to banks, for confirming eligibility of community development activities in advance.

Impact Review of Community Development Activities. Section V describes the agencies' proposal for specific impact review factors to inform the impact and responsiveness evaluation of a bank's activities under the Community Development Financing Test, the Community Development Services Test, and the Community Development Financing Test for Wholesale or Limited Purpose Banks.

Assessment Areas and Areas for Eligible Community Development Activity. Section VI describes proposals on delineating facility-based assessment areas for main offices, branches, and deposit-taking remote service facilities (to include ATMs). Under the proposal, large banks would delineate assessment areas comprised of full counties, metropolitan divisions, or MSAs. Intermediate and small banks could continue to delineate partial county facility-based assessment areas, consistent with current practice.

The section also describes the proposal for large banks to delineate retail lending assessment areas where a bank has concentrations of home mortgage and/or small business lending outside of its facility-based assessment areas. Under this proposal, a large bank would delineate retail lending assessment areas where it has an annual lending volume of at least 100 home mortgage loan originations or at least 250 small business loan originations in an MSA or nonmetropolitan area of a state for two consecutive years.

The section also discusses the proposal to allow banks to receive CRA credit for any qualified community development activity, regardless of location, although performance within facility-based assessment areas would be emphasized.

Performance Tests, Standards, and Ratings in General. Section VII describes the agencies' proposed evaluation framework tailored for differences in bank size and business model. The agencies propose the following four tests for large banks: Retail Lending Test; Retail Services and Products Test; Community Development Financing Test; and Community Development Services Test. Intermediate banks would be evaluated under the Retail Lending Test and the *status quo* community development test, unless they choose to opt into the Community Development Financing Test. Small banks would be evaluated under the *status quo* small bank lending test, unless they choose to opt into the Retail Lending Test. Wholesale and limited purpose banks would be evaluated under a tailored version of the Community Development Financing Test.

Under this framework, large banks would be banks that had average quarterly assets, computed annually, of at least $2 billion in both of the prior two calendar years; intermediate banks would be banks that had average quarterly assets, computed annually, of at least $600 million in both of the prior two calendar years and less than $2 billion in either of the prior two calendar years; and small banks would be banks that had average quarterly assets, computed annually, of less than $600 million in either of the prior two calendar years. The agencies are in the process of seeking approval from the U.S. Small Business Administration (SBA) to use the $600 million threshold, where applicable and adjusted annually for inflation, rather than the SBA's recently updated size standards.[50]

The agencies propose to further tailor aspects of the proposal within the large bank category. The agencies propose that certain provisions of the Retail Services and Products Test and Community Development Services Test would apply only to large banks that had average quarterly assets, computed annually, of over $10 billion in both of the prior two calendar years. These banks are referred to in this **SUPPLEMENTARY INFORMATION** as large banks with assets of over $10 billion. Large banks that had average quarterly assets, computed annually, of $10 billion or less in either of the prior two calendar years are referred to in this **SUPPLEMENTARY INFORMATION** as large banks with assets of $10 billion or less.

The section also discusses a new proposed definition of ''operations subsidiary'' to the Board's CRA regulation and ''operating subsidiary'' for the FDIC's and OCC's CRA regulations (referred to collectively in this **SUPPLEMENTARY INFORMATION** as ''bank subsidiaries'') to identify those bank affiliates whose activities would be required to be attributed to a bank's CRA performance. The agencies propose to maintain the current flexibilities that would allow a bank to choose to include or exclude the activities of other bank affiliates that are not considered ''bank subsidiaries.'' The section also discusses performance context, and the requirement for activity in accordance with safe and sound operations.

Retail Lending Test Product Categories and Major Product Lines. Section VIII describes the proposed categories and standards for determining when a bank's retail lending product lines are evaluated under the Retail Lending Test. The agencies propose the following retail lending product line categories: A

[50] 87 FR 18627, 18830 (Mar. 31, 2022). Of particular relevance to the Agencies' CRA regulations, the SBA revised the size standards applicable to small commercial banks and savings institutions, respectively, from $600 million to $750 million, based upon the average assets reported on such a financial institution's four quarterly financial statements for the preceding year. The final rule has a May 2, 2022 effective date.

closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm lending. The agencies also propose including automobile lending as an eligible retail lending product line. In addition, the agencies propose a major product line standard to determine when a retail lending product line is evaluated.

The NPR proposes to define the terms ''small business'' and ''small farm'' consistent with the Consumer Financial Protection Bureau's (CFPB) proposal under section 1071 (Section 1071 Rulemaking)[51] of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act[52]). The CFPB has proposed to define a ''small business'' as having gross annual revenues of $5 million or less in the preceding fiscal year. The agencies are in the process of seeking approval from the SBA to use the standard proposed by the CFPB in its Section 1071 Rulemaking rather than the SBA's size standards.[53]

Retail Lending Test Evaluation Framework for Facility-Based Assessment Areas and Retail Lending Assessment Areas. Section IX discusses the proposed Retail Lending Test for standardizing evaluations of retail lending performance in facility-based assessment areas and retail lending assessment areas for large and intermediate banks. The agencies propose using a *retail lending volume screen* to evaluate a bank's retail lending volumes. The agencies also propose to evaluate a bank's major product lines using two distribution metrics that measure the bank's record of lending in low- and moderate-income census tracts and to borrowers of different income or revenue levels. Further, the agencies propose to establish a standardized methodology for setting performance expectations for specific product lines. The methodology defines performance ranges for each conclusion category for each product, and this performance is then averaged together. Under the methodology, the amount of lending needed to achieve a given conclusion would differ across assessment areas according to local credit demand and would calibrate across business cycles.

Retail Lending Test Evaluation Framework for Retail Lending Test Conclusions in State, Multistate MSAs, and at the Institution Level. Section X describes the agencies' proposal to assign conclusions on the Retail Lending Test for large and intermediate banks at the state and multistate MSA levels based on the conclusions reached at individual facility-based and retail lending assessment areas, as applicable. The agencies also propose to assign conclusions on the Retail Lending Test at the institution level by similarly combining conclusions from all of a bank's facility-based and retail lending assessment areas, as applicable, as well as the bank's retail lending performance outside of its assessment areas. The consideration of outside lending recognizes that some bank lending may be geographically diffuse, without concentrations in particular local markets that would be captured by the proposed retail lending assessment areas.

Retail Services and Products Test. Section XI describes the agencies' proposal to evaluate large banks under the Retail Services and Products Test. This test would use a predominantly qualitative approach, incorporating quantitative measures as guidelines, as applicable. First, the delivery systems part of the proposed test seeks to achieve a balanced evaluation framework that considers a bank's branch availability and services, remote service facility availability, and its digital and other delivery systems. The agencies propose that the evaluation of digital and other delivery systems and deposit products would be required for large banks with assets of over $10 billion, and not required for large banks with assets of $10 billion or less.

Second, the credit and deposit products part of the proposed test aims to evaluate a bank's efforts to offer products that are responsive to the needs of low- and moderate-income communities. The agencies propose that the evaluation of deposit products responsive to the needs of low- or moderate-income individuals would be required for large banks with assets of over $10 billion, and not required for large banks with assets of $10 billion or less.

Community Development Financing Test. Section XII describes the agencies proposals for the Community Development Financing Test, which would apply to large banks as well as intermediate banks that choose to opt into this test. The Community Development Financing Test would consist of a community development financing metric, benchmarks, and an impact review. These components would be assessed at the facility-based assessment area, state, multistate MSA and institution levels, and would inform conclusions at each of those levels.

Community Development Services Test. Section XIII describes the agencies' proposal to assess a large bank's community development services, underscoring the importance of these activities for fostering partnerships among different stakeholders, building capacity, and creating the conditions for effective community development. The agencies propose that in nonmetropolitan areas, banks may receive community development services consideration for volunteer activities that meet an identified community development need, even if unrelated to the provision of financial services. The proposed test would consist of a primarily qualitative assessment of the bank's community development service activities. For large banks with assets of over $10 billion, the agencies propose also using a metric to measure the hours of community development services activity per full time employee of a bank.

Wholesale and Limited Purpose Banks. Section XIV describes the agencies' proposed Community Development Financing Test for Wholesale and Limited Purpose Banks, which would include a qualitative review of a bank's community development lending and investments in each assessment area and an institution level-metric measuring a bank's volume of activities relative to its capacity. The agencies also propose giving wholesale and limited purpose banks the option to have examiners consider community development service activities that would qualify under the Community Development Services Test.

Strategic Plans. Section XV describes the agencies' proposal to maintain a strategic plan option as an alternative method for evaluation. Banks that elect to be evaluated under a CRA strategic plan would continue to request approval for the plan from their appropriate Federal banking agency. The agencies propose more specific criteria to ensure that all banks are meeting their CRA obligation to serve low- and moderate-income individuals and communities. Banks approved to be evaluated under a CRA strategic plan option would have the same assessment area requirements as other banks and would submit plans that include the same performance tests and standards that would otherwise apply unless the

[51] *See* 15 U.S.C. 1691c–2. The CFPB's Section 1071 Rulemaking would amend Regulation B to implement changes to ECOA made by section 1071 of the Dodd-Frank Act. This rulemaking would require covered financial institutions to collect and report to the CFPB data on applications for credit for small businesses, including businesses that are owned by women or minorities. *See* 86 FR 56356 (Oct. 8, 2021), as corrected by 86 FR 70771 (Dec. 13, 2021).

[52] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[53] This assumes the CFPB's section 1071 rulemaking is finalized as proposed with a ''small business'' defined as having gross annual revenues of $5 million or less.

bank is substantially engaged in activities outside the scope of these tests. In seeking approval for a plan that does not adhere to requirements and standards that are applied to other banks, the plan would be required to include an explanation of why the bank's view is that different standards would be more appropriate in meeting the credit needs of its communities.

Assigned Conclusions and Ratings. Section XVI describes the agencies' proposal to provide greater transparency and consistency on assigning ratings for a bank's overall performance. The proposed approach would produce performance scores for each applicable test, at the state, multistate MSA, and institution levels based on a weighted average of assessment area conclusions, as well as consideration of additional test-specific factors at the state, multistate MSA, or institution level. These performance scores are mapped to conclusion categories to provide test-specific conclusions for the state, multistate MSA, and at the institution level. The agencies propose to combine these performance scores across tests to produce ratings at the state, multistate MSA, and the institution level.

The agencies propose to determine a bank's overall state, multistate MSA, or institution rating by taking a weighted average of the applicable performance test scores. For large banks the agencies propose the following weights: 45 percent for Retail Lending Test performance score; 15 percent for Retail Services and Products Test performance score; 30 percent for Community Development Financing Test performance score; and 10 percent for Community Development Services Test performance score. For intermediate banks, the agencies propose to weight the Retail Lending test at 50 percent and the community development test, or if the bank chooses to opt into the Community Development Financing Test, at 50 percent.

The agencies also propose updating the criteria to determine how discriminatory and other illegal practices would adversely affect a rating, as well as what rating level (state, multistate MSA, and institution) would be affected.

Performance Standards for Small and Intermediate Banks. Section XVII describes the agencies' proposal to continue evaluating small banks under the small bank performance standards in the current CRA framework and to apply the proposed metrics-based Retail Lending Test to intermediate banks. Under the proposal, small banks could opt into the Retail Lending Test and could continue to request additional consideration for other qualifying CRA activities. For intermediate banks, in addition to the proposed Retail Lending Test, the agencies propose to also evaluate an intermediate bank's community development activity pursuant to the criteria under the current intermediate small bank community development test. Intermediate banks could also opt to be evaluated under the proposed Community Development Financing Test.

Effect of CRA Performance on Applications. In Section XVIII, the agencies propose to maintain the current regulatory provisions for considering CRA performance on bank applications, such as those for mergers and acquisitions, deposit insurance, and branch openings and relocations.

Data Collection, Reporting, and Disclosure. In Section XIX, the agencies propose to revise data collection and reporting requirements to increase the clarity, consistency, and transparency of the evaluation process through the use of standard metrics and benchmarks. The proposal recognizes the importance of using existing data sources where possible, and tailoring data requirements, where appropriate.

In addition to leveraging existing data, the proposal would require large banks to collect, maintain, and report additional data. All large banks would have the same requirements for certain categories of data, including community development financing data, branch location data, and remote service facility location data. Some new data requirements would only apply to large banks with assets of over $10 billion. Large banks with assets of over $10 billion would have data requirements for deposits data, automobile lending data, retail services data on digital delivery systems, retail services data on responsive deposit products, and community development services data. The proposal also provides updated standards for all large banks to report the delineation of their assessment areas. Data requirements for intermediate banks and small banks would remain the same as the current requirements.

Content and Availability of Public File, Public Notice by Banks, Publication of Planned Examination Schedule, and Public Engagement. Section XX describes the agencies' proposal to provide more transparent information to the public on CRA examinations and encourage communication between members of the public and banks. The agencies propose to make a bank's CRA public file more accessible to the public by allowing any bank with a public website to include its CRA public file on its website. The agencies also propose publishing a list of banks scheduled for CRA examinations for the next two quarters at least 60 days in advance in order to provide additional notice to the public. Finally, the agencies propose to establish a way for the public to provide feedback on community needs and opportunities in specific geographies.

Transition. Section XXI discusses the agencies' proposed timeline for the transition from the current regulatory and supervisory framework to the proposed rule's CRA regulatory and supervisory framework.

Regulatory Analysis. Section XXII discusses the required regulatory analyses for the proposed rule. This includes a description of the Board's and the FDIC's Initial Regulatory Flexibility Analyses, which conclude that the proposed rule will not have a significant economic impact on a substantial number of small entities, and the OCC's certification that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Text of Common Proposed Rule. Section XXIII sets forth the common regulatory text for the proposed CRA regulation.

III. Community Development Definitions

Under the current and proposed CRA rule, a bank may, depending on its size, be evaluated for its community development lending, investments, and/or services under various tests. These activities must have community development as their primary purpose. Community development activities currently fall into four broad categories: Affordable housing; community services; economic development; and revitalization and stabilization. The agencies propose to revise the community development definitions in order to clarify eligibility criteria for different community development activities by including eleven categories that establish specific eligibility standards for a broad range of community development activities. The new definitions incorporate some aspects of guidance that are currently provided in the Interagency Questions and Answers. The proposed definitions reflect an emphasis on activities that are responsive to community needs, especially the needs of low- and moderate-income individuals and communities and small businesses and small farms.

A. Primary Purpose of Community Development

In § __.13, the agencies propose to define in the CRA regulations standards for determining whether a community development activity has a ''primary purpose'' of community development. Currently, the approach to demonstrating that an activity has a primary purpose of community development is explained in the Interagency Questions and Answers.[54] Under the proposal, a loan, investment, or service meets the primary purpose standard when it is designed for the express purpose of community development as set forth in proposed § __.13(a)(1). In general, activities with a primary purpose of community development, as proposed, would receive full CRA credit for the Community Development Financing Test and Community Development Services Test, as described below.

To determine whether an activity is designed for an express community development purpose, the agencies propose applying several approaches. First, if a majority of the dollars, applicable beneficiaries, or housing units of the activity are identifiable to one or more of the community development activities defined in § __.13(a)(2), then the activity meets the requisite primary purpose and would receive full CRA credit.

Second, and alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the activity may still be considered to possess the requisite primary purpose, and the bank may receive CRA credit for the entire activity, if: (i) The express, *bona fide* intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; (ii) the activity is specifically structured to achieve the expressed community development purpose; and (iii) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved.

Pro Rata Credit for Qualified Affordable Housing. The agencies propose that affordable housing that is developed in conjunction with Federal, state, local, or tribal government programs that have a stated purpose or bona fide intent to promote affordable housing would be considered even if fewer than the majority of the beneficiaries of the housing are low- or moderate-income individuals. In such cases, the activity would be considered to have a primary purpose of affordable housing only for the percentage of total housing units in the development that are affordable. For example, if a bank makes a $10 million loan to finance a mixed-income housing development in which 10 percent of the units will be set aside as affordable housing for low- or moderate-income individuals, the bank may treat $1 million of such loan as a community development loan. In other words, the pro-rata dollar amount of the total activity would be based on the percentage of units set aside for affordable housing for low- or moderate-income individuals.

The agencies propose a different approach for an activity that involves low-income housing tax credits (LIHTCs). Specifically, a bank would receive consideration for the full amount of the loan or investment for a LIHTC-financed project, regardless of the share of units that are considered affordable. This proposal is consistent with current guidance adopted in 2010 that clarified that projects developed with LIHTCs had a bona fide intent of providing affordable housing.[55]

Pro Rata Consideration for Other Community Development Activities. The proposal does not specify any other application of partial credit for activities, but the agencies seek feedback on whether such consideration is appropriate for this rulemaking in other specific cases. For example, an essential infrastructure project may serve a broad area where low- and moderate-income census tracts comprise a minority of total census tracts. In such cases, the activity could provide benefit to some low- or moderate-income individuals, although the overall project did not focus on low- or moderate-income census tracts or individuals. The agencies have considered whether banks should receive partial consideration more generally for these activities based on the share of low- or moderate-income census tracts or low- or moderate-income individuals that benefit from the project compared to the number of census tracts or total population that benefited from the project overall. However, partial consideration of activities could result in a significant expansion of the activities that could qualify, and thereby serve to divert limited resources from projects specifically targeted to benefit low- or moderate-income people or communities. In addition, the agencies believe that the proposed primary purpose standard retains appropriate flexibility to provide consideration for activities where less than the majority of the entire activity benefits low- or moderate-income individuals or communities, if those activities have the express, bona fide intent of community development.

Request for Feedback

Question 1. Should the agencies consider partial consideration for any other community development activities (for example, financing broadband infrastructure, health care facilities, or other essential infrastructure and community facilities), or should partial consideration be limited to only affordable housing?

Question 2. If partial consideration is extended to other types of community development activities with a primary purpose of community development, should there be a minimum percentage of the activity that serves low- or moderate-income individuals or geographies or small businesses and small farms, such as 25 percent? If partial consideration is provided for certain types of activities considered to have a primary purpose of community development, should the agencies require a minimum percentage standard greater than 51 percent to receive full consideration, such as a threshold between 60 percent and 90 percent?

B. Affordable Housing

The agencies are proposing a definition for affordable housing that includes four components: (i) Affordable rental housing developed in conjunction with Federal, state, and local government programs; (ii) multifamily rental housing with affordable rents; (iii) activities supporting affordable low- or moderate-income homeownership; and (iv) purchases of mortgage-backed securities that finance affordable housing. The proposed definition is intended to clarify the eligibility of affordable housing as well as to recognize the importance of promoting affordable housing for low- or moderate-income individuals.

[54] As discussed in the Interagency Questions and Answers, a loan, investment, or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or promoting economic development by financing small businesses or small farms that meet the requirements set forth in 12 CFR __.12(g). *See* Q&A § __.12(h)–8.

[55] *See* 75 FR 11642 (Mar. 11, 2010).

1. Background

a. Current Approach to Affordable Housing

The current CRA regulations define ''community development'' to include ''affordable housing (including multifamily rental housing) for low- or moderate-income individuals.'' [56] The agencies have stated in the Interagency Questions and Answers that low- or moderate-income individuals must benefit or be likely to benefit from the housing in order to qualify and meet the existing primary purpose standard.[57] Currently, the agencies consider activities that support both single-family (1–4 family units) and multifamily (more than 4-family units) affordable housing. Single-family home mortgage loans are generally considered as part of the lending test, and other activities that are not home mortgage loans and that support single-family affordable housing may be considered as community development.[58] Multifamily loans are considered separately and may qualify for both retail lending and community development consideration if they meet the definition of affordable housing.[59] Purchases of mortgage-backed securities that primarily consist of single-family mortgage loans to low- or moderate-income individuals, or of multifamily affordable housing, are also considered as qualifying community development activities.[60]

Multifamily Housing. Multifamily housing qualifies under two different categories of affordable housing: Subsidized or unsubsidized housing. Housing that is financed or supported by a government affordable housing program or a government subsidy is considered subsidized affordable housing. Subsidized affordable housing is generally viewed as qualifying under affordable housing criteria if the government program or subsidy has a stated purpose of providing affordable housing to low- or moderate-income individuals, thereby satisfying Interagency Questions and Answers guidance that low- or moderate-income individuals benefit, or are likely to benefit, from the housing.[61] Examples of subsidized affordable housing include housing financed with LIHTCs, the HOME Investment Partnerships Program, or Project-Based Section 8 Rental Assistance.

Multifamily housing with affordable rents, but that is not financed or supported by a government affordable housing program or a government subsidy, is generally considered unsubsidized affordable housing, and is also referred to in this **SUPPLEMENTARY INFORMATION** as ''naturally occurring affordable housing.'' This housing can qualify as affordable housing if the rents are affordable to low- or moderate-income individuals, and if it is clear that low- or moderate-income individuals benefit, or are likely to benefit, from this housing. However, there are no standards currently in place for determining that low- or moderate-income individuals will benefit, or are likely to benefit, from the housing. Guidance indicates that it is not sufficient to determine that low- or moderate-income individuals are likely to benefit from the housing solely because the rents or housing prices are set according to a particular formula.[62] To assess whether the housing will benefit low- or moderate-income individuals, examiners may consider a range of demographic, economic or market factors, such as the median rents of the assessment area and the project based on project rent rolls; the low- or moderate-income population in the area of the project; or the past performance record of the organization(s) undertaking the project.[63]

Under the current framework, there is not a specified standard for determining when a property or unit is considered affordable to low- or moderate-income individuals. One approach used by banks and examiners is to calculate an affordable rent based on what is affordable to a moderate-income renter, assuming that 30 percent of the renter's income is spent on rent. Alternatively, some use the U.S. Department of Housing and Urban Development's (HUD) Fair Market Rents as a standard for measuring affordability.[64] Stakeholders note that lack of a consistent standard for affordability, combined with unclear methods for determining whether low- or moderate-income individuals are likely to benefit, leads to inconsistent consideration of unsubsidized affordable housing.

Single-Family Housing. Certain activities related to single-family housing can also qualify as affordable housing provided that the housing is affordable and low- or moderate-income individuals benefit, or are likely to benefit, from the housing. While single-family mortgages qualify under the lending test,[65] activities that support the construction of affordable housing or other activities to promote affordable homeownership for low- or moderate-income individuals are considered as affordable housing under the community development definition. Similar to the issues noted above with unsubsidized rental housing, there are no consistent standards in place to demonstrate that single-family for-sale housing is affordable and likely to benefit low- or moderate-income individuals. Therefore, under the current framework, stakeholders note that it is difficult for certain single-family projects to qualify, unless it is a project developed in partnership with a government program or non-profit organization that has a mission of providing affordable housing to low- or moderate-income individuals.

Mortgage-Backed Securities. Mortgage-backed securities qualify as an affordable housing activity provided they demonstrate a primary purpose of community development. Specifically, the security must primarily address affordable housing (including multifamily housing) of low- or moderate-income individuals.[66] Thus, a mortgage-backed security that contains a majority of mortgages to low- or moderate-income borrowers can qualify as an investment with a primary purpose of affordable housing.

b. Stakeholder Feedback on Affordable Housing

Stakeholders have expressed support for a definition of affordable housing that includes both subsidized and unsubsidized housing, and that is informed by more clear and specific eligibility standards. Stakeholders generally support the current approach of qualifying housing developed, purchased, rehabilitated, or preserved in conjunction with a Federal, state, local, or tribal government program. Many stakeholders also indicate support for including naturally occurring affordable housing in the definition of affordable housing, but note that more consistent and practically feasible qualification standards are needed. They also raise concerns about the types of requirements or restrictions—if any—that should be put in place to ensure that these properties remain affordable. For example, some stakeholders have noted that a bank financing a naturally

[56] 12 CFR __.12(g)(1).

[57] *See* Q&A § __.12(g)(1)–1.

[58] Single-family home mortgage loans may be included as community development under the intermediate small bank methodology. *See* Q&A § __.12(h)–3.

[59] *See* Q&A § __.42(b)(2)–2.

[60] *See* Q&A § __.12(t)–2.

[61] *See* Q&A § __.12(g)(1)–2.

[62] *See* Q&A § __.12(g)(1)–1.

[63] *See* Q&A § __.12(g)(1)–1.

[64] *See* HUD, Fair Market Rents, *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord/fmr.*

[65] *See* Q&A § __.12(h)–3.

[66] *See* Q&A § __.12(t)–2.

occurring affordable housing activity would often not be able to verify and document the income of tenants at time of rental and on an ongoing basis.

Regarding the current treatment of mortgage-backed securities, some stakeholders have expressed concern that some banks rely on purchases of mortgage-backed securities for CRA purposes in lieu of pursuing other activities that would have a more direct impact on the community or that would be more responsive to specific needs. Some stakeholders have also noted concerns that some banks may purchase high volumes of mortgage-backed securities shortly before their CRA examinations and sell them shortly afterwards, reducing any potential benefits to liquidity for lenders and credit availability for communities. Stakeholders generally have not opposed the consideration of mortgage-backed securities as a qualified investment, although some suggested additional requirements, such as preventing banks from receiving CRA credit for mortgage-backed securities that are purchased and then quickly resold.

2. Rental Housing in Conjunction With Government Programs

First, the agencies propose that a rental housing unit would be considered affordable housing if it is purchased, developed, financed, rehabilitated, improved, or preserved in conjunction with a Federal, state, local, or tribal government affordable housing plan, program, initiative, tax credit, or subsidy with a stated purpose or the bona fide intent of providing affordable housing for low- or moderate-income individuals. Examples below demonstrate how this component of the definition intends to add greater clarity around the many types of subsidized activities that currently qualify for consideration.

The proposal covers a broad range of government-related affordable rental housing activities for low- and moderate-income individuals, including affordable housing plans, programs, initiatives, tax credits, and subsidies pertaining to both multifamily and single-family properties. This would cover government subsidy programs that provide affordable rental housing for low- or moderate-income individuals, such as Project-Based Section 8 Rental Assistance and the HOME Investment Partnerships Program. The proposal also includes activities with rental properties receiving LIHTCs. Although LIHTCs are sometimes described as a ''program,'' the agencies propose including the term ''tax credits'' to provide clarity about the eligibility of tax credit programs focused on affordable housing for low- or moderate-income individuals.

The proposed language encompasses affordable housing activities tied to every level of government, not just Federal Government programs. In addition to affordable housing programs at the Federal level, the agencies also propose to include state and local affordable housing plans, programs, initiatives, tax credits, or subsidies that support affordable housing for low- or moderate-income individuals. This would include affordable rental units for low- or moderate-income individuals created as a result of local government inclusionary zoning programs. Inclusionary zoning provisions in many local jurisdictions provide requirements or incentives for developers to set aside a portion of housing units within a property that meet an affordability standard and are occupied by low- or moderate-income individuals. In addition, affordable multifamily housing programs offered by state housing finance agencies and affordable housing trust funds managed by a local government to support the development of affordable housing for low- or moderate-income individuals would be included in this component. The proposal also specifies that affordable housing activities related to tribal governments would be included under the scope of the definition.

To qualify under the proposed definition, a government-related affordable housing plan, program, initiative, tax credit, or subsidy would need to have a stated purpose or bona fide intent of supporting affordable rental housing for low- or moderate-income individuals. The agencies propose this requirement to emphasize affordable housing activities benefitting low- or moderate-income individuals. The agencies are not proposing a separate affordability standard for this prong of the definition and would rely upon the affordability standards set in each respective government affordable housing plan, program, initiative, tax credit, or subsidy, provided that the program has a stated purpose or bona fide intent of providing rental housing that is affordable to low- or moderate-income individuals.

The agencies seek feedback on whether additional requirements should be included to ensure that activities qualifying under this definition support housing that is both affordable to and occupied by low- or moderate-income individuals. For example, the agencies are considering whether to include a specific affordability standard of 30 percent of 80 percent of area median income for the cost of rents of housing that receives consideration under this definition, or a requirement that any programs verify that occupants of the affordable units are low- or moderate-income individuals.

The agencies seek feedback on whether activities involving government programs that have a stated purpose or bona fide intent to provide affordable housing serving low-, moderate-, and middle-income individuals should qualify under this definition in certain circumstances. For example, the agencies seek feedback on this alternative when the housing is located in a nonmetropolitan county, or in *High Opportunity Areas.* The agencies recognize that nonmetropolitan counties may have limited opportunities for affordable housing, and that it may be appropriate to consider affordable housing activities in these areas that include middle-income renters. Broadening this category to include activities that support housing that is affordable to middle-income individuals in nonmetropolitan counties could include developing affordable housing in conjunction with programs such as the U.S. Department of Agriculture Section 515 Rural Rental Housing or Multifamily Guaranteed Rural Rental Housing programs.[67]

Under a second alternative, the agencies would consider these activities in *high opportunity areas.* One option would be to define *high opportunity areas* to align with the definition of these areas by the Federal Housing Finance Agency (FHFA), as discussed in Section V.[68] These areas include census tracts with high costs of development and low poverty rates, and the agencies consider affordable housing activities in these areas to be especially responsive. For example, these activities may include financing for a multifamily rental housing development that serves middle-income residents in a *high opportunity area* that is supported by tax-exempt bonds that are issued by state or local agencies to support affordable housing. Consideration of

[67] *See* Rural Rental Housing Loans (Section 515) (Sept. 2002), *https://www.hud.gov/sites/documents/19565_515_RURALRENTAL.pdf,* and U.S. Department of Agriculture, Multifamily Guaranteed Rural Rental Housing (Dec. 2021), *https://www.rd.usda.gov/sites/default/files/fact-sheet/508_RD_FS_RHS_MFGuarantee.pdf.*

[68] *See, e.g.,* Federal Housing Financing Agency, ''Overview of the 2020 High Opportunity Areas File'' (2020), *https://www.fhfa.gov/DataTools/Downloads/Documents/Enterprise-PUDB/DTS_Residential-Economic-Diversity-Areas/DTS_High%20Opportunity_Areas_2020_README.pdf,* and HUD's Office of Policy Development and Research (PD&R), Qualified Census Tracts and Difficult Development Areas, *https://www.huduser.gov/portal/datasets/qct.html.*

activities supporting housing that is affordable to middle-income families in these geographies would reflect the limited supply of affordable housing in these markets and would provide additional flexibility for banks to identify opportunities to address community needs. However, the agencies have also considered that broadening the definition could reduce the emphasis on activities that serve low-and moderate-income individuals more directly and where the need is more acute.

3. Multifamily Rental Housing With Affordable Rents

For the second prong of the affordable housing definition in proposed § __.13(b), the agencies propose to provide clear and consistent criteria in order to qualify affordable low- or moderate-income multifamily rental housing that does not involve a government program, initiative, tax credit, or subsidy, also referred to as ''naturally occurring affordable housing'' in this **SUPPLEMENTARY INFORMATION**, for purposes of CRA affordable housing consideration.

The agencies recognize that naturally occurring affordable housing is an important source of affordable housing for many low- and moderate-income individuals. In addition, the agencies also recognize that this category of housing poses unique challenges in terms of ensuring that its benefits extend to low- or moderate-income individuals, since there is often no consistent way to confirm renter income for these properties, in contrast to properties receiving government subsidies. The proposed definition seeks to address this by clarifying that this category of affordable housing can receive CRA credit if it meets a specified set of applicable standards.

First, in order to qualify under this prong of the proposed definition, the agencies propose that the rent for the majority of the units in a multifamily property could not exceed 30 percent of 60 percent of the area median income for the metropolitan area or nonmetropolitan county. These rental amounts would need to reflect the rents used by the bank to underwrite the property, including post-construction or post-renovation monthly rents. Second, naturally occurring affordable housing would also need to meet at least one of the following criteria in order to increase the likelihood that units benefit low- or moderate-income individuals: (i) The housing is located in a low- or moderate-income census tract; (ii) the housing is purchased, developed, financed, rehabilitated, improved, or preserved by a non-profit organization with a stated mission of, or that otherwise directly supports, providing affordable housing; (iii) there is an explicit written pledge by the property owner to maintain rents affordable to low- or moderate-income individuals for at least five years or the length of the financing, whichever is shorter; or (iv) the bank provides documentation that a majority of the residents of the housing units are low- or moderate-income individuals or families, for example documentation that a majority of residents have Housing Choice Vouchers.

a. Affordability Standard for Naturally Occurring Affordable Housing

The proposed rental affordability standard for naturally occurring affordable housing—30 percent of 60 percent of the area median income—is intended to target the definition for units affordable to low- or moderate-income households. This would establish a higher bar than what is often used today to determine whether rents are affordable for low- or moderate-income individuals, which is 30 percent of 80 percent of area median income. The agencies considered using the standard of 30 percent of 80 percent of area median income but believe it would be preferable to use a more targeted definition to ensure that rents are affordable to low-income households and to increase the likelihood that low- or moderate-income households will occupy the units. For example, in 2019, approximately 46 percent of occupied rental units with affordability levels between 61–80 percent of area median income were occupied by middle- or upper-income households.[69] This is compared to 24 percent of occupied rental units with affordability levels under 60 percent of area median income being occupied by middle- or upper-income households. Limiting eligibility to those units with affordability levels under 60 percent of area median income may therefore help to ensure that the households served by this housing are in fact low- or moderate-income households.

However, a potential drawback to using an affordability standard anchored to 60 percent of area median income is that it could restrict eligibility for properties with affordability levels at 80 percent of area median income where many, but not all, of the units are occupied by low- or moderate-income households. The agencies seek feedback on the alternative approach of using 80 percent area median income as the affordability standard under proposed § __.13(b)(2).

In calculating whether rents meet the affordability standard, the agencies propose using the monthly rental amounts as underwritten by the bank. The definition further specifies that this rent would need to reflect any post-construction or post-renovation rents considered as part of the bank's financing. Consider, for example, a multifamily property that meets the proposed affordability standard before bank financing, but where the property owner plans to renovate the building after receiving the loan and subsequently increases the rents above the affordability standard. In this example, if the bank relied on the post-renovation rents as part of its underwriting, then the loan would not count for CRA purposes under the proposed affordable housing definition. The agencies' objective in including this provision is to target CRA credit to properties that are likely to remain affordable and to avoid providing credit for activities that may result in displacement of low- or moderate-income individuals.

The agencies seek feedback on whether there are alternative ways to ensure that CRA credit for naturally occurring affordable housing is targeted to properties where rents remain affordable for low- or moderate-income individuals.

The proposed definition would require the majority of units in a naturally occurring affordable housing property to meet the affordability standard. Properties in which fewer than 50 percent of units are affordable would not qualify under the proposed definition. This requirement is intended to ensure that activities qualifying as naturally occurring affordable housing support housing that remains affordable to and occupied by low- or moderate-income individuals.

The agencies seek feedback on whether single-family rental housing should also be considered under the naturally occurring affordable housing category, provided it meets the same combination of criteria proposed for multifamily rental housing. The agencies also seek feedback on whether such an alternative should be limited to rural areas. The agencies recognize that the composition of the housing stock varies across geographies, and that some areas, such as rural communities, may lack affordable multifamily rental housing that is either in conjunction

[69] Thyria Alvarez and Barry L. Steffen, HUD, Office of Policy Development and Research, ''Worst Case Housing Needs 2021 Report to Congress'' (July 2020) (agencies' calculations using Exhibit A–12 at 74), *https://www.huduser.gov/portal/publications/Worst-Case-Housing-Needs-2021.html.*

with a government program or naturally occurring affordable housing. In these communities, single-family rental housing may be an important source of affordable housing for low- and moderate-income individuals. In considering how and whether to incorporate affordable single-family rental housing into the naturally occurring affordable housing definition, the agencies are mindful of the fact that home mortgage loans for single-family rental housing would count in the geographic distribution metrics of the proposed Retail Lending Test.

b. Additional Eligibility Standards for Naturally Occurring Affordable Housing

The agencies are proposing four additional criteria under proposed § __.13(b) for qualifying multifamily housing with affordable rents as naturally occurring affordable housing. These criteria are intended to focus the definition on housing that is more likely to benefit low- or moderate-income individuals or increase the likelihood that rents will remain affordable for low- or moderate-income individuals. In addition to the underwriting requirement (rents not exceeding 30 percent of 60 percent of area median income), the proposal requires a property to meet at least one of the following criteria: (i) The location of the housing is in a low- or moderate-income census tract; (ii) the housing is developed in association with a non-profit organization with a mission of, or that otherwise directly supports, affordable housing; (iii) the financing is provided in conjunction with a written affordability pledge by the developer of at least 5 years, or the length of the financing, whichever is shorter; or (iv) the bank provides documentation that the majority of the housing units are occupied by low- or moderate-income households.

Low- or Moderate-Income Census Tract. The first proposed criterion is the location of eligible properties in a low- or moderate-income census tract, because the majority low- or moderate-income status of a census tract indicates that affordable rental housing in that census tract is likely to benefit low- or moderate-income individuals. Using geography as a proxy for tenant income is generally consistent with current guidance.[70] In addition, census tract income data is readily available and verifiable information, in contrast to verifying tenant income, which may prove infeasible for many property owners or developers.

An additional approach that the agencies seek feedback on is whether to expand this criterion to also encompass middle- and upper-income census tracts in which at least 50 percent of renters are low- or moderate-income. Following the same logic as the proposed low- and moderate-income census tract criteria, the agencies have considered that affordable rental housing in a neighborhood in which the majority of renters are low- or moderate-income would also be likely to benefit low- or moderate-income individuals. In addition, applying this standard would qualify affordable housing in more middle-and upper-income census tracts, thereby expanding this criterion beyond only low- and moderate-income census tracts. While 33 percent of census tracts are designated as low- or moderate-income, a total of 72 percent of census tracts meet either the low- and moderate-income census tract standard or the low- and moderate-income median renter census tract standard.[71] The agencies seek feedback on whether these additional census tracts should be added to the proposed definition.

Additionally, the agencies seek feedback on an alternative in which no geographic criteria are included. Under this option, activities qualifying as supporting naturally occurring affordable housing would instead be required to meet one of the other criteria described below (mission-driven non-profit organization, written affordability pledge, or tenant income documentation), in addition to the standard of rents not exceeding 30 percent of 60 percent of area median income. By removing the geographic criteria, this alternative approach would be intended to equally apply the other criteria across census tracts of all income levels. However, the agencies are mindful that this alternative would require banks to provide documentation required under the other proposed criterion in order to receive consideration for naturally occurring affordable housing.

Mission-Driven Non-Profit Organization. A second proposed criterion for determining whether multifamily housing with affordable rents is eligible is if the housing is purchased, developed, financed, rehabilitated, improved, or preserved by any non-profit organization with a stated mission of, or that otherwise directly supports, providing affordable housing. The agencies intend this provision to encompass organizations that target services to low- or moderate-income individuals and communities, and may also have a mission to serve individuals and communities that are especially vulnerable to housing instability. In addition, affordable properties in any census tract, including middle- and upper-income census tracts, could qualify under this option. This criterion does not include government programs or entities, as such activities would be considered under the affordable housing category in proposed § __.13(b)(1).

Written Affordability Pledge. A third proposed criterion for determining if multifamily housing with affordable rents is eligible under the definition is the presence of an explicit written pledge on the part of the property owner to maintain rents that are affordable for at least five years or for the length of the financing, whichever is shorter.[72] This prong would address concerns about the likelihood of rents in an eligible property increasing in the future and potentially displacing low- or moderate-income households. In addition, affordable properties in any census tract, including middle- and upper-income census tracts, could qualify under this option. Some stakeholders have urged the requirement of a written pledge in order for any naturally occurring affordable housing to qualify for CRA purposes. However, the agencies are mindful that such a requirement would necessitate additional documentation to receive consideration for naturally occurring affordable housing. For this reason, the agencies believe that it is preferable to include this criterion as one of several options for meeting the eligibility standard.

Tenant Income Documentation. A fourth proposed criterion for determining if multifamily housing with affordable rents is eligible under the definition is documentation provided by the bank demonstrating that the majority of the housing units are occupied by low- or moderate-income

[70] *See* Q&A § __.12(g)(1)–1.

[71] The sample used for this analysis includes all census tracts for which there was non-missing renter median income data (2019 5-year American Community Survey) plus census tracts that were known to be low- or moderate-income but had missing data. The agencies' analysis found that there are 69,161 census tracts with non-missing renter median income data. Of those census tracts, 22,521 (33 percent) are designated low- or moderate-income; 27,070 (39 percent) are designated as renter low- or moderate-income; and the remaining 19,570 (28 percent) are neither low- or moderate-income nor renter low- or moderate-income. Seventy-three percent of all census tracts could be a geography where affordable housing is located under that alternative proposal.

[72] The agencies expect that the length of financing would often go beyond the five-year written affordability pledge. The agencies would scrutinize short-term financing (less than five years) to ensure such financing is not a way to avoid the affordability commitment.

individuals or households. Such documentation would be direct evidence that the activity benefits low- or moderate-income individuals. In addition, this criterion could apply to affordable properties in any census tract, including middle- or upper-income census tracts. For example, a multifamily rental property with a majority of rents set at 30 percent of 60 percent of area median income that is located in a middle-income census tract, and where the bank can document that the majority of occupants receive Housing Choice Vouchers,[73] would receive consideration under this criterion. The agencies recognize that it may be challenging for banks to obtain this documentation. Accordingly, the agencies are proposing to include this factor as one of several options for meeting the eligibility standard.

4. Activities That Support Affordable Homeownership for Low- or Moderate-Income Individuals

The agencies propose a third prong for the affordable housing definition to include: (i) Activities that directly assist low- or moderate-income individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing; or (ii) activities that support programs, projects, or initiatives that assist low- or moderate-income individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing. This category could include owner-occupied housing in single-family or multifamily properties.

While these activities could be conducted in conjunction with a variety of financing types, such as conventional mortgages, shared equity models, or community land trusts, any reported mortgage loan that is evaluated under the Retail Lending Test would not count under this definition. Instead, this category would include activities such as construction loan financing for a non-profit housing developer building single-family owner-occupied homes affordable to low- or moderate-income individuals; financing or a grant to a non-profit community land trust focused on providing affordable housing to low- or moderate-income individuals; a loan to a resident-owned manufactured housing community with homes that are affordable to low- or moderate-income individuals; a shared-equity program operated by a non-profit organization to provide long-term affordable homeownership; and financing or grants for organizations that provide down payment assistance to low- or moderate-income homebuyers.

Activities eligible under this criterion may include activities with a governmental or non-profit organization with a stated purpose of, or that otherwise directly supports, providing affordable housing. Additionally, this category may include activities conducted by the bank itself, or with other for-profit partners, provided that the activity supports affordable homeownership for low- or moderate-income individuals. For example, a bank providing direct down payment assistance or supporting free home repairs or maintenance for low- or moderate-income homeowners could be considered under this prong of the definition.

The agencies seek feedback on what conditions or terms, if any, should be added to this criterion to ensure that activities that support affordable low- and moderate-income homeownership are sustainable and beneficial to low- or moderate-income individuals and communities.

5. Mortgage-Backed Securities

The agencies propose to define standards for investments in mortgage-backed securities related to affordable housing that qualify for community development consideration. Consistent with current practice, the agencies are proposing that mortgage-backed securities would qualify as affordable housing when the security contains a majority of either single-family home mortgage loans for low- and moderate-income individuals or loans financing multifamily affordable housing that otherwise qualifies under the proposed affordable housing definition in proposed § __.13(b).

This definition recognizes that purchases of qualifying mortgage-backed securities that contain home mortgage loans to low- or moderate-income borrowers or that contain qualifying affordable housing loans are investments in affordable housing. The issuance and purchase of these securities may improve liquidity for affordable housing development and for lenders that make home mortgage loans to low- or moderate-income borrowers, which in turn allows them to make more loans to low- or moderate-income borrowers than would otherwise be possible. However, some stakeholders have noted that qualifying purchases of mortgage-backed securities are lower in impact and responsiveness to community credit needs than other qualifying affordable housing activities that more directly support housing for low- or moderate-income individuals.

The agencies seek feedback on alternative approaches that would create a more targeted definition of qualifying mortgage-backed securities. One alternative the agencies are considering is to consider mortgage-backed securities for only the portion of loans in the security that are affordable. For example, if 60 percent of a qualifying mortgage-backed security consists of single-family home mortgage loans to low- or moderate-income borrowers, and 40 percent of the security consists of loans to middle- or upper-income borrowers, the mortgage-backed security would receive consideration only for the dollar value of the loans to low- or moderate-income borrowers. This treatment would reflect that a qualifying mortgage-backed security represents a purchase of multiple home mortgage loans, some of which may not meet the definition of affordable housing or have a primary purpose of community development. However, the agencies are mindful of the added complexity that this approach could create.

The agencies are also considering whether to limit consideration of mortgage-backed securities to the initial purchase of a mortgage-backed security from the issuer, and not considering subsequent purchases of the security. This change would be intended to emphasize activities that more directly serve low- or moderate-income individuals and communities and to reduce the possibility of multiple banks receiving CRA credit for purchasing the same security.

The agencies seek feedback on these alternatives and on other ways of appropriately considering qualifying mortgage-backed security investments so as to emphasize community development financing activities that are most responsive to low- or moderate-income community needs.

Request for Feedback

Question 3. Is the proposed standard of government programs having a ''stated purpose or bona fide intent'' of providing affordable housing for low- or moderate-income (or, under the alternative discussed above, for low-, moderate- or middle-income) individuals appropriate, or is a different standard more appropriate for considering government programs that

[73] The housing choice voucher program is the Federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. *See* 24 CFR part 982 (program requirements for the tenant-based housing assistance program under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f); the tenant-based program is the housing choice voucher program). *See also* ''U.S. Department of Housing and Urban Development, Housing. Choice Vouchers Fact Sheet,'' *https://www.hud.gov/topics/housing_choice_voucher_program_section_8.*

provide affordable housing? Should these activities be required to meet a specific affordability standard, such as rents not exceeding 30 percent of 80 percent of median income? Should these activities be required to include verification that at least a majority of occupants of affordable units are low- or moderate-income individuals?

Question 4. In qualifying affordable rental housing activities in conjunction with a government program, should the agencies consider activities that provide affordable housing to middle-income individuals in *high opportunity areas,* in nonmetropolitan counties, or in other geographies?

Question 5. Are there alternative ways to ensure that naturally occurring affordable housing activities are targeted to properties where rents remain affordable for low- and moderate-income individuals, including properties where a renovation is occurring?

Question 6. What approach would appropriately consider activities that support naturally occurring affordable housing that is most beneficial for low- or moderate-income individuals and communities? Should the proposed geographic criterion be expanded to include census tracts in which the median renter is low- or moderate-income, or in distressed and underserved census tracts, in order to encourage affordable housing in a wider range of communities, or would this expanded option risk crediting activities that do not benefit low- or moderate-income renters?

Question 7. Should the proposed approach to considering naturally occurring affordable housing be broadened to include single-family rental housing that meets the eligibility criteria proposed for multifamily rental housing? If so, should consideration of single-family rental housing be limited to rural geographies, or eligible in all geographies, provided the eligibility criteria to ensure affordability are met?

Question 8. How should the agencies consider activities that support affordable low- or moderate-income homeownership in order to ensure that qualifying activities are affordable, sustainable, and beneficial for low- or moderate-income individuals and communities?

Question 9. Should the proposed approach to considering mortgage-backed securities that finance affordable housing be modified to ensure that the activity is aligned with CRA's purpose of strengthening credit access for low- or moderate-income individuals? For example, should the agencies consider only the value of affordable loans in a qualifying mortgage-backed security, rather than the full value of the security? Should only the initial purchase of a mortgage-backed security be considered for affordable housing?

Question 10. What changes, if any, should the agencies consider to ensure that the proposed affordable housing definition is clearly and appropriately inclusive of activities that support affordable housing for low- or moderate-income individuals, including activities that involve complex or novel solutions such as community land trusts, shared equity models, and manufactured housing?

C. Economic Development

The agencies propose several revisions to what constitutes economic development activities that are intended to encourage activities supportive of small businesses and small farms. The proposal in § __.13(c) is also intended to improve the overall transparency of the definition by including certain activities that are currently addressed in guidance. In addition, the agencies seek to simplify the way that small business and small farm lending is considered under CRA evaluations.

A significant change compared to the current CRA regulations' criteria for economic development is that all reported lending to small businesses and small farms would be considered under the proposed Retail Lending Test, described in Section IX, and not under the proposed economic development definition. This change is related to the agencies' proposal to leverage the CFPB's proposed small business standard under section 1071 to define ''small business'' and ''small farm'' as those with $5 million in gross annual revenues and below, as discussed above.

In some ways, the proposed Retail Lending Test approach would afford broader consideration of loans to small businesses and small farms than the current CRA approach taken as a whole across the *status quo* lending and community development tests. There are also some differences that would narrow consideration of some loans that currently are considered under the economic development criteria.

1. Background

a. Current Approach to Economic Development

Under the current regulation, community development is defined to include ''activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the SBA's Development Company (SBDC) or Small Business Investment Company (SBIC) programs (13 CFR 121.301) or have gross annual revenues of $1 million or less'' [74] (the ''current economic development definition''). Under current guidance, activities qualify as economic development if they meet both a ''size test'' and a ''purpose test.'' [75] An institution's loan, investment, or service meets the size test if it finances, either directly, or through an intermediary, businesses or farms that either meet the size eligibility standards of the SBDC or SBIC programs, or have gross annual revenues of $1 million or less. For consideration under the size test, the term ''financing'' is considered broadly and includes technical assistance that readies a business that meets the size eligibility standards to obtain financing. To meet the purpose test, current guidance states that a bank's loan, investment, or service must promote economic development by creating, retaining, and/or improving jobs for low- or moderate-income persons, low- or moderate-income geographies, areas targeted for redevelopment, or by financing certain intermediaries. Activities that support job training or workforce development are also considered to meet the purpose test.[76]

b. Stakeholder Feedback on Economic Development

Stakeholders note various challenges with the current economic development definition. Some observe that while guidance includes a variety of economic development activities, the smallest businesses and farms may still face specific unmet financing needs. Industry stakeholders indicate that it can be difficult to demonstrate that an activity meets both the size test and purpose test. Specifically, these stakeholders point to difficulty in demonstrating that the primary purpose of a loan or investment with a small business or small farm was to create, retain, and/or improve low- or moderate-income employment and note that this requirement eliminates consideration of some other loans to small businesses that are also high impact, such as loans that help small businesses purchase new equipment in order to improve efficiency of operations.

Stakeholders generally indicate that more clarity is needed in the types of activities that will be considered to strengthen small business and small farms, though some stakeholders note

[74] 12 CFR __.12(g)(3).

[75] *See* Q&A § __.12(g)(3)–1.

[76] *Id.*

that the agencies should take a more flexible approach to defining the types of activities that qualify. Stakeholders also support qualifying workforce development for low- or moderate-income individuals regardless of the size of the business, as larger industries are a source of jobs for low- or moderate-income individuals.

2. Covering Small Business and Small Farm Loans Under the Evaluation of a Bank's Retail Lending Performance

Under the proposal, a bank's loans to small businesses and small farms would be evaluated in the Retail Lending Test portion of the CRA examination. As discussed further in Section VIII regarding proposed § __.22 for the Retail Lending Test, the agencies are considering alternative size standards for defining small businesses and small farms that would differ from the SBA's size standards.[77] Specifically, once CFPB section 1071 data is available, the agencies would transition from the current CRA definitions of small business and small farm loans to loans to small businesses and small farms with gross annual revenues of $5 million or less.[78] In the interim, for purposes of evaluation under the Retail Lending Test, the agencies propose to use the current approach that evaluates small business and small farm loans using the Reports of Condition and Income (Call Report) definitions. This current approach captures loans of $1 million or less to businesses, and loans of $500,000 or less to farms, as reported in the Call Report.[79]

Accordingly, the proposed economic development definition would not include a component to qualify a bank's loans to small businesses or small farms—apart from activities undertaken consistent with Federal, state, local, or tribal government plans, programs, or initiatives that support small businesses or small farms as those entities are defined in the plans, programs, or initiatives. With regard to economic development, the agencies currently evaluate businesses or farms that meet the size eligibility standards of the SBDC or SBIC programs (13 CFR 121.301) or have gross annual revenues of $1 million or less, only if not reported as a small business loan or a small farm loan under the CRA.[80] This would no longer be the case under the agencies' proposed economic development definition, since all reported lending for small businesses and small farms would be considered under the proposed Retail Lending Test.

The proposal to include small business loans and small farm loans in the Retail Lending Test, instead of under the economic development definition, is intended to recognize that loans to small businesses and small farms are primarily retail loan products, and more appropriately considered under the Retail Lending Test, while emphasizing other activities to promote access to financing for small businesses and small farms under the economic development definition. As discussed in Section XVII, the agencies are proposing that intermediate banks retain flexibility to have certain retail loans—small business, small farm, and home mortgage loans—be considered as community development loans. This option would be available to an intermediate bank if those loans have a primary purpose of community development and are not required to be reported by the bank.

Small business and small farm lending evaluated under the proposed Retail Lending Test would not have the accompanying requirement that these loans demonstrate job creation, retention, or improvement for low- or moderate-income areas or individuals, as is currently required for loans considered under the current criterion for economic development. As noted above, some stakeholders have reported having challenges demonstrating that activities satisfied this criterion, including demonstrating that jobs created or retained meaningfully benefit low- or moderate-income individuals and families. The agencies believe that this would appropriately broaden consideration of small business and small farm lending relative to the status quo, although it would involve a change of the test under which these loans would be considered.

The agencies recognize that these changes would have a number of intersecting impacts on the activities considered under the economic development definition and evaluated in the Retail Lending Test. For example, loans to certain businesses that meet SBIC and SBDC size standards and are now covered community development loans might not qualify for CRA consideration under the proposal. For some types of businesses, the SBIC and SBDC size standards exceed gross annual revenues of $5 million; accordingly, loans to businesses that meet SBIC and SBDC size standards and have gross annual revenues exceeding $5 million would no longer be covered community development loans. Under this scenario, these loans would also not be considered under the proposed Retail Lending Test.

Another example of the impact from this change involves the existing job creation, retention, or improvement for low- or moderate-income individuals standard. Compared to the volume of loans considered under the current economic development criteria, a greater volume of loans may be considered under the proposed Retail Lending Test as there would no longer be a requirement that loans to small businesses and small farms demonstrate job creation, retention, or improvement for low- or moderate-income individuals. The agencies recognize the critical importance of job creation as part of supporting local economies, and therefore seek feedback on the related proposals in both the Retail Lending Test and economic development definition sections.

The agencies also seek feedback on whether to continue considering bank loans to small businesses and small farms that currently qualify under the economic development criteria as community development activities during the transition period before solely considering these loans under the Retail Lending Test.

3. Activities Aligned With Federal, State, Local, or Tribal Efforts

The first prong of the proposed economic development definition includes activities undertaken consistent with Federal, state, local, or tribal government plans, programs, or initiatives that support small businesses or small farms as defined by these plans, programs, or initiatives. The current community development definitions do not include stand-alone criteria for economic development activities aligned with Federal, state, local, or tribal efforts. These activities are, however, referenced in the Interagency

[77] SBA regulations define ''small entities'' for banking purposes as entities with total assets of $600 million or less. *See* 13 CFR 121.201 (Sector 52, Subsector 522). The agencies have requested permission from the SBA to use size standards for defining small businesses and small farms that differ from the SBA's size standards, as provided in 15 U.S.C. 632(a)(2)(C).

[78] This assumes the CFPB's section 1071 rulemaking is finalized as proposed with a ''small business'' defined as having gross annual revenues of $5 million or less.

[79] *See* 12 CFR __.12(v) (defining a small business loan as a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Call Report). *See also* 12 CFR __ .12(w) (defining a small farm loan as a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Call Report).

[80] 12 CFR __.12(g)(3). Activities that promote economic development finance businesses and farms that meet the size eligibility standards of the SBDC or SBIC programs (13 CFR 121.301) or have gross annual revenues of $1 million or less.

Questions and Answers.[81] Aligning economic development activities with government programs that address identified needs for small businesses and small farms can encourage coordination between banks, government agencies, and other program participants for activities that can be highly responsive to the unmet needs of communities.

In addition, this prong of the proposed definition specifies that lending to, investing in, or providing services to SBDCs, SBICs, New Markets Venture Capital Companies, qualified Community Development Entities, or U.S. Department of Agriculture Rural Business Investment Companies would qualify as economic development. The current regulation does not specifically address activities with these entities, but the Interagency Questions and Answers state that the agencies will presume that activities with these entities promote economic development.[82] As a result, the proposal is intended to provide greater clarity and encourage the continued participation in, and support of, programs offered through these providers of small business and small farm financing.

This prong of the proposed definition would not specify a gross annual revenue threshold of $5 million or under for the businesses or farms supported through these government plans, programs, or initiatives, or through the specified entities. Instead, this prong of the definition would leverage the size standards used by the respective government plans, programs, or initiatives. This would include using the standards established by SBDCs and SBICs for loans, investments, or services to these entities.

4. Support for Financing Intermediaries

The second prong of the proposed economic development definition includes activities with financial intermediaries that increase access to capital for businesses or farms with gross annual revenues of $5 million or less. The agencies propose using this same gross annual revenue standard to simplify the approach and to be consistent throughout the definition. The current regulation does not specifically address financing intermediaries that increase access to capital for small businesses and small farms, although both industry and community group stakeholders have stressed the importance of financial intermediaries, such as non-profit revolving loans funds, in providing access to financing for small businesses and small farms that are not ready for traditional bank financing. Examples of financial intermediaries include a Community Development Corporation that provides technical assistance to recently formed small businesses, or a CDFI that provides lending to support sustainability of small farms. The agencies propose to recognize the role of these financial intermediaries—which could include organizations, programs, and services—by including in the definition of economic development a component for activities that support financial intermediaries that lend to, invest in, or provide technical assistance to businesses or farms with gross annual revenues of $5 million or less.

5. Technical Assistance and Support Services for Small Businesses

The third prong of the proposed economic development definition includes technical assistance activities to support businesses or farms with gross annual revenues of $5 million or less. This prong would also include providing services such as shared space, technology, or administrative assistance to businesses or farms with gross annual revenues of $5 million or less, or to organizations that have a primary purpose of supporting such businesses or farms. While these activities are not included in the current regulation, they are addressed in the Interagency Questions and Answers.[83] In addition to reflecting current guidance, the agencies recognize that some small businesses and small farms may not be prepared to obtain traditional bank financing and may need technical assistance and other services in order to obtain credit in the future. Supporting these activities fills a gap in needed services for small businesses and small farms and plays a critical role in helping a small business and small farms grow and thrive.

6. Considering Workforce Development and Job Training Under Community Supportive Services

The agencies are proposing that workforce development and job training programs, which are currently qualified as a component of economic development, would instead be considered under the proposed definition of community supportive services. The current regulations do not address workforce development and training programs, but the Interagency Questions and Answers provide that these activities should be considered under the economic development definition. Stakeholders have affirmed the critical importance of workforce development and job training programs for low- and moderate-income individuals or unemployed persons. However, stakeholders have also noted the limitations of current guidance, which requires economic development activities to be tied to a financing activity for a small business. To address this concern, the agencies propose to recognize workforce development activities under the new community supportive services definition. The agencies believe that while the economic development definition could include workforce development and job training activities, such activities are better aligned with the focus of the proposed community supportive services definition, which does not restrict the size of the business involved. The proposal for community supportive services is discussed in greater detail in Section III.D.

Request for Feedback

Question 11. Would lending to small businesses and small farms that may also support job creation, retention, and improvement for low- or moderate-income individuals and communities be sufficiently recognized through the analysis of small business and small farm loans and the qualitative review in the Retail Lending Test?

Question 12. During a transition period, should the agencies continue to evaluate bank loans to small businesses and small farms as community development activities until these loans are assessed as reported loans under the proposed Retail Lending Test?

Question 13. Should the agencies retain a separate component for job creation, retention, and improvement for low- and moderate-income individuals under the economic development definition? If so, should activities conducted with businesses or farms of any size and that create or retain jobs for low- or moderate-income individuals be considered? Are there criteria that can be included to demonstrate that the primary purpose of an activity is job creation, retention, or improvement for low- or moderate-income individuals and that ensure activities are not qualified simply because they offer low wage jobs?

D. Community Supportive Services

The agencies propose to replace ''community services,'' which is a type of activity that has a community development purpose under the current regulation, with a new definition of

[81] *See, e.g.,* Q&A § __.12(g)(4)(i)–1 and Q&A § __.12(g)(3)–1.

[82] *See* Q&A § __.12(g)(3)–1.

[83] *See* Q&A § __.12(g)(3)–1.

"community supportive services." Proposed § __.13(d) defines community supportive services as general welfare activities that serve or assist low- or moderate-income individuals, such as childcare, education, workforce development and job training programs, health services, and housing services programs. In specifying these categories, the agencies' goal is to provide clearer standards in the regulation for identifying the kind of activities that qualify under the definition. The change in terminology from "community services" to "community supportive services" is intended to more clearly distinguish these activities from "community development services," which the proposal generally defines in § __.25(d) as volunteer service hours that meet any one of the community development purposes.

1. Background

a. Current Approach to Community Services

The CRA regulations currently define community development to include "community services targeted to low- or moderate-income individuals," but the regulations do not further define community services.[84] The Interagency Questions and Answers include examples of activities that qualify for consideration as community services, such as programs for low- or moderate-income youth, homeless centers, soup kitchens, healthcare facilities, domestic violence shelters, and alcohol and drug recovery programs serving low- or moderate-income individuals.[85]

b. Stakeholder Feedback on Community Services

Stakeholders generally support continuing to target services to low- or moderate-income individuals, and various stakeholders have expressed support for including clear criteria in the regulation for determining whether a community service is targeted to low- or moderate-income individuals. In addition, some stakeholders have indicated that using a geographic proxy, such as an activity taking place in a low- or moderate-income census tract, should be sufficient to determine whether an activity is qualifying.

2. Defining Community Supportive Services

As discussed above, and in order to increase clarity and consistency, the agencies propose to define community supportive services as general welfare activities that serve or assist low- or moderate-income individuals such as, but not limited to, childcare, education, workforce development and job training programs, health services and housing services programs. The agencies also propose to incorporate standards in the regulation to demonstrate that a community supportive services activity has a primary purpose of serving low- or moderate-income individuals.

Specifically, the agencies propose building on current guidance by both clarifying and expanding upon a non-exclusive list of standards that banks can use to demonstrate that a program or organization primarily serves low- or moderate-income individuals. Examples in the proposal include services provided to students or their families at a school where the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture's National School Lunch Program,[86] and services that are targeted to individuals who receive or are eligible to receive Medicaid.[87]

Additionally, the agencies propose that an activity performed in conjunction with a qualified community development organization located in a low- or moderate-income census tract is a community supportive service given that these community-based organizations often serve the community where they are located. This change builds on an example currently included in the Interagency Questions and Answers to clarify within the definition the use of a geographic proxy to determine eligibility for activities.[88]

In addition, as noted previously, the agencies propose to consider workforce development and job training program activities under the definition of community supportive services and not as a component of economic development. The inclusion of workforce development activities within the community supportive services definition helps clarify that activities that support workforce development programs would receive consideration if the program's participants are low- or moderate-income individuals, and would not consider the size of the business.

E. Redefining Revitalization and Stabilization Activities

The agencies propose to replace the current revitalization and stabilization activities component of the community development definitions with six new categories of activities. The agencies intend for this new category of definitions to provide more clarity on the types of activities that qualify, and to better tailor the types of activities that qualify in different targeted geographies. Each of the categories focuses on place-based activities that benefit residents of targeted geographic areas: (i) Revitalization; (ii) essential community facilities; (iii) essential community infrastructure; (iv) recovery activities in designated disaster areas; (v) disaster preparedness and climate resiliency activities; and (vi) qualifying activities in Native Land Areas. These definitions are referred to collectively in this **SUPPLEMENTARY INFORMATION** as the place-based definitions.

The proposed definitions for the first four of these categories—revitalization activities undertaken with government plans, programs or initiatives; essential community facilities; essential community infrastructure; and recovery activities in designated disaster areas—build upon the current regulation's revitalization and stabilization component of the community development definitions and related guidance. Each of the new categories would provide additional clarity by capturing a specific set of activities, rather than falling under one broad category, as is currently the case under the current regulation. In addition, the agencies propose adding two new categories to the place-based definitions that may qualify for CRA consideration: (i) Disaster preparedness and climate resiliency activities and (ii) activities in Native Land Areas. While disaster preparedness and climate resiliency activities, and activities in Native Land Areas are not specified under the current approach, some activities that would qualify under these new categories would also qualify under the current approach, either as revitalization and stabilization, or under other prongs.

The six proposed place-based definitions share four common elements. First, each definition has a geographic focus (*e.g.,* low- or moderate-income census tracts) where the activities must occur. Second, each definition has standardized eligibility criteria that require the activity to benefit local residents, including low- or moderate-income residents, of the targeted geographies. Third, each definition has the eligibility requirement that the activity must not displace or exclude low- or moderate-income residents in the targeted geography. Finally, each definition provides that the activity must be

[84] *See* 12 CFR __.12(g)(2).

[85] *See* Q&A § __&.12(t)–4; and Q&A § __.12(g)(2)–1.

[86] *See* USDA Food and Nutrition Service, National School Lunch Program, *https://www.fns.usda.gov/nslp.*

[87] *See Medicaid.gov,* Medicaid program, *https://www.medicaid.gov/medicaid/index.html.*

[88] *See* Q&A § __.12(g)(2)–1.

conducted in conjunction with a government plan, program, or initiative that includes an explicit focus on benefitting the targeted geography. Together, these four common elements are intended to provide necessary clarity regarding the activities that may qualify for CRA credit, while maintaining sufficient flexibility. In addition, these four common elements are intended to ensure a strong connection between the activities and community needs.

1. Background

a. Current Approach to Revitalization and Stabilization

Under the current regulation, the revitalization and stabilization activities component of the community development definitions is intended to encourage banks to direct additional resources toward comprehensive efforts to rebuild entire communities, rather than solely focusing on the needs of low- and moderate-income individuals in these communities. The current regulations define four types of eligible geographies where activities that revitalize or stabilize qualify: Low- or moderate-income geographies; distressed nonmetropolitan middle-income geographies; underserved nonmetropolitan middle-income geographies; and designated disaster areas.[89]

Current guidance states that revitalization and stabilization activities are those that help to ''attract new, or retain existing, businesses or residents'' in an eligible geography and qualifying activities are generally similar in eligible low- and moderate-income geographies, distressed nonmetropolitan middle-income geographies and designated disaster areas.[90] In all targeted geographies, community facilities and infrastructure can be considered to the extent that these activities help to attract or retain residents or businesses. However, these activities are only explicitly noted in the guidance for underserved nonmetropolitan middle-income areas.[91]

Current guidance also states that an activity will be presumed to revitalize or stabilize a geography if the activity is consistent with a government plan for the revitalization or stabilization of the area.[92] However, the standards in the guidance for the types of plans that can be used to determine eligibility are inconsistent.

The current guidance also varies for the different targeted geographies. For instance, in both distressed and undeserved nonmetropolitan middle-income geographies and designated disaster areas, the guidance specifies that examiners will consider all activities that revitalize or stabilize a geography but give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods.[93] However, in determining whether an activity revitalizes or stabilizes a low- or moderate-income geography, in absence of a Federal, state, local, or tribal government plan, guidance instructs examiners to evaluate activities based on the actual impact on the geography, if that information is available.[94] The Interagency Questions and Answers do not further specify how to measure an activity's actual impact for a targeted geography, which may create varying interpretations. As a result, considering activities under the existing revitalization and stabilization definition can prove challenging to banks, community groups, and examiners alike due to these inconsistent criteria.

b. Stakeholder Feedback on Revitalization and Stabilization

Stakeholders have provided feedback on a number of issues related to the current revitalization and stabilization component of the community development definition. First, stakeholders have noted that current guidance does not provide sufficient upfront clarity about the range of activities that will be eligible for consideration or where the activities must occur to be considered. Various stakeholders also note the need for additional clarity in defining eligible revitalization and stabilization activities, while also maintaining flexibility to meet local needs and/or changing circumstances. Some stakeholders have also indicated that an illustrative list of qualifying revitalization and stabilization activity examples could help provide needed clarity.

Second, some community group stakeholders have noted that not all qualifying activities with a revitalization and stabilization purpose benefit low- or moderate-income individuals or underserved communities. Various community stakeholders indicate that the agencies should update the revitalization and stabilization activities component so that qualifying activities primarily benefit low- or moderate-income residents of targeted, underserved geographies, noting that activities currently considered under revitalization and stabilization do not always provide direct benefit for low- or moderate-income individuals.

Third, stakeholders have indicated varying levels of support for greater consistency regarding government plans to revitalize or stabilize a geography. Some stakeholders have stated that activities should not be required to align with a government plan, but that activities that do align with a government plan should receive automatic CRA consideration. Other stakeholders have stated opposition to placing great emphasis on a government plan as leading to more-or-less automatic qualification of an activity, noting government plans vary widely, including in scope, purpose, level of community engagement, and the rigor of included criteria.

Lastly, many stakeholders have supported providing consideration for activities related to disaster preparedness and climate resiliency. Some stakeholders supported evaluating these activities as essential infrastructure or within the broader category of revitalization activities. Community group stakeholders noted that low- and moderate-income communities are particularly vulnerable to weather-related disasters and expressed that consideration for disaster preparedness and climate resiliency activities should be limited to activities that benefit low- or moderate-income individuals or census tracts. Other stakeholders expressed concerns that the qualifying definitions should not be broadened to include activities whose purpose is to mitigate climate change, such as carbon capture facilities.

2. Common Elements for Proposed Place-Based Definitions

The agencies propose four common elements which would be required eligibility standards for each of the six place-based definitions. First, across all place-based definitions, the agencies propose targeted census tracts where activities would be eligible for consideration. Under this proposal, revitalization activities, essential infrastructure activities, essential community facilities activities, and disaster preparedness and climate resiliency activities would be eligible if they benefit residents of targeted census tracts. As set forth in proposed § __.12,

[89] *See* 12 CFR __.12(g)(4).

[90] *See* Q&A § __.12(g)(4)(i)–1; Q&A § __.12(g)(4)(ii)–2; and Q&A § __.12(g)(4)(iii) –3.

[91] *See* Q&A § __.12(g)(4)(iii)–4.

[92] *See* Q&A § __.12(g)(4)(i)–1; Q&A § __.12(g)(4)(ii)–2; and Q&A § __.12(g)(4)(iii)–3.

[93] *See* Q&A § __.12(g)(4)(ii)–2 and Q&A § __.12(g)(4)(iii)–3.

[94] *See* Q&A § __.12(g)(4)(i)–1.

targeted census tracts include low- and moderate-income census tracts, as well as distressed or underserved nonmetropolitan middle-income census tracts. The proposed approach in § __.13 provides consistency on activities eligible across these targeted census tracts.

Consistent with current guidance, the agencies are also proposing that recovery activities in designated disaster areas qualify in census tracts of all income levels, provided that the activities benefit residents in an area subject to a Federal Major Disaster Declaration, excluding Major Disaster Categories A and B. Qualified activities in Native Land Areas would be eligible in those geographies, as separately defined in proposed § __.12. The agencies' approach of defining geographic eligibility under this framework is intended to tailor the requirements for each definition, while maintaining the flexibility needed for diverse, local redevelopment needs.

Second, the agencies propose that all place-based activities benefit or serve residents of the targeted census tract(s), including low- and moderate-income residents. Adding this specific eligibility requirement establishes the expectation that residents in targeted census tracts must benefit from the activity and is intended to provide greater certainty that an activity is responsive to community needs compared to the current approach that relies upon examiner judgment ''to give greater weight to those activities that are most responsive to community needs'' in targeted geographies.[95] For example, financing to support development of a new industrial park in conjunction with a city-sponsored revitalization plan would be eligible for CRA credit if it benefitted residents of the targeted census tracts by providing new employment opportunities, including for low- and moderate-income residents.

The agencies are not proposing that all place-based activities solely benefit or serve low- or moderate-income residents. Rather, the proposal seeks to maintain flexibility for activities to meet a range of community needs while also requiring the inclusion of low- or moderate-income residents as beneficiaries of an activity. Such flexibility is particularly important in distressed and underserved nonmetropolitan middle-income census tracts, which can have fewer low- or moderate-income residents.

Third, the agencies propose that eligible place-based activities cannot lead to the displacement or exclusion of low- or moderate-income residents in targeted geographies. For example, if low- or moderate-income individuals were not able to have access to or benefit from an activity, then the activity would not meet this part of the definition and would be ineligible for CRA credit. Likewise, as another example, if a project to build commercial development to revitalize an area involved demolishing housing occupied by low- or moderate-income individuals, then the activity would not meet this part of the definition and would be ineligible for CRA credit. In proposing these requirements, the agencies seek to ensure that qualifying activities do not have a detrimental effect on low- or moderate-income individuals or communities or on other underserved communities.

Lastly, under the proposal, activities eligible under the place-based community development definitions would need to be in conjunction with a government plan, program, or initiative that includes an explicit focus on benefitting the targeted census tracts. The current standard in Interagency Questions and Answers states that activities may qualify if consistent with the community's formal or informal plans for the revitalization and stabilization of a low- or moderate-income geography.[96] In addition, under current guidance, activities are presumed to revitalize or stabilize a distressed nonmetropolitan middle-income area if the activity is consistent with a ''bona fide'' government revitalization or stabilization plan.[97]

The agencies' proposal to require activities eligible under the place-based community development definitions to be in conjunction with a government plan, program, or initiative is intended to achieve several objectives. First, this standard helps to ensure that the activity is responsive to identified community needs. Second, the proposed standard is intended to increase clarity, because all activities eligible under the place-based community development definitions would need to meet this criterion. Currently, standards vary across the targeted geographies and the reliance on a plan to demonstrate that an activity helps to attract or retain residents is used inconsistently.

Third, the agencies' proposal is intended to provide flexibility, because it would allow consideration of an activity to be in conjunction with a government plan, program, or initiative. By including consideration for activities in conjunction with a program or initiative, in addition to a government plan, banks would have the flexibility to pursue responsive place-based activities that are in conjunction with a program or initiative even if not part of a plan. For example, a grant to support a park in a low-income census tract could qualify if it was in conjunction with a citywide initiative, or program, to expand greenspace in low- or moderate-income areas. Additionally, the standard of ''in conjunction with'' would provide greater clarity than provided under current guidance by expressly stating that an eligible activity must be included as part of a government plan, program, or initiative.

3. Revitalization Activities Undertaken With a Government Plan, Program, or Initiative

The agencies are proposing a new place-based definition for activities undertaken in conjunction with a Federal, state, local, or tribal government plan, program, or initiative that includes an explicit focus on revitalizing or stabilizing targeted census tracts. While the goals of a plan, program or initiative could include stabilization or revitalization of other geographies, the plan, program, or initiative would also need to specifically include the targeted census tracts. Activities meeting this definition would need to meet the four common elements for place-based criteria described above. This definition incorporates some aspects of existing guidance for revitalization and stabilization but would no longer focus eligibility of activities on the extent that an activity helps to attract or retain residents or businesses in targeted geographies. Instead, activities would be eligible for consideration under this proposal if they are in conjunction with a plan, program, or initiative for the targeted geography, allowing for more comprehensive redevelopment goals. Additionally, conducting activities in conjunction with a government plan, program, or initiative provides a mechanism to ensure that activities are intentional and support articulated community revitalization goals.

The agencies provide several examples in the proposed regulation that are drawn from current guidance to provide some clarity on the type of activities that could be considered under this definition. These examples include adaptive reuse of vacant or blighted buildings, brownfield redevelopment, or activities consistent with a plan for a business improvement district or main street program.

[95] *See* Q&A § __.12(g)(4)(i)–1; Q&A § __.12(g)(4)(ii)–2; and Q&A § __.12(g)(4)(iii)–3.

[96] *See* Q&A § __.12(g)(4)(i)–1.

[97] *See* Q&A § __.12(g)(4)(iii)–3.

However, this list is not exhaustive, and the agencies' intent is to allow flexibility for qualifying activities to help meet a range of identified community needs.

The agencies propose that housing-related activities would not be covered by the definition of revitalization activities. Under current guidance, activities that provide housing for middle-income and upper-income individuals can qualify if the activities meet certain criteria and help to revitalize or stabilize a distressed or underserved nonmetropolitan middle-income geography or designated disaster area.[98] However, some stakeholders have noted concerns that housing that benefits middle- or upper-income individuals, particularly in a low- or moderate-income census tract, can lead to displacement of existing residents. In addition, the agencies note that additional clarity would come from qualifying most housing-related community development activities in the affordable housing definition. The agencies recognize that housing activities are often components of government plans, programs, and initiatives to revitalize communities, and therefore seek feedback on whether housing-related revitalization activities should be considered under either the affordable housing definition or the revitalization activities definition and under what circumstances.

4. Essential Community Infrastructure and Essential Community Facilities

The agencies propose creating separate definitions for essential community infrastructure and for essential community facilities that benefit or serve residents in one or more of the eligible targeted census tracts. Under proposed § __.13(f), activities that qualify as essential community infrastructure are those that provide financing or other support for such items as broadband, telecommunications, mass transit, water supply and distribution, and sewage treatment and collection systems. Activities that qualify as essential community facilities include those that finance or provide other support for public amenities in targeted areas. Illustrative examples of essential community facility activities include, but are not limited to, financing activities to support the development of schools, libraries, childcare facilities, parks, hospitals, healthcare facilities, and community centers. Similar to the other place-based definitions, the agencies specify that activities would need to be in conjunction with a Federal, state, local, or tribal government plan, program, or initiative with an explicit focus on benefitting a geographic area that includes the targeted census tracts. This proposal is intended to ensure that the activities have a clear objective of meeting needs in targeted communities.

The proposal builds on the current Interagency Questions and Answers guidance to clarify that both essential community infrastructure activities and essential community facilities activities would be considered if they are conducted in and benefit or serve residents of low- or moderate-income census tracts, as well as distressed or underserved nonmetropolitan middle-income census tracts. Current guidance explicitly notes that these activities are eligible in underserved middle-income nonmetropolitan geographies, but these activities are only qualified in low- or moderate-income census tracts, distressed nonmetropolitan middle-income census tracts or designated disaster areas if they help attract or retain businesses or residents. Consequently, the current treatment of these activities in targeted geographies is inconsistent, and the agencies' proposal aims to provide more clarity and certainty for when these activities can be considered and to do so consistently across the different categories of targeted census tracts.

The agencies' proposed requirements for all place-based definitions, described previously, is intended to ensure that any qualifying activity related to essential community infrastructure or essential community facilities benefits or serves residents of the eligible targeted census tracts, including low- or moderate-income residents. Several community stakeholders have raised concern that larger scale infrastructure projects can often provide limited benefits for targeted census tracts, especially for low- and moderate-income residents in these geographies. Under the agencies' proposal, such activities are eligible for consideration if there is a demonstrated benefit for the residents of the targeted census tracts and it is evident that low- or moderate-income residents would be beneficiaries of the activity and not be excluded from the larger-scale improvements. For example, a bank could purchase a bond to fund improvements for a city-wide water treatment project that is consistent with a city's capital improvement plan. This project would qualify if it benefits or serves residents in the eligible census tracts to a degree sufficient to meet the primary purpose standard and does not exclude low- or moderate-income residents. The agencies seek feedback on whether any additional criteria for infrastructure and essential community facilities would further ensure that activities include a benefit to low- or moderate-income residents in the communities served by these projects.

5. Recovery Activities in Designated Disaster Areas

The agencies propose a definition for activities targeted to the recovery of designated disaster areas. The needs of these areas often differ from other targeted geographic areas, and the proposed definition is intended to more accurately and specifically describe eligible disaster recovery activities. The proposed definition includes activities that revitalize or stabilize geographic areas subject to a Major Disaster Declaration administered by the Federal Emergency Management Agency (FEMA). Consistent with current guidance, activities in designated disaster areas that meet this eligibility standard would be considered, regardless of the income level of the designated census tracts. The agencies believe activities that promote the recovery of designated disaster areas benefit the entire community, including, but not limited to, low- or moderate-income individuals and low- or moderate-income communities.

To qualify under the proposed definition, a disaster recovery activity would need to be in conjunction with a Federal, state, local, or tribal government disaster plan that includes an explicit focus on the recovery of the geographic area. The proposed definition incorporates existing guidance that states an activity will be presumed to revitalize or stabilize a designated disaster area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan.[99] Examples of activities eligible under this definition include, but are not limited to, assistance with rebuilding infrastructure and other community services, financing to retain businesses that employ local residents, and recovery-related housing or financial assistance to individuals in the designated disaster areas. Additionally, although activities in all census tract income-levels would be considered, these activities would need to be responsive to community needs, including low- or moderate-income community needs, and could not displace or exclude low- or

[98] *See* Q&A § __.12(g)(4)–2.

[99] *See* Q&A § __.12(g)(4)(ii)–2.

moderate-income residents of designated disaster areas.

The agencies considered whether the definition of a designated disaster area should include any FEMA disaster declaration, including areas receiving Categories A and B assistance. However, the agencies believe that activities covered under Categories A and B are generally short-term recovery activities that would significantly expand the number of designated disaster areas where activities could be considered without providing long-term benefits to impacted communities. Therefore, the agencies propose to retain the definition of designated disaster areas included in the Interagency Questions and Answers and propose that exceptions be considered, such as the disaster declarations for the COVID–19 pandemic, on a case-by-case basis.

6. Disaster Preparedness and Climate Resiliency Activities

The agencies propose a definition for disaster preparedness and climate resiliency activities that is separate from the recovery activities in the designated disaster areas category that exists under the current CRA framework. The proposed definition focuses on activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks. The proposal would encompass activities in low- or moderate-income census tracts, as well as distressed and underserved nonmetropolitan middle-income census tracts. To be eligible, the proposed disaster preparedness and climate resiliency definition would require these activities to be conducted in conjunction with a government plan, program, or initiative that is focused on disaster preparedness or climate resiliency that includes an explicit focus on benefitting a geographic area that includes the targeted census tracts.

a. Background

There is growing evidence that highlights the ways in which lower-income households and communities are especially vulnerable to the impact of natural disasters and weather-related disasters, as well as climate-related risks.[100] Low- and moderate-income communities are more likely to be located in areas or buildings that are particularly vulnerable to disasters or climate-related risks, such as storm shocks or drought.[101] Since residents of affordable housing are more likely to be low-income, and affordable housing tends to be older and of poorer quality, low- and moderate-income households are more likely to have housing that is susceptible to disaster-related damage.[102] Additionally, lower-income households tend to have fewer financial resources, making them less resilient to the temporary loss of income, property damage, displacement costs, and health challenges they face from disasters.[103] Finally, low- and moderate-income communities are often disproportionately affected by the health impacts associated with natural disasters and climate-related events.[104]

To date, the agencies' CRA regulations have allowed CRA credit for certain activities that help communities, including low- or moderate-income communities, recover from natural disasters. Under the current CRA framework, banks can receive consideration for activities that help to revitalize and stabilize designated disaster areas, such as financial assistance for services to individuals who have been displaced from designated disaster areas, and financial assistance for rebuilding needs.[105] On a limited basis, activities that help designated disaster areas mitigate the impact of future disasters may be considered under CRA if Hazard Mitigation Assistance is included in the FEMA disaster declaration.[106] Outside of activities related to disaster recovery, current CRA guidance provides that consideration will be given for loans financing renewable energy facilities or energy-efficient improvements in either affordable housing or community facilities that otherwise meet the existing definition of community development.[107] Current guidance does not explicitly include activities related to helping low- or moderate-income individuals, low- or moderate-income communities, small businesses, or small farms prepare for disasters or build resilience to future climate-related events.

b. Defining Disaster Preparedness and Climate Resiliency Activities

Under the proposed definition, disaster preparedness and climate resiliency activities are defined as activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks. The proposed definition would encompass activities that help low- or moderate-income individuals and communities proactively prepare for or mitigate the effect of disasters and climate-related risks, for example, earthquakes, severe storms, droughts, flooding, and forest fires.

Examples of eligible activities could include, but would not be limited to, developing financial products and services that help residents, small businesses, and small farms in targeted geographies prepare for and withstand the impact of future disasters; supporting the establishment of flood control systems in a flood prone low- or moderate-income or underserved or distressed nonmetropolitan middle-income census tract; and retrofitting affordable housing to withstand future disasters or climate-related events. Additional examples of qualifying activities could include, but would not be limited to: Promoting green space in low- or moderate-income census tracts

[100] Federal Reserve Bank of New York, ''Reducing Climate Risk for Low-Income Communities,'' news release, (Nov. 19, 2020), *https://www.newyorkfed.org/newsevents/events/regional_outreach/2020/1119-2020;* Jesse M. Keenan and Elizabeth Mattiuzzi, ''Climate Adaptation Investment and the Community Reinvestment Act,'' Community Development Research Briefs (June 16, 2019), *https://www.frbsf.org/community-development/publications/community-development-research-briefs/2019/june/climate-adaptation-investment-and-the-community-reinvestment-act/.*

[101] Eleanor Kruse and Richard V. Reeves, Brookings Institution, ''Hurricanes hit the poor the hardest,'', (Sept. 18, 2017), *https://www.brookings.edu/blog/social-mobility-memos/2017/09/18/hurricanes-hit-the-poor-the-hardest/*; U.S. Global Research Program, Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States (Washington, DC: U.S. Global Change Research Program, 2018), *https://nca2018.globalchange.gov/;* Bev Wilson, Journal of the American Planning Association, Volume 86, 2020—Issue 4, ''Urban Heat Management and the Legacy of Redlining'' (2020), *https://www.tandfonline.com/doi/full/10.1080/01944363.2020.1759127.*

[102] Maya K. Buchanan et al., Environ. Res. Lett. 15 124020 (2020), ''Sea level rise and coastal flooding threaten affordable housing,'' *https://iopscience.iop.org/article/10.1088/1748-9326/abb266.*

[103] U.S. Global Research Program, Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States (Washington, DC: U.S. Global Change Research Program, 2018), *https://nca2018.globalchange.gov/;* Patrick Sisson, Bloomberg, ''In Many Cities, Climate Change Will Flood Affordable Housing'' (Dec. 1, 2020), *https://www.bloomberg.com/news/articles/2020-12-01/how-climate-change-is-targeting-affordable-housing;* and Eleanor Kruse and Richard V. Reeves, Brookings Institution, ''Hurricanes hit the poor the hardest,'' (Sept. 18, 2017), *https://www.brookings.edu/blog/social-mobility-memos/2017/09/18/hurricanes-hit-the-poor-the-hardest/.*

[104] Eleanor Kruse and Richard V. Reeves, ''Hurricanes hit the poor the hardest,'' Brookings Institution (Sept. 18, 2017), *https://www.brookings.edu/blog/social-mobility-memos/2017/09/18/hurricanes-hit-the-poor-the-hardest/;* U.S. Global Research Program, Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States (Washington, DC: U.S. Global Change Research Program, 2018), *https://nca2018.globalchange.gov/.*

[105] *See* Q&A § __.12(g)(4)(ii)–2.

[106] *See* FEMA, How A Disaster Gets Declared, *https://www.fema.gov/disaster/how-declared.*

[107] *See* Q&A § __.12(h)–1.

in order to mitigate the effects of extreme heat, particularly in urban areas; energy efficiency improvements to community facilities that lower energy costs; financing community centers that serve as cooling or warming centers in low- or moderate-income census tracts that are more vulnerable to extreme temperatures; infrastructure to protect targeted geographies from the impact of rising sea levels; and assistance to small farms to adapt to drought challenges.

Similar to the other place-based definitions, disaster preparedness and climate resiliency activities would need to meet the required common elements specified in proposed § __.13(e). To ensure that a range of activities qualify for consideration, the agencies have proposed a comprehensive definition of disaster preparedness and climate resiliency activities; however, the agencies recognize that there may be overlap between the various components of the definition. For example, a loan to help develop a levee to prevent flooding in a moderate-income community could qualify as either a preparation to withstand a natural disaster or to adapt to climate-related risks.

The agencies intend that some energy efficiency activities would be eligible under the proposed definition for activities that help low- or moderate-income individuals and communities proactively prepare for, adapt to, or withstand natural disasters, weather-related disasters, or climate-related risks. As noted earlier, under current guidance, consideration could be given for loans that finance energy-efficient improvements in either affordable housing or community facilities that otherwise meet the existing definition of community development. Such activities may help lower utility costs, therefore making housing more affordable to low- and moderate-income individuals and lowering operating expenses for needed community facilities. Examples include, but are not limited to, weatherization upgrades to affordable housing in a targeted census tract, new and more efficient heating and air-cooling systems, or new energy efficient appliances. The agencies seek feedback on whether certain activities that support energy efficiency should be included as an explicit component of the proposed disaster preparedness and climate resiliency definition. Alternatively, the agencies seek feedback on whether these activities should be included when appropriate in other definitions, such as affordable housing and community facilities. Additionally, the agencies seek feedback on whether there should be energy efficiency standards for determining whether an activity provides a sufficient benefit to targeted census tracts, including low- or moderate-income residents.[108]

The agencies also seek feedback on the extent to which energy-related activities that would benefit residents in targeted census tracts should be considered as part of a disaster preparedness and climate resiliency definition. Although distinct from projects that focus on energy-efficiency improvements to housing or other buildings, some stakeholders suggest that focusing on access to renewable energy could also provide important benefits to targeted communities. Under the proposed definition an example of such a qualifying project could include, but would not be limited to, battery storage projects in low- and moderate-income areas with high flood or wind risk, thereby reducing risks of power loss due to flooding and high winds. However, the agencies do not intend that the proposed definition would include utility-scale projects.

The agencies seek feedback on whether the discussion above captures the range of activities that promote disaster preparedness and climate resiliency, and are appropriately tailored to meet the needs in low- and moderate-income communities and distressed or underserved nonmetropolitan middle-income areas.

In order for an activity to be eligible under this definition, the agencies propose that an activity must benefit or serve residents of targeted census tracts—specifically, low- or moderate-income census tracts, as well as distressed and underserved nonmetropolitan middle-income census tracts. The agencies considered whether eligibility for disaster preparedness and climate resiliency activities should extend to designated disaster areas. Activities related to disaster recovery, which can also include some activities to mitigate the impact of future disasters, would still be considered in all designated disaster areas. However, the agencies intend to provide eligibility for disaster preparedness and climate resiliency activities in geographic areas with more limited resources to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks. Therefore, the agencies propose to limit consideration to activities conducted in low- or moderate-income census tracts and distressed or underserved nonmetropolitan middle-income census tracts.

The agencies also seek feedback on whether the disaster preparedness and climate resiliency definition should include a separate prong that specifically focuses on activities that benefit low- or moderate-income individuals. Incorporating a separate prong of the definition for low- or moderate-income individuals would allow consideration in all communities for certain activities that are tied specifically to assisting low- or moderate-income individuals, and not just those in targeted geographies. For example, this could include activities that help low- or moderate-income individuals in any community with weatherization improvements or to establish savings accounts to mitigate the impact from future disasters. The agencies seek feedback on this option, as well as the types of activities that would be appropriate to consider under this prong.

Similar to the other place-based definitions, the agencies propose that disaster preparedness and climate resiliency activities must be in conjunction with a Federal, state, local, or tribal government plan, program, or initiative that includes an explicit focus on benefitting a geographic area that includes the targeted census tracts. This proposal is intended to ensure that the activities have a clear objective of meeting needs in targeted communities. However, the agencies recognize that disaster preparedness or climate resiliency plans or programs may not be in place for some targeted communities. Additionally, some government plans may not be specifically focused on disaster preparation or climate resiliency. Therefore, the agencies seek feedback on whether a plan, program, or initiative provides sufficient standards around what kinds of activities benefit targeted census tracts and should qualify for CRA purposes. The agencies also seek feedback on whether there are other options to determine whether disaster preparedness and climate resiliency activities are appropriately targeted.

Request for Feedback

Question 14. Should any or all place-based definition activities be required to be conducted in conjunction with a government plan, program, or initiative and include an explicit focus of benefitting the targeted census tract(s)?

[108] *See* 12 CFR 1282.34(d)(2) and (d)(3). For example, under its Duty to Serve regulation, the FHFA sets a standard that energy or water efficiency improvements must reduce energy or water consumption by at least 15 percent and that these energy efficiencies generated over an improvement's expected life will exceed the cost of installation.

If so, are there appropriate standards for plans, programs, or initiatives? Are there alternative options for determining whether place-based definition activities meet identified community needs?

Question 15. How should the proposals for place-based definitions focus on benefitting residents in targeted census tracts and also ensure that the activities benefit low- or moderate-income residents? How should considerations about whether an activity would displace or exclude low- or moderate-income residents be reflected in the proposed definitions?

Question 16. Should the agencies include certain housing activities as eligible revitalization activities? If so, should housing activities be considered in all, or only certain, targeted geographies, and should there be additional eligibility requirements for these activities?

Question 17. Should the agencies consider additional requirements for essential community infrastructure projects and essential community facilities to ensure that activities include a benefit to low- or moderate-income residents in the communities served by these projects?

Question 18. Should the agencies consider any additional criteria to ensure that recovery of disaster areas benefits low- or moderate-income individuals and communities?

Question 19. Does the disaster preparedness and climate resiliency definition appropriately define qualifying activities as those that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks? How should these activities be tailored to directly benefit low- or moderate-income communities and distressed or underserved nonmetropolitan middle-income areas? Are other criteria needed to ensure these activities benefit low- or moderate-income individuals and communities?

Question 20. Should the agencies include activities that promote energy efficiency as a component of the disaster preparedness and climate resiliency definition? Or should these activities be considered under other definitions, such as affordable housing and community facilities?

Question 21. Should the agencies include other energy-related activities that are distinct from energy-efficiency improvements in the disaster preparedness and climate resiliency definition? If so, what would this category of activities include and what criteria is needed to ensure a direct benefit to the targeted geographies?

Question 22. Should the agencies consider utility-scale projects, such as certain solar projects, that would benefit residents in targeted census tracts as part of a disaster preparedness and climate resiliency definition?

Question 23. Should the agencies include a prong of the disaster preparedness and climate resiliency definition for activities that benefit low- or moderate-income individuals, regardless of whether they reside in one of the targeted geographies? If so, what types of activities should be included under this prong?

Question 24. Should the agencies qualify activities related to disaster preparedness and climate resiliency in designated disaster areas? If so, are there additional criteria needed to ensure that these activities benefit communities with the fewest resources to address the impacts of future disasters and climate-related risks?

F. Activities With MDIs, WDIs, LICUs, and CDFIs

The agencies are seeking ways to strengthen CRA provisions to support MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs. To emphasize such activity, the agencies propose several provisions related to activities with these entities.

1. Background

a. Current Treatment of MDIs, WDIs, LICUs, and CDFIs

Under the CRA statute, nonminority- or nonwomen-owned financial institutions can receive CRA credit for capital investment, loan participation, and other ventures in cooperation with MDIs, WDIs,[109] and LICUs, provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered. These activities need not also benefit a bank's assessment areas or the broader statewide or regional area that includes the bank's assessment areas.

b. Stakeholder Feedback on MDIs, WDIs, LICUs, and CDFIs

Stakeholders have noted that CRA activities through bank partnerships with MDIs, WDIs, LICUs, and CDFIs are key in helping to meet the credit needs of low- or moderate-income individuals and communities. Stakeholders have supported a stronger emphasis on community development financing and services that support these institutions, including equity investments, long-term debt financing, technical assistance, and contributions to non-profit affiliates. Some stakeholders have suggested the need to increase certainty surrounding the treatment of activities in partnership with MDIs, WDIs, LICUs, and CDFIs. For example, stakeholders have noted that examiners may require extensive documentation that a CDFI assists low-income populations, even though CDFI certification by the Treasury Department is an indication of having a mission of community development.[110] To provide a stronger incentive and reduce burden, most stakeholders support conferring automatic CRA community development consideration for community development activities with Treasury Department-certified CDFIs.

2. Activities Related to MDIs, WDIs, LICUs, and Treasury Department-Certified CDFIs

The agencies propose a definition in § __.13 specific to MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs. In addition, in § __.12, the proposal defines the term MDI in two ways. For purposes of a bank engaging in an activity described in 12 U.S.C. 2907(a) (*i.e.,* a bank that donates, sells on favorable terms, or makes certain branches available on a rent-free basis to an MDI), the proposal defines MDI by cross-reference to the definition of the term in 12 U.S.C. 2907(b)(1). Section 2907(b)(1) states that an MDI is a depository institution (as defined in 12 U.S.C. 1813(c)) in which (i) more than 50 percent of the ownership or control is held by one or more minority individuals and (ii) more than 50 percent of the net profit or loss of which accrues to one or more minority individuals).[111] For all other purposes, the proposal defines an MDI as a bank that (i) meets the 12 U.S.C. 2907(b)(1) definition; (ii) is an MDI as defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 1463 note);

[109] The terms minority-owned financial institution and women-owned financial institution are not defined in the CRA statute. *See* 12 U.S.C. 2903(b). The CRA statute does define similar terms for minority depository institution (MDI) and women's depository institution (WDI) for purposes of the branch-related activities referenced in 12 U.S.C. 2907(a). This SUPPLEMENTARY INFORMATION uses MDI and WDI unless it is necessary to use the terms minority-owned financial institution or women-owned financial institution for clarity.

[110] *See* Treasury Department, Community Financial Institutions Fund, CDFI Certification, *https://www.cdfifund.gov/programs-training/certification/cdfi.*

[111] Two sections of the CRA statute reference minority- and women-owned institutions: 12 U.S.C. 2903(b) and 12 U.S.C. 2907. However, these sections use different terms for these institutions (*e.g.,* 12 U.S.C. 2903(b) uses the term ''minority- and women-owned financial institutions'' and 12 U.S.C. 2907 uses the terms ''minority depository institution'' and ''women's depository institution''). Note that the definitions in the CRA statute apply only to the activities referenced in 12 U.S.C. 2907.

or (iii) is considered to be a MDI by the appropriate Federal banking agency. The agencies based the second part of the definition on 12 U.S.C. 4703a(a)(6).[112]

By recognizing these two contexts, the proposal both ensures consistency with the CRA statute and provides flexibility for each agency to define MDI as it determines appropriate. Specifically, the proposal limits the definition of MDI to the definition in 12 U.S.C. 2907 where required by the CRA statute and includes a broader definition where legally permissible, namely for other activities conducted in cooperation with ''minority- and women-owned financial institutions'' (as described in 12 U.S.C. 2903(b)). By including both parts of the definition, the proposal would ensure that activities conducted in cooperation with banks owned by minority individuals receive consideration and provide consideration for activities conducted in cooperation with banks that the agencies have long considered to be MDIs.[113] Although 12 U.S.C. 2903(b) only references banks owned by minority individuals, the agencies believe including other banks designated by the agencies as MDIs in the definition is appropriate in light of the characteristics of these banks and the communities they serve. In addition, including all banks designated by the agencies as MDIs in the proposed definition would provide consistency between the CRA regulatory framework and the agencies' other policies and initiatives.

The proposal defines WDI by cross-reference to the definition of the term in 12 U.S.C. 2907(b)(2) (a depository institution (as defined in 12 U.S.C. 1813(c)) in which (i) more than 50 percent of the ownership or control is held by one or more women; (ii) more than 50 percent of the net profit or loss of which accrues to one or more women; and (iii) a significant percentage of senior management positions are held by women). An alternative definition option is unnecessary because none of the agencies define the WDI in a way that differs from the 12 U.S.C. 2907(b)(2) definition. For example, in SR 21–6 (Highlighting the Federal Reserve System's Partnership for Progress Program for Minority Depository Institutions and Women's Depository Institutions), the Board defines WDI by cross-reference to the 12 U.S.C. 2907(b)(2) definition.[114]

The agencies propose two other changes to the regulation involving MDIs, WDIs, LICUs, and CDFIs. First, investments, loan participations, and other ventures undertaken by any bank, including by MDIs and WDIs, in cooperation with other MDIs, other WDIs, or LICUs, would be considered.

The agencies also seek feedback on whether activities undertaken by an MDI or WDI to promote its own sustainability and profitability should qualify for consideration. Under this approach, eligibility could be limited to activities that demonstrate meaningful investment in the MDI or WDI's business, such as improving internal technology and systems, hiring new staff, opening a new branch, or expanding product offerings. Allowing these activities to qualify could encourage new investments to bolster the financial positions of these banks, allowing them to deploy additional resources to help meet the credit needs of their communities. Under this alternative, the agencies also seek feedback on specific eligibility criteria to ensure investments by MDIs or WDIs in themselves would ultimately benefit low- or moderate-income and other underserved communities.

Second, regarding CDFIs, the agencies propose that all activities with Treasury Department-certified CDFIs would be eligible CRA activities. Specifically, lending, investment, and service activities by any bank undertaken in connection with a Treasury Department-certified CDFI, at the time of the activity, would be presumed to qualify for CRA credit given these organizations would need to meet specific criteria to prove that they have a mission of promoting community development and provide financial products and services to low- or moderate-income individuals and communities. The agencies propose that activities undertaken by any bank in connection with a non-Treasury Department-certified CDFI could also qualify for CRA consideration if the activity separately met the defined eligibility criteria of a different prong of the community development definition. For example, a bank activity with a non-Treasury Department-certified CDFI to finance a rental housing project that serves low- or moderate-income individuals using a state subsidy program would qualify by meeting a prong of the affordable housing definition.

Request for Feedback

Question 25. Should the agencies also include in the MDI definition insured credit unions considered to be MDIs by the National Credit Union Administration?

Question 26. Should the agencies consider activities undertaken by an MDI or WDI to promote its own sustainability and profitability? If so, should additional eligibility criteria be considered to ensure investments will more directly benefit low- and moderate-income and other underserved communities?

G. Financial Literacy

The agencies propose a separate definition for activities that assist individuals and families, including low- and moderate-income individuals and families, to make informed financial decisions regarding managing income, savings, credit, and expenses, including with respect to homeownership. Under the proposed rule, a bank would receive consideration for these activities without regard to the income level of the beneficiaries.

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[112] Under 12 U.S.C. 4703a(a)(6), the term ''minority depository institution'' means an entity that is (1) an MDI, as defined in section 308 of the FIRREA (12 U.S.C. 1463 note); (2) considered to be an MDI by (i) the appropriate Federal banking agency or (ii) the National Credit Union Administration, in the case of an insured credit union; or (3) listed in the FDIC's Minority Depository Institutions List published for the Third Quarter 2020. In this proposal, the agencies did not include insured credit unions designated by the National Credit Union Administration as MDIs but are seeking feedback on whether they should be included. In addition, the proposal does not include the FDIC's Minority Depository Institutions List published for the third quarter of 2020 because it reflects a point in time and the list is updated regularly.

[113] *See* OCC, News Release 2013–94, ''Comptroller Curry Tells Minority Depository Institutions OCC Rules Make It Easier for Minority Institutions to Raise Capital,'' Policy Statement on Minority National Banks and Federal Savings Associations (June 13, 2013), *https://www.occ.gov/news-issuances/news-releases/2013/nr-occ-2013-94.html* (permits banks that no longer meet the minority ownership requirement to continue to be considered minority depository institutions if they serve a predominantly minority community); Board, SR 21–6/CA 21–4: ''Highlighting the Federal Reserve System's Partnership for Progress Program for Minority Depository Institutions and Women's Depository Institutions'' (Mar, 5, 2021), *https://www.federalreserve.gov/supervisionreg/srletters/SR2106.htm* (permits designation as a minority depository institution if the majority of a bank's board of directors consists of minority individuals and the community that the bank serves is predominantly minority); and FDIC, Statement of Policy Regarding Minority Depository Institutions (June 15, 2021), *https://www.fdic.gov/regulations/laws/rules/5000-2600.html#fdic5000policyso* (permits designation as a minority depository institution if a majority of the bank's board of directors consists of minority individuals and the community that the bank serves is predominantly minority).

[114] SR 21–6/CA 21–4 (Mar. 5, 2021), *https://www.federalreserve.gov/supervisionreg/srletters/SR2106.htm. See also* FDIC (June 15, 2021), *https://www.fdic.gov/regulations/laws/rules/5000-2600.html#fdic5000policyso*; OCC, News Release 2013–94 (June 11, 2013), *https://www.occ.treas.gov/static/licensing/form-minority-owned-policy.pdf* (including depository institutions that are owned by women in the OCC's definition of MDI but not specifically defining WDI in its Policy Statement on Minority National Banks and Federal Savings Associations).

1. Background

Current Approach. Under current guidance, eligible financial services, education, and housing counseling activities are included as examples of community development services.[115] These activities must be targeted to low- or moderate-income individuals, such as financial education in a school where the majority of students receive free or reduced-price lunch or a housing counseling program in a low-income neighborhood.[116]

Stakeholder Feedback. Many industry stakeholders have expressed support for expanding consideration of financial education and housing counseling to include activities that benefit all income levels, as these activities can provide benefit to the financial well-being of an entire community. These stakeholders have noted that the need for financial education also exists for seniors, veterans, rural communities, and other groups of people of all income levels, including low- or moderate-income individuals. In addition, because financial literacy and housing counseling are, in practice, primarily delivered to low- or moderate-income individuals, some stakeholders have stated that the need to obtain income documentation may be less important.

Alternatively, many community group stakeholders have opposed expanding consideration of financial education and housing counseling to include activities that benefit all income levels. Some of these stakeholders have expressed concern that expanding financial education and housing counseling activities to recipients of all income levels will result in a reduction in programs directly benefiting low- or moderate-income individuals and communities.

2. Activities Related to Financial Literacy

The agencies propose to recognize financial literacy activities that assist individuals and families, including low- or moderate-income individuals and families, to make informed financial decisions regarding managing income, savings, credit, and expenses, including with respect to homeownership.[117] This expansion would limit the need to track income levels of participants taking part in financial literacy activities, which is sometimes difficult to obtain for persons who are not already loan customers of banks.

Under this proposal, for example, a financial planning seminar with senior citizens or a financial education program for children in a middle-income school district would qualify for consideration. However, qualifying activities could not be targeted to, or solely benefit, middle- and upper-income individuals or families in order to be consistent with the intent of CRA to serve the credit needs of all communities, including low- and moderate-income communities. Therefore, these activities would need to benefit and provide needed services to the entire community, including low- or moderate-income individuals and families.

Request for Feedback

Question 27. Should consideration of financial literacy activities expand to include activities that benefit individuals and families of all income levels, including low- and moderate-income, or should consideration be limited to activities that have a primary purpose of benefiting low- or moderate-income individuals or families?

H. Activities in Native Land Areas

The agencies propose a new definition of qualifying activities in Native Land Areas in § __.13(l) for community development activities related to revitalization, essential community facilities, essential community infrastructure, and disaster preparedness and climate resiliency that are specifically targeted to and conducted in Native Land Areas (which is separately defined in proposed § __.12). The Native Land Areas proposed definition in § __.12 leverages other Federal and state designations of Native and tribal lands.

1. Background

Available data indicate that Native and tribal communities face significant and unique community development challenges. For example, the poverty rate among Native individuals on reservations is 36 percent, and exceeds 50 percent in some communities.[118] Basic infrastructure in tribal communities significantly lags the rest of the country, with over one-third of Native households in tribal areas affected by significant physical problems with their housing, including deficiencies with plumbing, heating, or electric—a share nearly five times greater than for the United States population as a whole.[119] In addition, there are low rates of broadband and cellular access in many tribal communities, with 28 percent of all tribal lands and 47 percent of rural tribal lands lacking broadband and cellular access.[120]

Current Approach. The current CRA regulations do not include a specific definition for certain community development activities in Native Land Areas, although current guidance encompasses activities consistent with a tribal government plan if the activities are located in low- or moderate-income census tracts.[121] The rescinded OCC 2020 CRA final rule adopted definitions of both ''Indian country'' and ''other tribal and Native lands,'' and designated certain activities as being eligible in these geographic areas.[122]

Stakeholder Feedback. Some community group stakeholders have supported establishing a clear geographic definition of tribal areas where banks may receive CRA consideration for certain qualifying activities under the agencies' CRA regulations. Several stakeholders have indicated support for a geographic definition that is broader than the statutory definition for Indian country under 18 U.S.C. 1151. These stakeholders note that only using this statutory definition of Indian country would exclude lands that are also typically thought of as Native and tribal lands. Additional geographic options suggested by stakeholders include Hawaiian Home Lands,[123] state-recognized and tribally-defined U.S. Census Bureau Tribal Statistical Areas, and certain other U.S. Census Bureau statistical areas.

[115] *See* Q&A § __.12(i)–3.

[116] *See* Q&A § __.12(h)–8.

[117] *See* Marina L. Myhre and Nicole Elsasser Watson, ''Housing Counseling Works,'' HUD, Office of Policy Development and Research (Sept. 2017), *https://www.huduser.gov/portal/sites/default/files/pdf/Housing-Counseling-Works.pdf.*

[118] The Federal Reserve Bank of Minneapolis's Center for Indian Country Development calculated poverty rates for the American Indian and Alaska Native population living on federally recognized reservations and off-reservation trust lands using the U.S. Census Bureau's American Community Survey 5-Year 2015–2019 data. Thirty of these land units had American Indian and Alaska Native poverty rates above 50 percent. Under the more expansive U.S. Census Bureau definition of Native lands, this number grows to 56.

[119] HUD, ''Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs'' (2017), *https://www.huduser.gov/portal/publications/HNAIHousingNeeds.html.*

[120] Federal Communications Commission, 2020 Broadband Deployment Report, p. 29 (2020), *https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2020-broadband-deployment-report.*

[121] *See* Q&A § __.12(g)(4)(i)–2 and Q&A § __.12(g)(4)(iii)–3.

[122] *See* 85 FR 34734 (June 5, 2020).

[123] ''Hawaiian home lands'' are areas held in trust for Native Hawaiians by the State of Hawaii under the Hawaiian Homes Commission Act of 1920. *See* Hawaiian Homes Commission Act, 1920, ch. 42, 42 Stat. 108 (July 9, 1921).

2. Native Land Areas Definition

Under § __.12, the agencies propose to define ''Native Land Areas'' to include the following geographic areas: Indian country, land held in trust by the United States for Native Americans, state American Indian reservations, Alaska Native villages, Hawaiian Home Lands, Alaska Native Village Statistical Areas, Oklahoma Tribal Statistical Areas, Tribal Designated Statistical Areas, American Indian Joint-Use Areas, and state-designated Tribal Statistical Areas. More specifically, the following components are reflected in the proposed definition:

• *Indian country* means, as defined in 18 U.S.C. 1151: (i) All land within the limits of any Indian reservation under the jurisdiction of the U.S. Government; (ii) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

• *Land held in trust by the United States for Native Americans,* as described in 38 U.S.C. 3765(1)(A).

• *State American Indian reservations* means those reservations established by a state government for tribes recognized by the state.[124]

• *Alaska Native village* means, as defined in 43 U.S.C. 1602(c), any tribe, band, clan, group, village, community, or association in Alaska that is recognized pursuant to the Alaska Native Claims Settlement Act of 1972.

• *Hawaiian Home Lands* means lands that have the status of Hawaiian Home Lands as defined in section 204 of the state of Hawaii's Hawaiian Homes Commission Act.[125]

• *Alaska Native Village Statistical Area* means the more densely settled portion of Alaska Native villages, as presented in statistical data by the Census Bureau.[126]

• *Oklahoma Tribal Statistical Area* means statistical areas identified and delineated by the U.S. Census Bureau in consultation with federally recognized American Indian tribes based in Oklahoma.[127]

• *Tribal-Designated Statistical Areas* means areas identified and delineated for the U.S. Census Bureau by American Indian tribes that do not currently have a reservation or off-reservation trust land.[128]

• *American Indian Joint Use Areas* means a statistical area defined by the U.S. Census Bureau that is administered jointly and/or claimed by two or more American Indian tribes.[129]

• *State-designated Tribal Statistical Areas* means the land areas of Indian tribes and heritage groups that are recognized by individual states as defined and identified by the U.S. Census Bureau's annual Boundary and Annexation Survey.[130]

Under the agencies' proposal, Native Land Areas would be comprised of a very similar list of categories to those included in the rescinded OCC 2020 CRA final rule. This reflects stakeholder feedback supporting comprehensive incorporation of Native geographies. The proposal would include the definition of Indian country under 18 U.S.C. 1151, which includes all land within the limits of any Indian reservation under the jurisdiction of the U.S. Government, whether created by statute or executive order.

The proposed definition of Native Land Areas also includes areas typically considered by the Bureau of Indian Affairs (BIA) and the U.S. Census Bureau as Native geographies. Accordingly, Native Land Areas would include all geographic areas delineated as U.S. Census Bureau American Indian/Alaska Native/Native Hawaiian (AIANNH) Areas and/or BIA Land Area Representations. Robust, publicly available data files (''shapefiles''), defining the boundaries of these geographies are actively maintained by the U.S. Census Bureau and BIA, respectively.[131]

3. Qualifying Activities in Native Land Areas

To help address the challenges specific to Native Land Areas, the agencies propose creating a definition for qualifying community development activities targeted to and conducted in these geographic areas to include:

• Revitalization activities in Native Land Areas;

• Essential community facilities in Native Land Areas;

• Essential community infrastructure in Native Land Areas; and

• Disaster preparedness and climate resiliency activities in Native Land Areas.[132]

The agencies propose that essential community facilities, eligible community infrastructure, and disaster preparedness and climate resiliency activities in Native Land Areas must benefit or serve residents, including low- or moderate-income residents of Native Land Areas, without displacing or excluding low- or moderate-income residents. In addition, these activities would need to be conducted in conjunction with a Federal, state, local, or tribal government plan, program, or initiative that benefits or serves residents of Native Land Areas, without displacing or excluding low- or moderate-income residents of such geographic areas.

Separately, the agencies are proposing that revitalization activities in Native Land Areas have a more specific focus on low- and moderate-income individuals. Specifically, the agencies are proposing that under this definition revitalization activities must benefit or serve residents of Native Land Areas and must include substantial benefits for low- or moderate-income residents. For example, a bank's purchase of a bond to fund an industrial revitalization project in a Native Land Area would qualify for consideration if a majority of the employment opportunities created by the project benefitted low- or moderate-income residents, and the activity met other required criteria. Revitalization activities in Native Land Areas also would need to be undertaken in conjunction with a Federal, state, local, or tribal government plan,

[124] *See* U.S. Census Bureau, State American Indian Reservations, *https://www.census.gov/programs-surveys/geography/about/glossary/aian-definitions.html.*

[125] *See* U.S. Census Bureau, TIGERweb: Hawaiian Home Lands, *https://tigerweb.geo.census.gov/tigerwebmain/TIGERweb_geography_details.html#HHL.*

[126] *See* U.S. Census Bureau, TIGERweb: Alaska Native Village Statistical Areas, *https://tigerweb.geo.census.gov/tigerwebmain/TIGERweb_geography_details.html#ANVSA.*

[127] *See* U.S. Census Bureau, TIGERweb: Oklahoma Tribal Statistical Area, *https://tigerweb.geo.census.gov/tigerwebmain/TIGERweb_geography_details.html#OTSA.*

[128] *See* U.S. Census Bureau, Tribal Designated Statistical Areas, *https://tigerweb.geo.census.gov/tigerwebmain/TIGERweb_geography_details.html#TDSA.*

[129] *See* U.S. Census Bureau, TIGERweb: American Indian Joint Use Areas, *https://tigerweb.geo.census.gov/tigerwebmain/TIGERweb_geography_details.html#:~:text=Joint%2DUse%20Areas%2C%20as%20applied,purpose%20of%20presenting%20statistical%20data.*

[130] *See* U.S. Census Bureau, State-designated Tribal Statistical Areas, *https://tigerweb.geo.census.gov/tigerwebmain/TIGERweb_geography_details.html#SDTSA.*

[131] *See* U.S. Census Bureau, AIANNH shapefile, *https://www2.census.gov/geo/tiger/TIGER2021/AIANNH/,* and Bureau of Indian Affairs, U.S. Department of the Interior, Land Area Representation shapefile, *https://biamaps.doi.gov/bogs/datadownload.html.*

[132] The agencies note that in addition to the place-based community development activities described in this section, other community development activities (*i.e.,* affordable housing or economic development) could also qualify for consideration in Native Land Areas provided that they otherwise meet the eligibility standards for that particular activity.

program, or initiative with explicit focus on revitalizing or stabilizing Native Land Areas and a particular focus on low- or moderate-income households. The agencies propose this more targeted standard because these areas include some middle- and upper-income census tracts. The agencies believe that it is therefore important to establish a stronger nexus between these activities and the low- and moderate-income residents who reside in these areas to ensure that activities provide community benefit.

The agencies seek feedback on whether to consider activities in Native Land Areas undertaken in conjunction with plans, programs, or initiatives through designees of tribal governments in addition to those with Federal, state, local, or tribal governments. Tribal government designees such as tribal housing authorities, tribal associations and intertribal consortiums are central to economic development and community planning efforts in many Native Land Areas. For example, in Alaska and California, tribal associations or consortiums play a significant role in the delivery of government services to tribal communities. The Federal Government sometimes also contracts directly with these types of intertribal associations to deliver public health and other services to meet its trust obligations to these tribes.[133] Stakeholders also note that some tribal governments have limited administrative capacity to develop or execute formal plans. Expanding this criterion to include other types of tribal designees would therefore serve to expand place-based community development activity eligibility for Native communities where tribal governments are not the primary or only entities that deliver government services.

As part of the proposal, the agencies considered adding a requirement that tribal governments be consulted for an activity to be eligible under this definition. However, the agencies believe that such a requirement could be overly restrictive and impractical to implement. Instead of focusing only on tribal governments, the proposed definition would allow an activity to qualify if it is undertaken in conjunction with a Federal, state, local, or tribal government plan, program, or initiative. The agencies were concerned that limiting eligibility to only those activities where tribal governments had been consulted could diminish the scope of the activities eligible under the definition due to the time and resource constraints of tribal governments.[134] The agencies seek comment on appropriate criteria to tailor the proposed definition to activities benefiting residents of Native Land Areas, including low- or moderate-income individuals, and meeting revitalization, essential community facility, essential community infrastructure, or climate resiliency needs.

Request for Feedback

Question 28. To what extent is the proposed definition of Native Land Areas inclusive of geographic areas with Native and tribal community development needs?

Question 29. In addition to the proposed criteria, should the agencies consider additional eligibility requirements for activities in Native Land Areas to ensure a community development activity benefits low- or moderate-income residents who reside in Native Land Areas?

Question 30. Should the agencies also consider activities in Native Land Areas undertaken in conjunction with tribal association or tribal designee plans, programs, or initiatives, in addition to the proposed criteria to consider activities in conjunction with Federal, state, local, or tribal government plans, programs, or initiatives?

IV. Qualifying Activities Confirmation and Illustrative List of Activities

To provide stakeholders with additional certainty in determining what community development activities qualify, the agencies propose maintaining a publicly available illustrative, non-exhaustive list of activities eligible for CRA consideration. The agencies also propose including a process for modifying the illustrative list of activities periodically. In addition, the agencies are proposing a process, open to banks, for confirming eligibility of qualifying community development activities.

A. Current Approaches To Confirming Eligibility of Qualifying Community Development Activities

Currently, as part of their CRA examinations, banks submit community development activities that were undertaken without an assurance these activities are eligible. Knowing that an activity previously qualified can frequently provide banks with some confidence that the same types of activities are likely to receive consideration in the future. However, new, less common, more complex, or innovative activities might require examiner judgment and the use of performance context to determine whether an activity qualifies for CRA purposes. For these activities, stakeholders might know only at the end of an examination—and after a loan or investment has been made or a service provided—whether an activity will receive CRA credit. Stakeholders strongly support incorporating additional methods into CRA for improving upfront certainty related to what community development activities qualify for consideration.[135]

B. Stakeholder Feedback on Confirmation and Illustrative List

Stakeholders have indicated broad support for a non-exhaustive, illustrative list of qualifying activities similar to the list required by and implemented in accordance with the rescinded OCC 2020 CRA final rule. Some stakeholders have expressed that the illustrative list ensured more flexibility in engaging in new and innovative activity. Stakeholders noted that the list should be specific and include the examples of qualified activities from the current Interagency Questions and Answers. Some stakeholders suggested a searchable list,

[133] Federal programs such as the Indian Community Development Block Grant define eligible applicants using 25 U.S.C. 5304, a portion of the Indian Self Determination and Education Act. Under this definition, eligible applicants or recipients for programs serving Native Americans are not strictly limited to tribal governments. Other examples of this practice include a 2021 expansion of eligible Native American groups related to the Public Works and Economic Development Act of 1965 (86 FR 52957 (Sept. 24, 2021)), and the Indian Energy Tribal Development and Self-determination Act Amendments of 2017, which expanded the groups eligible to apply for the Indian Tribal Energy Development and Self Determination Act to include intertribal organizations and tribal energy development organizations. *See* Public Law 115–325, 132 Stat. 4445 (Dec. 18, 2018).

[134] *See* Board, ''Growing Economies in Indian Country: Taking Stock of Progress and Partnerships: A Summary of Challenges, Recommendations, and Promising Efforts,'' (May 1, 2012), *https://www.federalreserve.gov/newsevents/conferences/indian-country-publication.htm.*

[135] The OCC maintains a confirmation process that is not codified in the CRA regulations in which national banks, savings associations, and other interested parties may request confirmation that a loan, investment, or service is consistent with existing CRA regulations. The OCC also maintains an illustrative list on its website as a reference for national banks, savings associations, and other interested parties to determine whether activities that they conducted while the OCC 2020 CRA final rule was in effect were eligible for CRA consideration; however, activities included on that illustrative list may not receive consideration if conducted after January 1, 2022, when the rescission of the OCC 2020 CRA final rule became effective. *See* OCC, CRA Qualifying Activities and Confirmation Request, *https://www.occ.gov/topics/consumers-and-communities/cra/qualifying-activity-confirmation-request/index-cra-qualifying-activities-confirmation-request.html.*

and others suggested that the list identify activities that do not qualify.

Stakeholders also expressed support for a confirmation process for determining, in a timely manner, if an activity qualifies as a community development activity in order to provide greater certainty.

C. Qualifying Activities Confirmation and Illustrative List of Activities

To provide additional upfront certainty, in § __.14, the agencies propose the maintenance of an illustrative list of qualifying activities and a method to confirm eligibility of activities.

First, the agencies propose to establish a publicly available illustrative, non-exhaustive list of activities eligible for CRA community development consideration. Stakeholders have supported this approach as a way to illustrate loans, investments, and services that meet the CRA community development criteria while retaining those criteria as the determinative factors in eligibility for qualifying community development activities. Under this approach, the list would provide examples that help clarify the regulatory meaning of key community development terms. Although some stakeholders have expressed concern that a list may serve to limit innovation by leading banks to focus primarily on activities found on the list, the agencies seek feedback on whether the benefit of greater certainty outweighs this potential concern.

The agencies are also proposing a formal mechanism for banks to receive feedback in advance or after the fact on whether proposed community development activities would be considered eligible for CRA. This approach would allow a bank evaluated under CRA to request that the agencies confirm that an activity is eligible for CRA community development consideration. Although some stakeholders wanted the confirmation process to be open to all stakeholders, including community groups, as is the case for the process implemented by the OCC, the agencies believe that the proposal to limit the requestors to banks evaluated under CRA would accomplish the desired goal of increased certainty of eligibility. While other stakeholders may have an interest in ensuring certain activities qualify for community development consideration, ultimately, these stakeholders are not subject to CRA examinations. Banks evaluated under CRA may request confirmation of activities under consideration, including activities that may have been presented to them by other stakeholders. When the agencies confirm that an activity is or is not eligible for CRA community development consideration, the requestor would be notified, and the agencies may add the activity to the publicly available list. Instead of being static, the periodic update to the list would allow it to be flexible and incorporate new activities.

Request for Feedback

Question 31. Should the agencies also maintain a non-exhaustive list of activities that *do not* qualify for CRA consideration as a community development activity?

Question 32. What procedures should the agencies develop for accepting submissions and establishing a timeline for review?

Question 33. Various processes and actions under the proposed rule, such as the process for confirming qualifying community development activities in § __.14, the designation of census tracts in § __.12, and, with respect to recovery activities in designated disaster areas, the determination of temporary exception or an extension of the period of eligibility of activities under § __.13(h)(1), would involve joint action by the agencies. The agencies invite comment on these proposed joint processes and actions, as well as alternative processes and actions, such as consultation among the agencies, that would be consistent with the purposes of the Community Reinvestment Act.

V. Impact Review of Community Development Activities

The agencies propose to conduct an impact review of community development activities under the Community Development Financing Test, the Community Development Financing Test for Wholesale or Limited Purpose Banks, and the Community Development Services Test. The impact review would qualitatively evaluate the impact and responsiveness of qualifying activities with respect to community credit needs and opportunities.

In § __.15, the agencies propose specific impact review factors that would inform the evaluation. A greater volume of activities aligning with the impact review factors would positively impact conclusions for each test. The approach of incorporating specific impact review factors into the qualitative evaluation is intended to promote clear and consistent procedures, which would result in a more standardized application of qualitative factors compared with current practices. In addition, this approach encourages banks to pursue activities with a high degree of impact on and responsiveness to the needs of low- or moderate-income communities.

The evaluation of impact and responsiveness would include, but would not be limited to, a set of specific factors provided in the regulation. In addition, the agencies may consider information that demonstrates an activity's significant impact on and responsiveness to local community development needs, such as detailed information about a bank's activities, local data regarding community needs, and input from community stakeholders.

A. Background

1. Current Approach to Qualitative Review

Currently, the agencies' qualitative assessment of a bank's community development performance takes into account the extent to which a bank's community development activities are innovative and complex. In addition, the agencies consider whether a bank's activities reflect leadership and are responsive to community needs.[136] These terms are generally defined in the Interagency Questions and Answers, and guidance explains that an examiner will consider both quantitative and qualitative aspects of a bank's community development activities.[137] Certain activities may be considered more responsive than others if those activities effectively meet an identified community development need.[138] Innovativeness takes into account whether a bank implements meaningful improvements to products, services, or delivery systems to respond to community needs.[139] The qualitative aspects of the bank's community development activities are assessed based on information provided by the bank and in light of performance context and other information about credit and community development needs in the local community.

While current guidance emphasizes the importance of a qualitative review of a bank's community development activities and recognizes that certain activities are more responsive than others, there are no clear standards for how these factors are measured. As a result, the evaluation relies heavily on examiner judgment.

2. Stakeholder Feedback

Stakeholders have suggested that the current approach for the qualitative evaluation of community development

[136] *See* Q&A § __.21(a)–2.

[137] *See* Q&A § __.21(a)–3.

[138] *Id.*

[139] *See* Q&A § __.21(a)–4.

activities could be more transparent and consistent. For example, determining whether an activity is innovative is reliant on examiner judgment. In addition, stakeholders have expressed that the qualitative assessment could have a stronger focus on the impact and responsiveness of a bank's community development activities and, relatedly, that it could be more clearly linked to CRA's core purpose of serving low- and moderate-income individuals and communities. For example, stakeholders have noted that the criteria of ''innovative'' and ''complex'' are not necessarily targeted toward the ultimate impact of the activity; an activity might be highly complex without being highly impactful or responsive to low- and moderate-income communities. Lastly, stakeholders have noted that more clarity is needed to better understand which activities have been deemed more responsive or innovative by examiners as this information is not consistently presented in performance evaluations.

B. Impact Review Factors

In § __.15, the agencies propose the following impact review factors for the qualitative evaluation of community development activities under the Community Development Financing Test, the Community Development Financing Test for Wholesale or Limited Purpose Banks, and the Community Development Services Test.

1. Activities Serving Persistent Poverty Counties and Geographies With Low Levels of Community Development Financing

The agencies propose several impact review factors for activities in specific geographic areas with significant community development needs. Serving these geographies would reflect a high level of responsiveness because the activities could increase economic opportunity where it is needed most and may involve a high degree of complexity and effort on the part of the bank. First, the agencies are proposing activities serving persistent poverty counties as one impact review factor. The agencies are seeking feedback on whether activities serving high poverty census tracts should be included in this impact review factor. Second, the agencies are also proposing to include activities serving areas with low levels of community development financing as an impact review factor.

Persistent Poverty Counties. The agencies are proposing to identify activities in persistent poverty counties, defined as counties with a poverty rate of at least 20 percent over each of the past three decades, as an impact review factor.[140] The agencies estimate that 5.3 percent of the U.S. population lives in persistent poverty counties, using population estimates from the 2015–2019 American Community Survey.[141] A focus on persistent poverty counties would highlight activities serving areas with longstanding economic challenges where community development needs are significant. For example, the agencies analyzed economic data to estimate which counties would be identified under this approach and found a large concentration of counties located in the Mississippi Delta, Appalachia, and Colonias regions, and in Native Land Areas. Congress has directed other agencies, including the Treasury Department's Community Development Financial Institutions Fund, the U.S. Economic Development Administration, the U.S. Department of Agriculture, and the U.S. Environmental Protection Agency, to allocate program funding specifically to regions meeting the definition of persistent poverty.[142] In addition, designating geographic areas at the county level offers a high degree of clarity and simplicity regarding which qualifying activities would meet the criterion. Banks that seek out qualifying activities that serve an entire county, as well as qualifying activities that serve only a specific portion of the county, would have certainty that the activities meet the impact review factor.

The agencies are also seeking feedback on including activities in census tracts with a current poverty rate of at least 40 percent as an impact review factor. The agencies estimate that 3.5 percent of the U.S. population lives in census tracts where the poverty rate exceeds 40 percent, according to the 2015–2019 American Community Survey. Accounting for overlap between persistent poverty counties and census tracts that meet this threshold, approximately 8.1 percent of the U.S. population lives in either a persistent poverty county or a high poverty census tract, according to the 2015–2019 American Community Survey. This approach would draw attention to economically distressed geographies that are smaller than an entire county, such as a high poverty neighborhood in a densely populated urban area. A census tract approach would offer the advantage of emphasizing activities that specifically serve communities, including individual neighborhoods, with significant community development needs, and where barriers to credit access and opportunity are often the greatest. In addition, the designation of census tracts, as opposed to counties, emphasizes activities serving communities in urban areas, including communities that are located in a county that is not a persistent poverty county.

Areas with Low Levels of Community Development Financing. The agencies propose an impact factor for activities serving areas with low levels of community development financing, based on data collected and reported under a revised CRA regulation. By incorporating local community development financing data into the designation, this approach would highlight areas where CRA capital is most limited. Because comprehensive CRA community development financing data is not currently available at local levels, the agencies would first collect and analyze data under a revised CRA regulation and would then determine the appropriate approach for identifying areas with low levels of qualified community development activities.

The agencies seek feedback on the different options for impact review factors for activities that serve geographies with significant community development needs, and whether to include high poverty census tracts along with persistent poverty counties and areas with low levels of community development financing. The agencies have considered that expressly highlighting both persistent poverty counties and high poverty census tracts may be appropriate to capture a balance of high needs areas in both metropolitan and nonmetropolitan areas.

2. Activities Supporting MDIs, WDIs, LICUs, and Treasury Department-Certified CDFIs

The agencies propose an impact review factor for activities that support or are conducted in partnership with MDIs, WDIs, LICUs, and Treasury

[140] The Congressional Research Service identifies 407 counties that meet the criteria for persistent poverty using poverty rate estimates from the 1990 Census, the 2000 Census, and the 2019 Small Area Income and Poverty Estimates (See ''The 10–20–30 Provision: Defining Persistent Poverty Counties'' *https://sgp.fas.org/crs/misc/R45100.pdf.*).

[141] The agencies apply population estimates from the 2015–2019 American Community Survey to estimate population of persistent poverty counties. *See* U.S. Census Bureau, American Community Survey 2015–2019 5-Year Data Release (Dec. 10, 2020), *https://www.census.gov/newsroom/press-kits/2020/acs-5-year.html.*

[142] For a description of statutory requirements related to the allocation of funds to persistent-poverty counties, see Government Accountability Office, ''Areas with High Poverty: Changing How the 10–20–30 Funding Formula Is Applied Could Increase Impact in Persistent Poverty Counties,'' *https://www.gao.gov/assets/gao-21-470.pdf.*

Department-certified CDFIs.[143] In general, these organizations have a mission of meeting the credit needs of low- and moderate-income and other underserved individuals, communities, and small businesses, which is highly aligned with CRA's core purpose.[144] In addition, these organizations often have intimate knowledge of local community development needs and opportunities, allowing them to conduct highly responsive activities. Furthermore, emphasizing partnership with these organizations is aligned with current practices and with the CRA statute, reflecting the impact and responsiveness of these activities.

The agencies are considering whether this impact review factor should cover only certain types of activities conducted in support of these organizations. One option would be for this impact review factor to include equity investments, long-term debt financing, donations, and services, and not to include short term deposits placed in an MDI. The goal of this alternative approach would be to encourage activities that stakeholders have noted are most effective in helping to advance the mission of these organizations.

3. Activities Serving Low-Income Individuals

The agencies propose an impact review factor for activities that serve low-income individuals and families, defined as those with an income of less than 50 percent of the area median income. This factor is intended to be consistent with the proposed Retail Lending Test approach, which includes separate metrics to assess lending to low-income and to moderate-income individuals. Low-income individuals have high community development needs and experience challenges with obtaining basic financial products and services, securing stable employment opportunities, finding affordable housing, and accessing digital infrastructure.[145] For these reasons, the agencies consider activities serving low-income individuals and families to have a high degree of impact and responsiveness and recognize that they often entail a high level of effort and complexity on the part of the bank and community partners.

The agencies are considering an alternative approach of defining this factor to include only those activities that serve individuals with an income of less than 30 percent of the area median income. This would ensure that the focus of this factor is on activities that serve the individuals that are most vulnerable to the challenges described above, such as housing instability and unemployment. However, there may be comparatively fewer community development opportunities for banks to take part in that would primarily serve individuals in this income category.

4. Activities that Support Small Businesses or Farms With Gross Annual Revenues of $250,000 or Less

The agencies propose an impact review factor for activities that support small businesses or farms with gross annual revenues of $250,000 or less. This factor is intended to align treatment of these activities with the proposed retail lending approach, which separately evaluates a bank's distribution of loans to small businesses and small farms with gross annual revenues of $250,000 or less, as well as the bank's loans to small businesses and small farms with gross annual revenue of greater than $250,000. The Retail Lending Test approach, as well as a discussion of the proposed gross annual revenue threshold of $250,000, is described further in Section IX.

The agencies seek feedback on whether this impact review factor should instead be set at a higher threshold of gross annual revenue, for example at $500,000. The agencies also seek feedback on whether this threshold should instead be set lower, for example at $100,000. These alternatives are also discussed in Section IX. In seeking feedback on these alternatives, the agencies also seek feedback on how to weigh the importance of using a consistent threshold for identifying smaller businesses and smaller farms both for the Retail Lending Test and for this impact review factor.

5. Activities That Support Affordable Housing in High Opportunity Areas

The agencies propose an impact review factor for activities that support the acquisition, development, construction, preservation, or improvement of affordable housing in *high opportunity areas.* The agencies would define *high opportunity areas* to align with the FHFA definition of High Opportunity Areas, including: (i) Areas designated by HUD as a ''Difficult Development Area'' (DDA); or (ii) areas designated by a state or local Qualified Allocation Plan as a *high opportunity area,* and where the poverty rate falls below 10 percent (for metropolitan areas) or 15 percent (for nonmetropolitan areas).[146]

The agencies consider affordable housing in *high opportunity areas* to have a high level of impact and responsiveness. First, geographic areas meeting this definition include areas where the cost of residential development is high [147] and affordable housing opportunities can be limited. Efforts to support affordable housing can be especially impactful where affordable housing needs are heightened in this manner. Second, as defined by FHFA, these areas are intended to describe areas that provide strong opportunities for low- and moderate-income individuals; increasing affordable housing opportunities in these areas helps to provide low- and moderate-income individuals with more choices of neighborhoods with strong economic opportunities.[148]

6. Activities Benefitting Native Communities

The agencies propose to designate activities benefitting or serving Native communities, including but not limited to those qualifying activities in Native Land Areas under proposed § __.13(l) as an impact review factor. This factor would recognize the unique status and credit and community development needs of Native and tribal communities as discussed above, which make bank activities that do serve these communities especially responsive.

The proposal would include all eligible community development activities taking place in Native Land Areas under this impact review factor. This includes activities as defined under proposed § __.13(l). In addition,

[143] This is consistent with 12 U.S.C. 2903(b).

[144] *See, e.g.,* Brett Theodos and Eric Hangen, Urban Institute, ''Expanding Community Development Financial Institutions'' (2017), *https://www.urban.org/research/publication/expanding-community-development-financial-institutions.*

[145] *See* FDIC, ''How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey'' (Oct. 2020) (hereinafter ''How America Banks''), *https://www.fdic.gov/analysis/household-survey/2019report.pdf;* Federal Reserve Bank of Dallas, ''Closing the Digital Divide: A Framework for Meeting CRA Obligations'' (July 2016, revised Dec. 2016), *https://www.dallasfed.org/~/media/documents/cd/pubs/digitaldivide.pdf;* and Joint Center for Housing Studies of Harvard University, ''America's Rental Housing 2022'' (2022), *https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf.*

[146] *See* Overview of the 2020 High Opportunity Areas File (2020), *https://www.fhfa.gov/DataTools/Downloads/Documents/Enterprise-PUDB/DTS_Residential-Economic-Diversity-Areas/DTS_High%20Opportunity_Areas_2020_README.pdf.*

[147] *See, e.g.,* HUD's Office of Policy Development and Research (PD&R), ''Qualified Census Tracts and Difficult Development Areas,'' *https://www.huduser.gov/portal/datasets/qct.html.*

[148] *See* FHFA DTS High Opportunity Areas, *https://www.fhfa.gov/DataTools/Downloads/Documents/Enterprise-PUDB/DTS_Residential-Economic-Diversity-Areas/DTS_High%20Opportunity_Areas_2020_README.pdf.*

the agencies propose to consider eligible community development activities that benefit Native Land Areas and meet other eligibility criteria under this impact review factor. For example, an affordable housing project that serves a Native Land Area or an activity in a Native Land Area undertaken with a CDFI would be included under this impact review factor.

The agencies also seek feedback on whether this proposed impact review factor should be defined to include activities benefitting Native communities but not located in Native Land Areas. Such an approach would recognize that many tribal members reside in areas outside of the proposed definition of Native Land Areas, as a result of a number of factors, including past Federal policies. Some past Federal Government policies, such as the policy of allotment, have had the effect of reducing the amount of land recognized as a reservation or as trust land. Additionally, some past Federal Government policies have relocated individual tribal members from reservation communities to cities and, as a result, away from tribal lands.[149] The Federal Government's trust obligation applies to not only tribes but also their citizens regardless of residency on tribal lands given their unique political status.[150]

7. Activities That Are a Qualifying Grant or Contribution

The agencies propose to include community development financing activities that are a qualifying grant or contribution as a separate impact review factor. The agencies recognize that the proposed community development financing metric provides these activities with comparatively little emphasis on its own, because the metric is based on the dollar amount of activities relative to deposits, and does not account for the fact that a grant has no repayment obligation, unlike a typical community development loan or qualifying investment. As a result, the agencies propose including these activities as an impact review factor so that they receive appropriate emphasis when assessing the metrics and impact review together.

[149] *See, e.g.,* The Indian Relocation Act of 1956, *https://www.govinfo.gov/content/pkg/STATUTE-70/pdf/STATUTE-70-Pg986.pdf* and National Archives, ''American Indian Urban Relocation,'' *https://www.archives.gov/education/lessons/indian-relocation.html.*

[150] *See, e.g.,* U.S. Department of the Interior, ORDER NO. 3335, ''Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries,'' *https://www.doi.gov/sites/doi.gov/files/migrated/news/pressreleases/upload/Signed-SO-3335.pdf.*

8. Activities That Reflect Bank Leadership Through Multi-Faceted or Instrumental Support

The agencies propose an impact review factor for activities that involve a high degree of leadership on the part of the bank, as demonstrated by multi-faceted or instrumental support. This prong is intended to capture the factors of complexity and leadership used under the current CRA regulations, but with greater specificity and a more direct tie to impact and responsiveness.

Multi-faceted support includes activities that entail multiple forms of support provided by the bank for a particular program or initiative, such as a loan to a community-based organization that serves low- or moderate-income individuals, coupled with a service supporting that organization in the form of technical assistance that leverages the bank's financial expertise. Instrumental support may include activities that involve a level of support or engagement on the part of the bank such that a program or project would not have come to fruition, or the intended outcomes would not have occurred, without the bank's involvement. The agencies recognize that activities involving multifaceted or instrumental support often require significant efforts by the bank, reflect a high degree of engagement with community partners, and are highly responsive to community needs.

9. Activities That Result in a New Community Development Financing Product or Service

The agencies propose an impact review factor for activities that result in a new community development financing product or service that addresses community development needs for low- or moderate-income individuals and communities as well as small businesses and small farms. This factor builds upon the emphasis on innovative activities under the current approach and is intended to ensure a strong connection to impact and responsiveness. This factor encourages banks and community partners to conceive of new strategies for addressing community development needs, especially those needs which existing products and services do not adequately address. For example, an activity that provides financing for the acquisition of land for a shared equity housing project that brings permanent affordable housing to a community could meet this impact review factor, to the extent that it involves a new strategy to meet a community development need. The proposed emphasis on activities that support developing new products and services helps to ensure that the CRA continually improves the landscape of product offerings for low- or moderate-income individuals, communities and small businesses and small farms.

Request for Feedback

Question 34. For the proposed impact review factors for activities serving geographic areas with high community development needs, should the agencies include persistent poverty counties, high poverty census tracts, or areas with low levels of community development financing? Should all geographic designations be included or some combination? What considerations should the agencies take in defining these categories and updating a list of geographies for these categories?

Question 35. For the proposed factor focused on activities supporting MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs, should the factor exclude placements of short-term deposits, and should any other activities be excluded? Should the criterion specifically emphasize equity investments, long-term debt financing, donations, and services, and should other activities be emphasized?

Question 36. Which of the thresholds discussed would be appropriate to classify smaller businesses and farms for the impact review factor relating to community development activities that support smaller businesses and farms: The proposed standard of gross annual revenue of $250,000 or less, or an alternative gross annual revenue threshold of $100,000 or less, or $500,000 or less?

Question 37. For the proposed factor of activities that support affordable housing in *high opportunity areas,* is the proposed approach to use the FHFA definition of *high opportunity areas* appropriate? Are there other options for defining *high opportunity areas*?

Question 38. For the proposed factor to designate activities benefitting or serving Native communities, should the factor be defined to include activities benefitting Native and tribal communities that are not located in Native Land Areas? If so, how should the agencies consider defining activities that benefit Native and tribal communities outside of Native Land Areas?

VI. Assessment Areas and Areas for Eligible Community Development Activity

The agencies propose to update the CRA assessment area approach to evaluate performance in facility-based assessment areas for all banks, and in retail lending assessment areas for large banks. These updates are intended to comprehensively establish the local communities in which a bank is evaluated for its CRA performance and to reflect ongoing changes to the banking industry. In addition, the agencies propose to consider qualifying community development activities outside of a bank's assessment areas at the state, multistate MSA, and institution levels to add certainty and to encourage qualifying activities in areas with high community development needs. Section X also discusses the agencies' proposal to evaluate large banks and certain intermediate banks on their retail loans that are outside of both retail lending assessment areas and facility-based assessment areas, to ensure that retail lending evaluations for these banks are comprehensive.

First, in § __.16, the agencies propose that facility-based assessment areas would remain a cornerstone of the proposed evaluation framework. The agencies propose to update how these areas are defined and to affirm that assessment areas may not reflect illegal discrimination or arbitrarily exclude low- or moderate-income census tracts. Recognizing the importance of the local communities served by a bank's facilities, the agencies propose to evaluate a bank on all applicable performance tests [151] within each facility-based assessment area, and to incorporate these performance conclusions into the bank's overall rating.

Second, in § __.17 for large banks only, the agencies propose establishing retail lending assessment areas to provide a means for evaluating lending that occurs outside of facility-based assessment areas. The agencies propose that a large bank would delineate a retail lending assessment area where it has a concentration of retail loan originations outside of its facility-based assessment areas, and the agencies propose applying only the Retail Lending Test in these areas. In proposing this approach, the agencies recognize that changes in technology and in bank business models have resulted in banks serving local communities that may extend beyond the geographic footprint of the bank's main office, branches, and other deposit-taking facilities. Consistent with the CRA's focus on a bank's local performance in meeting community credit needs, the agencies believe that it is appropriate to evaluate a large bank's retail lending under the Retail Lending Test as described in Section IX, in a community where it has a concentration of loans, even if it does not operate a facility there. In addition, as discussed in § __.22, for large banks and certain intermediate banks, the agencies propose evaluating a bank's retail lending performance on an aggregate basis outside retail lending areas, which include areas outside of facility-based or retail lending assessment areas.

Third, the agencies propose to evaluate any qualifying community development financing and services activities that banks elect to conduct in broader areas beyond their facility-based assessment areas. Banks would receive consideration for qualifying activities anywhere in a state or multistate MSA in which they maintain a facility-based assessment area, when determining the conclusion for that state or multistate MSA. In addition, banks would receive consideration at the institution level for any qualifying activities conducted nationwide. For purposes of the Community Development Financing Test and Community Development Services Test, these areas outside of facility-based assessment areas are referred to as areas for eligible community development activity as specified in § __.18.

The agencies believe this approach is preferable to an alternative approach that would require evaluating community development activities specifically within retail lending assessment areas. Building on the current practice of considering qualifying activities in broader statewide and regional areas, the agencies recognize that community development activities often benefit broader geographies, such as an entire state or region, which may not align with the geography of retail lending assessment areas. Furthermore, areas in greatest need of community development activities may not align with concentrations of bank lending where retail lending assessment areas are delineated. As a result, affording some additional flexibility may allow for community development activities that are higher in impact and responsiveness.

A. Background

1. Current Approach

Pursuant to the CRA statute, banks have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered. In their current CRA regulations, the agencies have interpreted local communities to include the areas surrounding a bank's main office, branches, and deposit-taking ATMs, given the linkage between physical facilities and a bank's customer base. Accordingly, one of the CRA regulations' core requirements is that each bank delineate areas in which their CRA performance will be assessed, referred to in the CRA regulations as assessment areas.

The current CRA regulations require that assessment areas not reflect illegal discrimination and not arbitrarily exclude low- or moderate-income census tracts. These provisions work congruently with ECOA and the FHA, to combat redlining. Consequently, it is crucial that banks appropriately delineate their assessment areas.

The CRA regulations currently define assessment areas for retail banks in connection with a bank's main office, branches, and deposit-taking ATMs and the surrounding areas in which it has originated or purchased a substantial portion of its loans. Assessment areas are generally composed of one or more counties, and in some cases, smaller political subdivisions. While a bank may currently adjust the boundaries of an assessment area to include only the portion of a political subdivision that it reasonably can be expected to serve, an assessment area must be composed of at least whole census tracts. Assessment areas for wholesale and limited purpose banks consist generally of one or more MSAs or metropolitan divisions or one or more contiguous political subdivisions, such as counties, cities, or towns in which the bank has its main office, branches, and deposit-taking ATMs. Banks whose business models predominantly focus on serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate their entire deposit customer base as their assessment area.

Assessment areas are used in different ways for the current evaluation of retail lending, community development loans and investments, and retail and community development services. Examiners evaluate a bank's retail lending and retail services performance within assessment areas, and retail lending outside of its assessment areas is generally not currently part of a bank's CRA evaluation. Conversely, the current evaluation of community development performance—including community development loans, investments, and services—considers activities within assessment areas as well as broader statewide or regional areas that include the assessment areas.

[151] Application of the performance tests and standards would be determined by bank size, as specified in proposed § __.21(b).

The agencies recognize that community development organizations and programs are efficient and effective ways for banks to promote community development. These organizations and programs often operate on a statewide or even multistate basis. Therefore, a bank's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the bank's assessment areas. The bank's assessment areas need not receive an immediate or direct benefit from the bank's participation in the organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the bank's assessment areas. In addition, activities in broader statewide or regional areas that do not benefit the assessment area may be considered if the bank has first met the needs of its assessment areas.

2. Stakeholder Feedback

Many stakeholders have expressed that the current CRA regulations define assessment areas too narrowly, considering how banking is conducted today. Some stakeholders have pointed out that banks now use new kinds of facilities to collect deposits, such as remotely staffed virtual or interactive teller machines and other staffed physical facilities that are not referred to as branches. Stakeholders have expressed the importance of appropriately defining assessment areas to include locations where banks are collecting deposits to ensure that banks are evaluated on serving low- and moderate-income individuals and low- and moderate-income communities.

Stakeholders differ on how much flexibility to give banks in delineating the size of a facility-based assessment area. For example, some industry stakeholders note that the ability to designate an assessment area that contains only part of a county, rather than an entire county, may allow a bank to achieve better alignment between its business strategy, capacity, and CRA activities. As a result, a number of industry stakeholders have supported continuing flexibility for small banks to delineate partial county assessment areas, and there is some support for also continuing to provide this flexibility to large banks. Community group stakeholders generally have not supported partial county assessment areas, and some have the view that partial county assessment areas may raise redlining risks and reduce incentives to lend and invest in low- and moderate-income communities.

Stakeholders have generally supported the objective of revising the assessment area approach to include an evaluation of retail lending outside of assessment areas but have offered different recommendations on how to address this issue. Some stakeholders have favored approaches that would designate local assessment areas, akin to current assessment areas, in areas where a bank's level of business activity exceeded a certain threshold, such as in lending volume or market share. Others have preferred that retail lending performance outside of assessment areas be evaluated only on an aggregate basis, while others have opposed any changes to the current assessment area framework for retail lending. Stakeholders generally agree that any assessment area approach should confer a strong CRA obligation for all banks, regardless of business model.

Stakeholders have also noted challenges with the current assessment area approach for evaluating community development financing activity. Some stakeholders have noted that there is a high degree of uncertainty regarding CRA consideration for community development activities outside of assessment areas. Stakeholders have stated that this uncertainty has contributed to low levels of community development financing in areas where few banks maintain an assessment area. In addition, stakeholders have expressed that the assessment area framework leads to high levels of competition for limited community development opportunities in some markets, especially those where banks that operate more broadly claim only a single main office assessment area. At the same time, stakeholders have also expressed that any updates to the approach should maintain a strong emphasis on community development financing and services within facility-based assessment areas.

B. Facility-Based Assessment Areas

With certain changes discussed below, the agencies propose to maintain assessment areas where a bank has its main office, branches, and deposit-taking remote service facilities. As discussed further below, the agencies propose replacing the current term ''deposit-taking ATM'' with ''deposit-taking remote service facility.'' The agencies would refer to assessment areas for a bank's main office, branches, and deposit-taking remote service facilities as ''facility-based assessment areas'' in order to differentiate them from the new proposal for retail lending assessment areas, discussed below under proposed § __.17. The agencies propose retaining the practice that the facility-based assessment area delineated by a bank would be used to assess the bank's CRA performance, provided that the facility-based assessment area does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income census tracts.

1. Facility-Based Assessment Area Requirements for a Bank's Main Office, Branches, and Deposit-Taking Remote Service Facilities

Under the proposal, banks would continue to delineate assessment areas where they have their main office, branches, and deposit-taking remote service facilities. While the number of bank branches has declined in recent years,[152] the agencies believe that branches remain an essential way of defining a bank's local communities. The definition of *branch* in proposed § __.12 would retain the existing regulatory language making it clear that staffed physical locations are deemed to constitute a branch, regardless of whether the physical location is a shared or unshared space.

The agencies are proposing to remove the examples of shared physical locations in the definition but do not intend for this removal to change or narrow the meaning of the regulation. Although the examples are illustrative only, the agencies believe they do not fully reflect the breadth of shared space locations that might exist under the proposed definition, particularly as new bank business models emerge in the future. The agencies intend that the examples provided in the current regulation of a mini-branch in a grocery store or a branch operated in conjunction with a local business or non-profit organization, as well as other staffed physical locations in shared spaces, would continue to require delineating a facility-based assessment area.

In addition, the agencies propose adding the language ''open to, and accepts deposits from, the general public'' to the definition of branch in § __.12 to underscore that this definition would capture new bank business models, with different types of names for staffed physical locations, when those locations are open to the public and collect deposits from customers. The agencies do not view this as a change from current standards, but wish to emphasize that staffed physical locations open to the general public and

[152] *See* Table 8 and Table 12 of Harris, et al. (2020), ''2020 Summary of Deposits Highlights.'' FDIC Quarterly, Vol. 15, Issue 1, *https://www.fdic.gov/analysis/quarterly-banking-profile/fdic-quarterly/2021-vol15-1/article2.pdf.*

that collect deposits from customers constitute a branch under the proposed CRA regulations regardless of whether the location is referred to as a ''branch'' by the bank. By using the word ''public,'' the agencies intend for this proposed definition to also encompass any staffed physical location that is open to bank customers by appointment only. The proposed language ''open to the general public'' would also clarify that certain staffed physical locations that are only open to bank employees would not meet the definition of a branch. In addition, the agencies seek feedback on the treatment of business models where staff assist customers with making deposits on their phones or mobile devices while customers are onsite at staffed physical locations.

As proposed, the updated CRA regulation would require facility-based assessment areas for deposit-taking ''remote service facilities,'' defined in proposed § __.12. The proposed definition of remote service facilities would capture not only deposit-taking ATMs, but other deposit-taking facilities as well, such as interactive or virtual ATMs where customers can connect with bank staff through a terminal. The agencies believe that the term remote service facility, as proposed, appropriately captures a range of non-branch facilities, and the agencies propose using this term instead of ATM throughout the regulation.

The agencies considered, but are not proposing, that a bank's loan production offices (LPOs) should automatically constitute a facility-based assessment area, given the variety of ways LPOs are used by banks.

2. Geographic Standards for Facility-Based Assessment Areas

The agencies propose that for large banks (including those that elect evaluation under an approved strategic plan) and wholesale or limited purpose banks, facility-based assessment areas would be required to consist of one or more MSAs or metropolitan divisions or one or more contiguous counties within an MSA, a metropolitan division, or the nonmetropolitan area of a state.[153]

Consistent with current regulations and guidance, a facility-based assessment area may not extend substantially beyond an MSA or state boundary unless the assessment area is located in a multistate MSA [154] or a combined statistical area.[155] As a result, these banks would no longer be allowed to delineate a partial county for facility-based assessment areas.

Compared to the current regulations (which allow assessment areas composed of partial political subdivisions, provided they include at least whole census tracts), the proposed requirement would create a more consistent standard for the delineation of assessment areas for large banks, wholesale or limited purpose banks, and large banks that elect to be evaluated pursuant to an approved strategic plan. This change also would encourage these banks to serve low- and moderate-income individuals and census tracts in counties where their deposit-taking facilities are located, and would help to safeguard and support fair lending. The proposed requirement for these banks to construct facility-based assessment areas out of whole counties also would support the proposed use of metrics and associated data to evaluate bank performance because this allows for data collection and reporting at the county level rather than at the census tract level.

The agencies propose continuing to allow small and intermediate banks to delineate facility-based assessment areas that include a partial county. However, a facility-based assessment area that includes a partial county would continue to be required to consist of whole census tracts. The agencies believe this flexibility would be appropriate for small and intermediate banks, because it reflects these banks' lower asset levels and capacities.

The agencies propose keeping the flexibility afforded a military bank to be able to delineate its customer base as its assessment area rather than a geographic delineation, consistent with the current CRA statute.[156]

In all cases and for all bank categories, the agencies propose retaining the prohibition that assessment areas may not reflect illegal discrimination or arbitrarily exclude low- or moderate-income census tracts. Arbitrarily excluding certain census tracts from an assessment area would reduce a bank's CRA obligation to serve its entire community, including low- or moderate-income individuals and census tracts, and the agencies consider this prohibition to be a vital component of the assessment area framework. Moreover, the agencies continue to recognize the importance of coordinating fair lending examinations with CRA examinations where feasible to ensure assessment areas do not reflect illegal discrimination.

Request for Feedback

Question 39. Should both small and intermediate banks continue to have the option of delineating partial counties, or should they be required to delineate whole counties as facility-based assessment areas to increase consistency across banks?

Question 40. Do the proposed definitions of ''remote service facility'' and ''branch'' include sufficient specificity for the types of facilities and circumstances under which banks would be required to delineate facility-based assessment areas, or are other changes to the CRA regulations necessary to better clarify when the delineation of facility-based assessment areas would be required?

Question 41. How should the agencies treat bank business models where staff assist customers to make deposits on their phone or mobile device while the customer is onsite.

Question 42. Should the proposed ''accepts deposits'' language be included in the definition of a branch?

C. Retail Lending Assessment Areas

In § __.17, the agencies are proposing an approach for large banks that would establish retail lending assessment areas where a bank has concentrations of home mortgage or small business lending outside of its facility-based assessment areas. Large banks would be evaluated under the Retail Lending Test, and not under other performance tests, in these areas.

The agencies consider it appropriate to evaluate large banks' retail lending in retail lending assessment areas on a local basis because it accords with CRA's focus on a bank's local performance in meeting community credit needs. A local evaluation promotes transparency by providing useful information to the public and banks regarding their performance in specific markets. The proposed approach of designating retail lending assessment areas is designed to provide a pathway to evaluate banks in a way that provides parity between banks that lend primarily through branches and those banks with different business models. Designating new retail lending assessment areas would ensure that, regardless of delivery channel, large banks would have evaluations of their retail lending in the local markets where they conduct significant retail lending business. In addition, as discussed in § __.22, for large banks, the agencies propose evaluating a bank's retail lending performance on an aggregate

[153] The agencies propose a definition of county in § __.12 that means any county or statistically equivalent entity as defined by the U.S. Census Bureau.

[154] 12 CFR __.41(e)(4); *see also* Q&A § __.41(e)(4)–1.

[155] Q&A § __.41(e)(4)–1.

[156] 12 U.S.C. 2902(4).

basis in areas outside of facility-based and retail lending assessment areas. This is intended to ensure that bank lending that is too geographically dispersed to be evaluated on a local basis is still considered in the bank's evaluation.

The agencies do not propose applying retail lending assessment area requirements to intermediate or small banks. For small banks, the agencies propose maintaining the status quo approach of evaluating a small bank in its facility-based assessment areas. For intermediate banks with more than 50 percent of lending outside of facility-based assessment areas, the agencies propose evaluating a bank's retail lending performance on an aggregate basis in areas outside of its facility-based assessment areas, rather than evaluating outside assessment area performance in specific MSAs or non-MSA portions of states where there are concentrations of lending. As discussed further in Section X, the agencies propose tailoring this approach so it applies to the subset of intermediate banks doing the most lending outside of facility-based assessment areas.

1. Overview of Requirements for Retail Lending Assessment Areas

Under this proposal, large banks would be required to designate retail lending assessment areas that would consist of either: (i) The entirety of a single MSA excluding counties inside their facility-based assessment areas; or (ii) all of the nonmetropolitan counties in a single state, excluding counties inside their facility-based assessment areas, aggregated into a single retail lending assessment area. A large bank would be required to delineate a retail lending assessment area in any MSA or the combined non-MSA areas of a state, respectively, in which it originated in that geographic area, as of December 31 of each of the two preceding calendar years: (i) At least 100 home mortgage loans outside of its facility-based assessment areas; or (ii) at least 250 small business loans outside of its facility-based assessment areas.

The agencies believe retail lending assessment areas composed of MSAs and non-MSAs provide a way to evaluate retail lending that occurs outside of facility-based assessment areas on a local basis. In establishing a bank's retail lending assessment areas in non-MSAs, the agencies would combine all loans in nonmetropolitan counties within a state that are not part of a bank's facility-based assessment areas to determine whether the bank's lending levels in those areas are sufficient to trigger a retail lending assessment area, using the 100 home mortgage loan or 250 small business loan thresholds. The agencies recognize that in many nonmetropolitan areas, retail lending is dispersed due to low population density and few bank branches. Combining non-MSA areas within a state is intended to ensure a sufficient volume of lending to require the delineation of retail lending assessment areas and ensure appropriate emphasis on these areas.[157]

Two Years of Data. With the objective of providing greater stability and certainty regarding the use of retail lending assessment areas over time, the agencies propose using two years of data to determine the need to establish retail lending assessment areas. Specifically, the proposal would be based on a bank's number of loans meeting the thresholds in both of the previous two calendar years before retail lending assessment areas would be required. This approach is intended to mitigate uncertainty for banks about when a retail lending assessment area could be designated and make retail lending assessment areas more durable over time. Furthermore, the agencies are considering publishing data, for example via an online dashboard, that would allow banks to assess how their current performance compares with relevant benchmarks in both facility-based assessment areas and retail lending assessment areas.

Thresholds. The agencies propose thresholds of 100 home mortgage loans and 250 small business loans in two consecutive years to require the delineation of retail lending assessment areas. To determine these thresholds, the agencies considered what levels would appropriately align with the amount of lending typically evaluated in a facility-based assessment area. The agencies also considered what threshold levels would result in a substantial percentage of loans that are outside of facility-based assessment areas being evaluated within a retail lending assessment area, as the agencies believe retail lending should be evaluated within a local context wherever feasible, based on a sufficient volume of loans and the size and business model of the bank.

For the mortgage loan threshold, the agencies found that the median number of home mortgage loans within a facility-based assessment area by a large bank in 2019, defined using the asset threshold proposed in § __.12, was 114.[158] The proposed threshold of 100 home mortgage loans would therefore establish a retail lending assessment area based on a similar level of lending present in a typical facility-based assessment area. In addition, as shown in Table 1, the proposed threshold of 100 home mortgage loans would result in approximately 50 percent of bank home mortgage loans that are currently outside of facility-based assessment areas being evaluated within a retail lending assessment area, based on analysis of 2017–2019 lending data from the CRA Analytics Data Tables.[159]

For small business lending, the agencies found that the median number of small business loans within a facility-based assessment area by a large bank in 2019, defined using the asset threshold proposed in § __.12, was 101. The agencies considered it appropriate to propose a higher threshold of 250 small business loans for the requirement to establish retail lending assessment areas because this level would result in a large share (62 percent) of bank loans that are currently outside of facility-based assessment areas being evaluated within a retail lending assessment area.

Table 1 also shows, under different threshold options for home mortgage loans and small business loans, respectively: (i) The number of banks that would be affected by the delineation of a new retail lending assessment area; (ii) the number of retail lending assessment areas that would be delineated; (iii) the percentage of outside facility-based assessment area lending that would be included in retail lending assessment areas; and (iv) the percentage of lending overall that would be captured under either facility-based

[157] The agencies' analysis of home mortgage loan and small business loan data from 2017–2019 indicates that the share of bank loans in non-MSA areas that would be evaluated at the local level would have increased from 67 percent to 83 percent for home mortgage loans, and from 38 percent to 80 percent for small business loans in 2019 under the proposed approach, due to adding retail lending assessment areas to existing facility-based assessment areas.

[158] The median number of home mortgage loans and small business loans for facility-based assessment areas includes the banks' total inside assessment area loans for each whole MSA or state non-MSA area that contains at least one facility-based assessment area. For example, if a bank has two facility-based assessment areas in one MSA, the loan count for those two areas was summed and treated as one facility-based assessment area. The median number of loans in facility-based assessment areas without combining those in the same MSA or non-MSA area was smaller. This analysis included single-family and multifamily loan originations; however, the proposed rule would include only single-family (*i.e.,* 1- to 4-unit) originations.

[159] The CRA Analytics Data Tables combine HMDA data, CRA small business and small farm data, and manually extracted data from CRA performance evaluations. Bank and community attributes (*e.g.,* assets, deposits, branching, and information about communities, such as percentage of low- and moderate-income households) and other third-party vendor data supplement the data tables. *See https://www.federalreserve.gov/consumerscommunities/data_tables.htm.*

assessment areas or retail lending assessment areas, on a combined basis.

TABLE 1 TO SECTION __.17—SUMMARY OF POTENTIAL EFFECT OF DIFFERENT RETAIL LENDING THRESHOLDS ON LARGE BANKS

	Number of affected banks (% of all)		Number of retail lending assessment areas (MSAs or state nonmetropolitan areas)			Outside-facility-based assessment area lending covered by retail lending assessment areas (%)	Lending covered by facility-based and retail lending assessment areas (% of total loans)
			All banks	Median	Max		
Mortgage Loans:							
-50 loans	148	46%	1,201	2	167	62%	92%
-100 loans (proposed)	91	28	641	2	123	50	90
-250 loans	38	12	204	2	59	32	86
Small business loans:							
-50 loans	103	31	2,676	1	386	76	90
-100 loans	48	15	1,771	5	337	72	88
-250 loans (proposed)	26	8	877	9.5	233	62	84
-500 loans	18	5	488	7	158	54	81
Total (meeting either mortgage or small business thresholds)	104	31	1,382	6	233	60	86

Note: The Retail Lending Assessment Areas are areas that would have been delineated in 2019 based on 2017 and 2018 data (two-year lending thresholds) using the CRA Analytics Data Tables. The bank lending volume was calculated using the 2017–2019 data. The sample includes banks with total assets of at least $2 billion in both 2017 and 2018. Wholesale banks, limited purpose banks, and military banks were excluded from this analysis.

Major Product Line. To provide a consistent evaluation of large banks' retail lending across different types of assessment areas, the agencies would use the major product line standard, discussed in Section VIII, to determine which retail lending product lines would be evaluated in a retail lending assessment area. As with facility-based assessment areas, the major product line standard is intended to ensure that a bank's performance in retail lending assessment areas reflects performance over whichever of a bank's retail lending products it specializes in locally.

The agencies seek feedback on an alternative approach to identifying major product lines in retail lending assessment areas. Under the alternative approach, rather than evaluating all of a bank's major product lines in a retail lending assessment area, the agencies would evaluate only home mortgage and small business lending. In addition, under the alternative approach, the agencies would only evaluate home mortgage lending if the bank surpassed the proposed 100 home mortgage loans threshold in the retail lending assessment area and would only evaluate small business lending if the bank surpassed the proposed 250 small business loans threshold. This is in contrast to the proposed approach, which would evaluate all major product lines whether the bank surpasses either or both of the proposed retail lending assessment area thresholds. The agencies considered that this alternative would more narrowly tailor the evaluation approach in retail lending assessment areas.

Option for Additional Tailoring. The agencies seek feedback on an alternative approach that would tailor the retail lending assessment area approach to exempt certain large banks that have a significant majority, such as at least 80 or 90 percent, of their retail loans inside their facility-based assessment areas. This exemption could tailor the retail lending assessment area approach so it does not include banks that are primarily branch-based, and therefore, the bank's overall Retail Lending Test conclusion could be reasonably derived by focusing on the activity within its facility-based assessment areas. A trade-off of this alternative is that it could exempt large banks which, despite having made a relatively low share of their loans outside of their facility-based assessment areas, have a large volume of such loans. As a result, these loans would be exempt from local evaluation, especially in smaller MSAs and rural areas. Under such an alternative, the agencies would evaluate the outside lending under the outside retail lending area approach described below.

2. Evaluation of Outside Lending of Large Banks and Certain Intermediate Banks

The agencies propose that retail loans that are located outside of any facility-based assessment areas or retail lending assessment areas for a large bank, including a large bank that elects evaluation under an approved strategic plan, and outside of any facility-based assessment areas for intermediate banks with substantial outside assessment area lending, would be evaluated on an aggregate basis at the institution level, as discussed in Section X.[160] The agencies considered that the inclusion of lending outside a bank's facility-based assessment areas or retail lending assessment areas in the evaluation framework would allow for a comprehensive assessment of a bank's lending to low- and moderate-income individuals and communities. This approach is also intended to ensure that a large bank's lending that is too geographically dispersed to be examined within an assessment area would still be evaluated.

3. Descriptive Analysis of Lending to Low- and Moderate-Income Borrowers or Smaller Businesses, and in Low- and Moderate-Income Census Tracts

As reflected in Table 2, the agencies conducted a descriptive analysis showing the levels of lending to low- and moderate-income borrowers and small businesses or in low- and moderate-income census tracts as compared across facility-based assessment areas, retail lending assessment areas, and outside of any assessment area. This analysis does not account for underlying differences between a bank's facility-based assessment areas and other areas that could affect low- and moderate-income lending levels, including the percentage of low- and moderate-income individuals and census tracts. The

[160] Under the proposed approach, approximately 10 percent of large banks' home mortgage loans and 16 percent of small business loans during 2017–2019 would not be captured by facility-based or retail lending assessment areas.

percentage of bank home mortgage loans to low- and moderate-income borrowers was slightly higher in facility-based assessment areas (21 percent) than in areas that would have been delineated as retail lending assessment areas (19 percent). The share of bank home mortgage loans in low- and moderate-income census tracts showed a similar pattern. For bank small business loans, the gap was greater in terms of the share of loans to smaller businesses in facility-based assessment areas (62 percent) and in retail lending assessment areas (46 percent). The gap in terms of the share of loans to small businesses in low- and moderate-income census tracts was modest, at 24 percent for facility-based assessment areas and 22 percent for retail lending assessment areas.

TABLE 2 TO SECTION __.17—LARGE BANK LOW- AND MODERATE-INCOME LENDING IN FACILITY-BASED ASSESSMENT AREAS, RETAIL LENDING ASSESSMENT AREAS, AND OTHER AREAS

	Total number of loans (2017–2019)	Share of loans to low- and moderate-income borrowers or smaller businesses (%)	Share of loans in low- and moderate-income census tracts (%)
Mortgage Loans:			
Facility-based Assessment Areas	4,777,269	21%	15%
Retail Lending Assessment Areas	634,258	19	14
Areas outside Bank Assessment Areas	631,062	17	13
Total	6,042,589	20	14
Small Business Loans:			
Facility-based Assessment Areas	7,848,271	62	24
Retail Lending Assessment Areas	3,490,558	46	22
Areas outside Bank Assessment Areas	2,097,510	40	21
Total	13,436,339	54	23

Note: The Retail Lending Assessment Areas are areas that would have been delineated in 2019 based on the 2017 and 2018 data (two-year lending thresholds) from CRA Analytics Data Tables. The bank lending volume was calculated using the 2017–2019 data. The sample includes banks with total assets of at least $2 billion in both 2017 and 2018. Wholesale banks, limited purpose banks, and military banks were excluded.

Request for Feedback

Question 43. If a bank's retail lending assessment area is located in the same MSA (or state non-MSA area) where a smaller facility-based assessment area is located, should the bank be required to expand its facility-based assessment area to the whole MSA (or non-MSA area) or should it have the option to designate the portion of the MSA that excludes the facility-based assessment area as a new retail lending assessment area?

Question 44. Should a bank be evaluated for all of its major product lines in each retail lending assessment area? In the alternative, should the agencies evaluate home mortgage product lines only when the number of home mortgage loans exceeds the proposed threshold of 100 loans, and evaluate small business loans only when the number of small business loans exceeds the proposed threshold of 250 loans?

Question 45. The agencies' proposals for delineating retail lending assessment areas and evaluating remaining outside lending at the institution level for large banks are intended to meet the objectives of reflecting changes in banking over time while retaining a local focus to CRA evaluations. What alternative methods should the agencies consider for evaluating outside lending that would preserve a bank's obligation to meet the needs of its local communities?

Question 46. The proposed approach for delineating retail lending assessment areas would apply to all large banks with the goal of providing an equitable framework for banks with different business models. Should a large bank with a significant majority of its retail loans inside of its facility-based assessment areas be exempted from delineating retail lending assessment areas? If so, how should an exemption be defined for a large bank that lends primarily inside its facility-based assessment area?

D. Areas for Eligible Community Development Activity

The agencies propose to evaluate the community development performance of a large bank, including a large bank that elects evaluation under an approved strategic plan, a wholesale or limited purpose bank, or an intermediate bank that elects evaluation under the Community Development Financing Test within each facility-based assessment area, and also to consider any additional qualifying activities that the banks elect to conduct outside of their facility-based assessment areas, referred to as ''areas for eligible community development activity'' in § __.18. The community development activities outside of a bank's facility-based assessment areas would not be required to serve the bank's retail lending assessment areas or any other specific geographies, and would be considered to inform state, multistate MSA, and institution level conclusions. This approach is intended to achieve a careful balance between emphasizing a bank's performance in its facility-based assessment areas, while also allowing banks the option of conducting qualifying community development activities outside of their facility-based assessment areas in broader geographic areas. The approach is described in detail in §§ __.24 and __.26.

The agencies recognize that the current approach to considering activities in broader statewide and regional areas has been beneficial from the standpoint of allowing a degree of flexibility but has also contributed to uncertainty about whether activities will qualify. For example, under the current approach, if a bank has conducted an activity in a broader statewide or regional area that examiners determine does not benefit an assessment area and the examiners determine that the bank has not already met the needs of its assessment areas, the bank may not receive consideration for that activity. In addition, banks may receive consideration at the assessment area level for an activity that serves a broader statewide or regional area provided that the assessment area is within the scope of the activity, even if the activity cannot be shown to have an immediate benefit to assessment area.

Under the proposed approach, the agencies would consider all qualifying activities, regardless of the geographies served. The agencies would clearly distinguish between qualifying activities that serve a facility-based assessment area and those that serve other areas and would establish clear standards for performance for facility-based assessment areas, states, multistate MSAs, and at the institution level. This approach is intended to create additional flexibility for banks to conduct qualifying activities outside of facility-based assessment areas, while also more directly emphasizing facility-based assessment area performance.

In determining the proposed assessment area approach for evaluating community development activities, the agencies considered the benefits of additional flexibility and certainty relative to the current approach. Granting additional flexibility may allow banks to identify impactful community development opportunities that serve geographies with high unmet community development needs, including geographies where few banks currently have facility-based assessment areas or concentrations of retail loans. Flexibility would also allow banks to identify those opportunities where the bank's business model, strategy, and expertise are well aligned with a community need.

While the agencies consider the option of flexibility to be beneficial for all banks' community development activities, it may be especially beneficial for the community development activities that are conducted by banks that operate primarily or entirely without branches. Under the proposed approach, these banks would continue to be evaluated in their facility-based assessment areas, but would also have the ability to conduct activities that receive CRA consideration in other markets. The agencies consider that the additional flexibility and certainty of this change could help to address a stakeholder concern regarding high concentrations of community development activities in some markets, including those where the main offices of internet and wholesale banks are located, and where there are significant unmet needs in other markets.

To affirm the current obligation that large, intermediate, and wholesale and limited purpose banks must meet the community development needs of their facility-based assessment areas, the agencies propose a number of provisions for the performance tests and overall ratings approach that emphasize assessment area performance, discussed in §§ __.24 and __.26. For example, the agencies would develop a conclusion in each facility-based assessment area for the applicable community development tests, which would be incorporated directly into institution ratings.

Request for Feedback

Question 47. The agencies propose to give CRA consideration for community development financing activities that are outside of facility-based assessment areas. What alternative approaches would encourage banks that choose to do so to conduct effective community development activities outside of their facility-based assessment areas? For example, should banks be required to delineate specific geographies where they will focus their outside facility-based assessment area community development financing activity?

Question 48. Should all banks have the option to have community development activities outside of facility-based assessment areas considered, including all intermediate banks, small banks, and banks that elect to be evaluated under a strategic plan?

VII. Performance Tests, Standards, and Ratings in General

The agencies propose to tailor the evaluation framework based on three bank size categories, revised from the current bank size categories used in CRA evaluations. The agencies also propose a tailored approach for wholesale banks, limited purpose banks, and banks that are approved to be evaluated under a strategic plan. The agencies recognize the importance of an evaluation framework that reflects differences in bank capacities, business models, and strategies. In addition, the agencies also recognize the importance of ensuring that banks meet their affirmative obligation under the CRA to meet the credit needs of their communities, which may encompass a wide range of retail lending products, services, and community development activities.

Proposed § __.21 details the proposed evaluation framework for each bank category and describes the treatment of bank subsidiaries, affiliates, consortiums, and third parties. In addition, this section of the proposed regulation provides performance context information considered, describes the categories for bank ratings, and outlines the requirement that bank CRA activities be conducted in a safe and sound manner.

A. Performance Tests, Tailoring to Bank Size, and Asset Thresholds

1. Current Approach

The current evaluation approach includes different examination processes for banks of different sizes and business models. Large banks are evaluated under three performance tests: The lending test, which assesses retail and community development loans; the investment test, which assesses qualified investments; and the service test, which assesses retail services and community development services. Intermediate small banks are evaluated under a lending test and a community development test, which assesses community development loans, qualified investments, and community development services. Small banks are evaluated under a single lending test. Wholesale and limited purpose banks are evaluated under a single community development test which assesses community development loans, qualified investments, and community development services. In addition, any bank may seek approval to be evaluated under a strategic plan.

2. Proposed Bank Categories and Evaluation Framework

The agencies propose an evaluation framework that is tailored based on bank size and business model, with different performance tests applied to banks of different sizes and to wholesale and limited purpose banks. The agencies are proposing updates to certain performance tests to incorporate standardized metrics and benchmarks. The agencies would assign conclusions for each performance test for each of a bank's facility-based assessment areas, states and multistate MSAs and at the institution level, as applicable. For large banks, the agencies would also assign Retail Lending Test conclusions for each retail lending assessment area. For large banks and certain intermediate banks, the agencies would also assign Retail Lending Test conclusions for outside retail lending areas.

Large Banks. The agencies propose four performance tests for large banks: A Retail Lending Test, a Retail Services and Products Test, a Community Development Financing Test, and a Community Development Services Test. Each of the four tests measures a different aspect of how responsive a bank's retail and community development activities are to the credit needs of its local communities. This proposed approach reflects a similar breadth of evaluation approaches as compared to the current framework that applies to large banks. Given their financial resources and market position, these banks collectively play a significant role in serving low- and moderate-income individuals and communities. Furthermore, banks in this category generally have the capacity to deliver a range of credit products and services that are covered under the four performance tests.

The agencies propose that some new requirements would apply only to large banks with assets of over $10 billion, reflecting the increased resources of these institutions. For example, the agencies propose that only large banks with assets of over $10 billion would have requirements for deposits data, retail services data on digital delivery systems, retail services data on responsive deposit products, and community development services data. In addition, the agencies propose that banks with assets of over $10 billion, including wholesale and limited purpose banks, would have automobile lending data requirements.

The proposed Retail Lending Test would measure how well a bank's retail lending meets the credit needs of low- and moderate-income individuals, small businesses and farms, and low- and moderate-income geographies through analysis of lending volume and lending distribution. To increase consistency in evaluations, the agencies propose that the Retail Lending Test rely on a set of metrics and community and market benchmarks that are grounded in local data. A bank's retail lending distribution metrics, calculated using the bank's number of loans, would be compared to local community and market benchmarks as proposed in § __.22 and discussed in Section IX. The agencies also propose that additional factors discussed in § __.22(e) be considered when evaluating a bank's retail lending performance. Retail Lending Test conclusions would be assigned for each of a large bank's facility-based assessment areas, retail lending assessment areas, and outside retail lending area, as well as at the state, multistate MSA, and institution levels, as applicable.

The proposed Community Development Financing Test would assess how well a bank meets community development financing needs. As proposed, the Community Development Financing Test would use metrics and benchmarks to standardize the review of community development loans and investments, while also incorporating a qualitative impact review of community development financing activities to complement the dollar-based community development financing metric and benchmarks. As proposed in § __.24 and discussed in Section XII, conclusions would reflect the agencies' qualitative assessments of a bank's metric relative to the benchmarks and impact review. Conclusions would be assigned for each of a bank's facility-based assessment areas, states, and multistate MSAs, and at the institution level, as applicable.

The proposed Retail Services and Products Test and Community Development Services Test would evaluate how well a bank's products and services meet community credit and community development needs, respectively. The agencies propose revised standards for these tests to reflect changes in banking over time and to introduce standard metrics, as well as benchmarks for the Retail Services and Products Test, to allow a more consistent evaluation approach.

The agencies propose additional tailoring of the Retail Services and Products Test, as well as the Community Development Services Test, reflecting the increased resources of large banks with assets of over $10 billion. Under the Retail Services and Products Test, the agencies propose that all large banks would be evaluated on their branch and remote service facility availability, as well as responsive credit products. The agencies propose that the following parts of this evaluation, as well as the associated data requirements, would be required only for large banks with assets of over $10 billion: (i) Digital and other delivery systems; and (ii) responsive deposit products. For large banks with assets of $10 billion or less, these components would be optional.

Under the Community Development Services Test, the agencies propose that only large banks with assets of over $10 billion would be required to collect, maintain, or report community development services data in a standardized format.

Section __.23 addresses the proposed Retail Services and Products Test and is discussed in Section XI. Section __.25 addresses the proposed Community Development Services Test and is discussed in Section XIII. Conclusions for the Retail Services and Products Test and Community Development Services Test would be assigned for each of a bank's facility-based assessment areas, states, and multistate MSAs, and at the institution level, as applicable.

Intermediate Banks. The agencies propose to evaluate intermediate banks under the proposed Retail Lending Test in § __.22 and the current intermediate small bank community development test as described in § __.29 or, at the bank's option, evaluation under the proposed Community Development Financing Test as described in § __.24. If an intermediate bank opts to be evaluated under the proposed Community Development Financing Test, the bank may request additional consideration at the institution level for community development services activities as described in § __.25 and for any retail services activities that serve low- or moderate-income individuals or communities (*i.e.,* activities covered under the proposed Retail Services and Products Test in proposed § __.23) when bank performance is at least satisfactory without consideration of such activities.

The agencies would tailor certain features of the Retail Lending Test and Community Development Financing Test for intermediate banks, including by maintaining current data collection, maintenance, and reporting requirements for intermediate banks that do not elect to be evaluated under the Community Development Financing Test, as discussed in § __42. By applying the Retail Lending Test to banks of this size, the proposal is intended to improve the clarity, consistency, and transparency of the evaluation of retail lending. The agencies believe retail lending remains a core part of a bank's affirmative obligation under the CRA to meet the credit needs of their entire communities. At the same time, the agencies recognize that, compared to large banks, intermediate banks might not offer as wide a range of retail products and services, have a more limited capacity to conduct community development activities, and may focus on the local communities where their branches are located.

Small Banks. The agencies propose to evaluate small banks under the current lending test as the default evaluation method. However, small banks would have the ability to opt into the proposed Retail Lending Test. Consistent with the current approach, small banks would continue to have the ability to request additional consideration at the institution level for qualifying community development activities or retail services activities that serve low- or moderate-income individuals and communities, when bank performance is at least satisfactory without consideration of such activities.

Allowing small banks the option of being evaluated under the proposed Retail Lending Test is intended to ensure that small banks have available a metrics-based approach to increase the clarity, consistency, and transparency of how their retail loans are evaluated. The agencies recognize the capacity constraints of these banks, and their more targeted focus on retail lending as opposed to the types of activities evaluated by other performance tests. To tailor the test to small banks' more limited capacities, the agencies propose to evaluate a small bank that opts into the Retail Lending Test under the provisions that pertain to an intermediate bank, with the exception that no small bank would be evaluated on its retail lending outside of its assessment areas, regardless of the percentage of the bank's overall retail lending it comprises.

Wholesale and Limited Purpose Banks. As proposed in § __.26 and discussed further in Section XIV, the agencies propose evaluating wholesale and limited purpose banks under only the Community Development Financing Test for Wholesale and Limited Purpose Banks, which would retain much of the current qualitative approach for this evaluation, with the addition of a quantitative metric at the institution level to improve consistency. The agencies also propose giving wholesale and limited purpose banks the option to have community development service activities in § __.25 considered to inform a bank's overall institution rating when bank performance is at least satisfactory without consideration of community development service activities.

3. Alternative Evaluation Under a CRA Strategic Plan

The agencies propose retaining the option for any bank to elect evaluation under an approved CRA strategic plan as discussed in § __.27 and in Section XV. The agencies propose to retain this alternative evaluation method to give banks flexibility to meet their CRA obligations in a manner that is tailored to community needs and opportunities as well as their own capacities, business strategies, and expertise. To ensure that banks evaluated under a strategic plan meet their CRA obligations, the agencies propose that strategic plans incorporate a metrics-based analysis of a bank's lending to low- or moderate-income individuals and communities. In addition, large banks evaluated under an approved strategic plan would be expected to delineate both facility-based and retail lending assessment areas, as applicable. For purposes of data collection, maintenance, and reporting requirements under proposed § __.42, the agencies believe that a bank evaluated under an approved strategic plan should have the same requirements as another bank of the same asset sizes. For example, a bank evaluated under an approved strategic plan with assets of over $10 billion would have the same data collection, maintenance, and reporting requirements of a large bank with assets of over $10 billion.

Conclusions for Tests

Under the proposal, the agencies would assign conclusions on each performance test in facility-based assessment areas, states, multistate MSAs, and at the institution level, as applicable. In addition, Retail Lending Test conclusions would also be assigned to retail lending assessment areas and outside retail lending areas, as applicable. The agencies propose retaining the five categories for conclusions composed of "Outstanding," "High Satisfactory," "Low Satisfactory," "Needs to Improve," and "Substantial Noncompliance." The proposed "High Satisfactory" and "Low Satisfactory" conclusions allow the agencies to better differentiate very good performance from performance at the lower end of the satisfactory range as compared to developing conclusions with only four categories including a single satisfactory category.

4. Asset Thresholds

As defined in proposed § __.12, the agencies propose to raise the asset threshold for each bank category. The agencies intend to balance the goals of providing more clarity, consistency, and transparency in the evaluation process, with minimizing the associated data requirements for smaller banks. Specifically, the proposal would modify the definition of a small bank to increase the asset threshold from $346 million to $600 million in assets. The proposal would create a new intermediate bank category that would include banks of at least $600 million and not more than $2 billion. The proposed intermediate bank threshold would be higher than the current intermediate small bank category, which currently includes banks with assets between $346 million and $1.384 billion. Large banks would be defined as banks with assets of at least $2 billion, which is higher than the current large bank threshold of $1.384 billion. A calculation of a bank's assets would be based on its average assets over four quarters of the calendar year, for two consecutive calendar years. If a bank's average assets correspond to two different bank size categories in two consecutive years, the bank would be considered to belong to the smaller of the two size categories. The agencies would also use this approach for calculating a bank's assets for purposes of distinguishing between large banks with assets of $10 billion or less from large banks with assets of over $10 billion for purposes of further tailoring certain elements of the proposal, as discussed in each respective section. As also specified in proposed § __.12, the agencies propose that both the $600 million asset size threshold and the $2 billion asset size threshold would be adjusted annually for inflation (based on the annual percentage change in a measure of the Consumer Price Index).

The agencies are proposing changes to the definition of a small bank in recognition of the potential challenges associated with regulatory changes for banks with more limited capacity. The agencies are in the process of seeking approval from the SBA to use the proposed $600 million threshold, adjusted annually for inflation, rather than the SBA's recently updated size standards, which include a $750 million threshold for small banks.[161] In requesting this approval, the agencies believe that it is appropriate to evaluate banks with assets of between $600 million and $750 million under the proposed intermediate banks standards, and that these banks have the capacity to conduct community development activities, as would be a required component of the evaluation for intermediate, but not small banks. Based on an analysis of current bank size characteristics, the agencies estimate that the proposed change to the small bank asset threshold would result in approximately 778 banks, representing 2 percent of all deposits, transitioning from the current intermediate-small bank category to the proposed small bank category.[162]

At the same time, by replacing the current intermediate small bank category with a new intermediate bank category that starts at a higher asset size threshold, the proposal reflects the agencies' view that banks of this size should have meaningful capacity to conduct community development financing, as they do under the current approach.

In proposing to increase the threshold for large banks, the agencies considered that banks of this size generally have the capacity to conduct the range of activities that would be evaluated under each of the four applicable performance tests. The agencies also recognize that the proposed Retail Lending Test and Community Development Financing test would require new data collection and reporting and propose a higher asset threshold because smaller large banks may have more limited capacity. The agencies estimate that the proposed increase in the large bank threshold would result in approximately 216

[161] 87 FR 18627, 18830 (Mar. 31, 2022). The SBA revised the size standards applicable to small commercial banks and savings institutions, respectively, from $600 million to $750 million, based upon the average assets reported on such a financial institution's four quarterly financial statements for the preceding year. The final rule has a May 2, 2022, effective date.

[162] Estimates are based on average assets from 2020 and 2021 Call Report data and the 2021 FDIC's Summary of Deposits.

banks representing approximately 2 percent of all deposits transitioning from the current large bank category to the proposed intermediate bank category. The agencies considered that increasing the large bank asset threshold beyond the proposed $2 billion level would remove a greater share of banks that play a significant role in fulfilling low- and moderate-income credit needs in local areas from the more comprehensive evaluation included in the proposed large bank evaluation approach.

Request for Feedback

Question 49. The agencies' proposed approach to tailoring the performance tests that pertain to each bank category aims to appropriately balance the objectives of maintaining strong CRA obligations and recognizing differences in bank capacity. What adjustments to the proposed evaluation framework should be considered to better achieve this balance?

Question 50. The proposed asset thresholds consider the associated burden related to new regulatory changes and their larger impact on smaller banks, and it balances this with their obligations to meet community credit needs. Are there other asset thresholds that should be considered that strike the appropriate balance of these objectives?

Question 51. Should the agencies adopt an asset threshold for small banks that differs from the SBA's size standards of $750 million for purposes of CRA regulations? Is the proposed asset threshold of $600 million appropriate?

B. Affiliate and Other Considerations

1. Current Approach for Evaluating Affiliate Activities

Under the current CRA regulations, banks are not required to include the activities of their affiliates in the evaluation of their CRA performance. Instead, any bank may elect to include affiliate lending,[163] community development investments,[164] and community development services,[165] as applicable, in the bank's evaluation. A bank provides the data necessary for evaluation if it elects to have the CRA activities of its affiliates considered.

Affiliate activities evaluated under the current CRA framework are subject to certain constraints.[166] In general, an affiliate may not claim a loan origination or purchase claimed by another affiliate; however, a bank may count as a purchase a loan originated by an affiliate that the bank subsequently purchases (even if the affiliate claimed the origination for CRA purposes), or count as an origination a loan later sold to an affiliate (even if the affiliate also claims the purchase for CRA purposes), provided the same loans are not sold several times to inflate their value for CRA purposes.[167] In addition, if a bank elects to have a particular category of affiliate lending in a particular assessment area considered, all loans of that type made by all of its affiliates in that particular assessment area must be considered.[168] For example, the bank cannot elect to include only home mortgage loans to low- or moderate-income individuals or in low- or moderate-income areas made by its affiliates and not include home mortgage loans to middle- and upper-income individuals or in middle- and upper-income areas.[169]

There are differing views among stakeholders on how to evaluate a bank's affiliates' activities. Some stakeholders have expressed support for permitting banks to have the option to have their affiliates' activities considered in their CRA evaluations. These stakeholders maintain that activities of bank affiliates are important in the overall strategy of a bank to meet the needs of the communities it serves. Other stakeholders have disagreed with the optionality of including affiliate activities, particularly affiliate lending, stating that doing so creates deficiencies in the examination process of a bank and could lead to abuse, because there are no consequences for affiliates that do not address the credit needs of low- and moderate-income individuals and in low- and moderate-income communities.

2. Treatment of Certain Bank Subsidiaries

Regarding the treatment of certain bank subsidiaries described below, the agencies propose: (i) Requiring the inclusion of relevant activities of a state member bank's ''operations subsidiaries'' and a national bank's, Federal savings association's, state non-member bank's, and state savings association's ''operating subsidiaries'' (referred to collectively as ''bank subsidiaries'' in this **SUPPLEMENTARY INFORMATION**) in the evaluation of the relevant bank's CRA performance; and (ii) maintaining the current flexibility for banks to choose to include or exclude the relevant activities of other bank affiliates.[170]

The agencies believe that where banks exercise a high level of ownership, control, and management of their subsidiaries, the activities of those subsidiaries should reasonably be attributable to the bank. Moreover, the agencies believe that evidence of discriminatory or illegal practices by these bank subsidiaries should be factored into a bank's performance evaluation, because their activities would be considered to be a component of the bank's own operations.

In this regard, the agencies are proposing to add a definition of ''operations subsidiary'' to the Board's CRA regulation and a definition of ''operating subsidiary'' to the FDIC's and OCC's CRA regulations to identify those bank affiliates whose activities would be required to be attributed to a bank's CRA performance.

Specifically, as defined in proposed § __.12 of the Board's CRA regulation, an ''operations subsidiary'' would mean an organization designed to serve, in effect, as a separately incorporated department of the bank, performing functions that the bank is empowered to perform directly at locations at which the bank is authorized to engage in business. As defined in proposed § 25.12 of the OCC's CRA regulation, an ''operating subsidiary'' would mean an operating subsidiary as described in: (i) 12 CFR 5.34 in the case of an operating subsidiary of a national bank; and (ii) 12 CFR 5.38 in the case of an operating subsidiary of a Federal or state savings association. As defined in proposed § 345.12 of the FDIC's CRA regulation, ''operating subsidiary'' for state non-member banks would have the same meaning as given to the term in 12 CFR 5.34 of the OCC's regulations.

Although the FDIC's regulations define ''subsidiary'' under 12 CFR 362.2(r), the definition includes all subsidiaries, not just operating subsidiaries. Neither the FDIC's regulations nor its implementing statute defines an ''operating'' or ''operations'' subsidiary. The FDIC and OCC, therefore, seek comment on whether, for purposes of CRA, the proposed definition of ''operating subsidiary'' for

[163] 12 CFR __.22(c). A bank may elect to have only a particular category of its affiliate's lending considered. The basic categories of loans that can be considered are home mortgage loans, small business loans, small farm loans, community development loans and the five categories of consumer loans (automobile loans, credit card loans, home equity loans, other secured loans, and other unsecured loans). *See* Q&A § __.22(c)(1)–1.

[164] 12 CFR __.23(c).

[165] 12 CFR __.24(c).

[166] 12 CFR __.22(c); __.23(c); and __.24(c).

[167] *See* Q&A § __.22(c)(2)(i)–1.

[168] 12 CFR __.22(c)(2)(ii).

[169] *See* Q&A § __.22(c)(2)(i)–1.

[170] The proposed rule defines these terms in proposed § __.12.

state non-member banks and state savings associations would be the best approach, or whether the FDIC and OCC should consider alternative definitions of operating subsidiary for FDIC-regulated entities for purposes of their CRA regulations. For example, the FDIC seeks feedback regarding whether, for purposes of CRA, the FDIC should develop its own definition of operating subsidiary or, alternatively, adopt the Board's proposed definition of ''operations subsidiary.''

Similarly, the Board requests comment on the advantages and disadvantages of the proposed definition of ''operations subsidiary.'' For example, to make the definitions among the agencies more uniform, should the Board, for purposes of CRA, adopt the OCC's definition of ''operating subsidiary''? Would it be more appropriate for the Board to define, for purposes of CRA, an ''operations subsidiary'' to be a company that: (i) Is domiciled in a state of the United States or in the District of Columbia; (ii) engages solely in activities in which the parent state member bank may engage, at locations at which the state member bank may engage in the activity, and subject to the same limitations as if the state member bank were engaging in the activity directly; and (iii) is controlled (as defined in 12 CFR 225.2(e)) by the parent state member bank? What other criteria should the Board include in the definition of ''operations subsidiary'' for purposes of CRA?

3. Treatment of Other Bank Affiliates

The agencies propose that the current flexibilities that allow a bank to choose to include or exclude the activities of other bank affiliates that are not considered ''bank subsidiaries'' would be maintained. Thus, under the proposed Retail Lending Test, if a bank chooses to have the agencies consider retail loans within a retail loan category that are made or purchased by one or more of the bank's affiliates in a particular assessment area, provided those loans are not claimed for purposes of CRA by any other bank, the agencies would consider all of the retail loans within that retail loan category made by all of the bank's affiliates in that particular assessment area. The agencies are also considering an alternative approach when a bank chooses to have the agencies consider retail loans within a retail loan category that are made or purchased by one or more of the bank's affiliates in a particular assessment area. Under the alternative approach, the agencies would consider all of the retail loans within that retail loan category made by all of the bank's affiliates in all assessment areas.

Also similar to current practice, the agencies propose to retain the provision that discriminatory practices by a bank's affiliates could adversely affect a bank's CRA performance if those bank affiliates' loans were submitted by the bank for CRA consideration as part of the bank's lending activity. In addition, the agencies propose to expand the current provision that provides that other illegal credit practice by a bank's affiliates could adversely affect a bank's CRA performance to include all illegal practices.[171]

Thus, proposed § __.21(c) would provide that the agencies would consider retail loans by a bank subsidiary unless the bank subsidiary is subject to its own CRA requirements. Additionally, at a bank's option, the agencies would consider retail loans by other affiliates of the bank, if those activities are not claimed for purposes of CRA by any other bank. With respect to bank subsidiaries, and other affiliates the bank elects to include in its retail lending performance evaluation, the proposal would require that: (i) The bank provide data on the retail loans of those subsidiaries' and affiliates' pursuant to proposed § __.42; (ii) no affiliate may claim a retail loan origination or purchase if another bank claims, for purposes of CRA, the same retail loan origination or purchase; and (iii) if a bank elects to have the agencies consider retail loans within a particular retail loan category made by one or more of the bank's affiliates in a particular facility-based assessment area, retail lending assessment area, or outside retail lending areas (*i.e.,* outside of its facility-based assessment areas and retail lending assessment areas), the bank must elect to have the agencies consider all of the retail loans within that loan category made by all of the bank's affiliates in that particular facility-based assessment area, retail lending assessment area, or outside retail lending area (*i.e.,* nationwide), provided those loans are not claimed for purposes of CRA by any other bank.

Regarding retail services and products activities, community development financing activities, and community development services activities, the proposal provides that the agencies would consider the activities conducted by a bank subsidiary unless the bank subsidiary is subject to its own CRA requirements. Additionally, at a bank's option, the agencies would consider the activities of other affiliates of the bank, if those activities are not claimed for purposes of CRA by any other bank. With respect to bank subsidiaries and other affiliates that the bank elects to include in its retail services and products and community development activities performance evaluation, the bank would be required to provide data on the bank subsidiaries' and affiliates' activities, as applicable, pursuant to § __.42. Further, a bank would not be able to claim an affiliate's activity if any other bank claims, for purposes of CRA, the same activity.

4. Community Development Financing by a Consortium or a Third Party

Currently, community development loans and community development investments by a consortium in which the bank participates or by a third party in which the bank has invested are considered at the bank's option.[172] If the bank requests consideration for these activities, the bank must report the data pertaining to these loans or investments. Although the current CRA regulations permit participants or investors to choose the allocation of qualifying loans or investments among themselves for consideration, no participant or investor may claim a loan origination or loan purchase or investment if another participant or investor claims the same loan origination or purchase.[173] In addition, the bank may not claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total qualifying loans or investments made by the consortium or third party.[174]

As specified in proposed § __.21(d), the agencies propose to retain the current flexibility with respect to consideration for community development loans and investments by a consortium in which the bank participates or by a third party in which the bank has invested. Consistent with current regulations, under the proposal, a bank that requests to have these activities considered may not claim an activity claimed by another participant or investor and may not claim more than its percentage share of the total activity made by the consortium or third party. In addition, a bank that requests consideration for these activities would be required to collect and report the data on loans or investments for which it seeks consideration under the Community Development Financing Test pursuant to § __.42.

[171] *See* 12 CFR __.28(c) and proposed § __.28(d).

[172] *See* 12 CFR __.22(d) and __.25(d)(2).

[173] *See id.*

[174] *See id.*

Request for Feedback

Question 52. The agencies propose to require that the activities of a bank's operations and operating subsidiaries be included as part of its CRA evaluation, as banks exercise a high level of ownership, control, and management of their subsidiaries, such that the activities of these subsidiaries could reasonably be attributable directly to the bank. What, if any, other factors should be taken into account with regard to this requirement?

Question 53. As discussed above, what factors and criteria should the agencies consider in adopting definitions of "operating subsidiary" for state non-member banks and state savings associations, and "operations subsidiary" for state member banks, for purposes of this proposed requirement?

Question 54. When a bank chooses to have the agencies consider retail loans within a retail loan category that are made or purchased by one or more of the bank's affiliates in a particular assessment area, should the agencies consider all of the retail loans within that retail loan category made by all of the bank's affiliates only in that particular assessment area, or should the agencies then consider all of the retail loans made by all of the bank's affiliates within that retail loan category in all of the bank's assessment areas?

C. Performance Context Information Considered

The agencies propose that each performance test would be applied to a bank in light of the relevant performance context information. Under the current CRA regulations, examiners rely on a broad range of economic, demographic, and bank- and community-specific information to understand the context in which a bank's record of performance should be evaluated. In order to fairly evaluate the responsiveness of a bank's activities, the agencies propose that consideration would be given to performance context information, including the bank's capacity and constraints, its business strategy, the needs of the community, and the opportunities for lending, investments, and services in the community.

The proposed § __.21(e) provides that the agencies could consider performance context information to the extent it is not otherwise considered as part of a proposed performance test. This reference is intended to acknowledge that the proposed performance tests incorporate aspects of performance context in different ways. The agencies propose using benchmarks for the performance tests that would help inform and tailor CRA evaluations to the local communities being served by banks. The agencies considered ways in which these proposed metrics, benchmarks, and approaches would directly capture many aspects of performance context. For example, the proposed community benchmarks for the Retail Lending Test metrics, as described in Section X, would reflect information about an assessment area, such as the percentage of owner-occupied residential units, the percentage of low-income families, or the percentage of small businesses or small farms. The market benchmark of the Retail Lending Test, as described in Section X, would reflect the aggregate lending to targeted areas or targeted borrowers by all lenders operating in the same assessment area. The use of these two kinds of benchmarks is intended to tailor the Retail Lending Test to the lending opportunities and needs that are unique to each assessment area. While some aspects of performance context are already embedded into the proposed metrics evaluation approach for the Retail Lending Test and Community Development Financing Test, there are some aspects that are unique to each bank that examiners would consider as outlined in § __.21(e). For example, this would include bank-specific factors such as a bank's past performance, size and financial condition, and safety and soundness limitations, as well any other information provided by the bank about community credit and development needs of the bank's local communities.

As a complement to the proposed performance context factors in § __.21(e), the agencies intend to explore ways to provide more information to banks and the public on factors impacting community credit needs. The agencies believe that this could provide greater consistency and transparency, while also enhancing public participation in the identification of community credit needs through both quantitative and qualitative information.

Request for Feedback

Question 55. The agencies request feedback on the proposed performance context factors in § __.21(e). Are there other ways to bring greater clarity to the use of performance context factors as applied to different performance tests?

D. Institution Performance Score and Assigned Ratings

As discussed in each performance test section and in § __.28, the agencies propose to assign conclusions for each applicable performance test at each applicable level (*e.g.,* facility-based assessment areas). The agencies propose to retain the five conclusions used in current practice: "Outstanding, "High Satisfactory," "Low Satisfactory," "Needs to Improve," and "Substantial Noncompliance."

In proposed § __.21(f)(2), the agencies are proposing to retain existing language regarding assigning ratings in current § __.21(c), indicating that the four performance ratings that can be assigned a bank are "Outstanding," "Satisfactory," "Needs to Improve," and "Substantial Noncompliance." The agencies have also retained language indicating that ratings reflect a bank's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of a bank. The agencies are proposing to add language referencing requirements in the CRA statute [175] to provide greater clarity regarding which geographic areas receive a rating in addition to an institution-level rating. Specifically, the agencies propose to include language indicating that they assign to a bank a rating regarding its CRA performance overall, across performance tests under which the bank is evaluated, and for its performance in, as applicable, each state, and multistate MSA (for any multistate MSA in which a bank maintains a branch in two or more states within that multistate MSA). As is further discussed in Section XVI, the agencies provide the methodology for assigning conclusions and ratings in more detail in the performance test sections of the proposed regulation; in the assigned conclusions and ratings section in § __.28, and in Appendices C and D of the proposed regulations.

For banks other than a small bank or a bank evaluated based on a strategic plan, the agencies would assign a performance score at the state, multistate MSA, as applicable, and institution level that reflects the precise numeric value on a ten-point scale that was derived to determine the overall rating category, as proposed in § __.28 and discussed in Section XVI. The agencies intend for the performance score to provide greater transparency regarding a bank's overall performance, such as whether a bank that earned a particular rating was close to the numeric threshold for a rating that was either higher or lower than the rating it ultimately received.

E. Safe and Sound Operations

In proposed § __.21(g), the agencies would retain the requirement, based in

[175] 12 U.S.C. 2906.

the CRA statute,[176] that a bank's CRA lending, investment, and service activities must be consistent with safe and sound banking practices, including underwriting standards. The agencies would also retain the statement that, although banks may employ flexible underwriting standards for lending that benefits low- or moderate-income individuals and low- or moderate-income census tracts, they must also be consistent with safe and sound operations. The agencies are proposing certain revisions to the language in this section for clarity, including by expressly stating that banks may employ flexible underwriting standards for small business and small farm lending, if consistent with safe and sound operations.

VIII. Retail Lending Test Product Categories and Major Product Lines

The agencies propose to update the definitions for certain retail lending products, to clarify the evaluation of automobile lending, to aggregate certain retail loan types for evaluation, and to develop a clear quantitative threshold for determining when to evaluate a retail product line under the Retail Lending Test. Specifically, the agencies seek to improve transparency and streamline retail lending evaluations by:

- Aggregating, respectively, all closed-end home mortgage loans, all open-end home mortgage loans, and all multifamily loans as separate product lines for the purposes of evaluation under the Retail Lending Test.
- Adding definitions of small business and small farm that align with the CFPB's proposed small business definition in its current rulemaking pursuant to section 1071 of the Dodd-Frank Act to minimize burden.
- Evaluating automobile lending using metrics in recognition of its importance to low- and moderate-income borrowers and communities.
- Establishing a clear major product line threshold of 15 percent of the dollar value of a bank's retail lending in each facility-based assessment area (and, as applicable, in each retail lending assessment area and in its outside retail lending area) to determine whether to evaluate, respectively, closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm lending under the Retail Lending Test.
- Establishing a major product line threshold for automobile lending of 15 percent based on the average of the percentage of automobile lending retail lending dollars out of total retail lending dollars and percentage of automobile loans by loan volume out of total retail lending by loan volume.

A. Background

1. Current Approach to Retail Lending Product Lines

The CRA regulations do not currently define major product line. Large banks are generally evaluated on all home mortgage, small business, and small farm loans. Additionally, a large bank's consumer loans are currently considered at its option or if these loans constitute a substantial majority of the bank's business.[177] There is currently no established threshold for determining whether consumer loans constitute a substantial majority of a bank's business, meaning examiner judgment is used to determine whether consumer loans meet the standard.

In contrast, small banks, including intermediate small banks, are evaluated only with respect to those retail lending categories that are considered primary products or major product lines (''major product lines''). Examiners select small bank major product lines for evaluation based on a review of relevant information, including the bank's business strategy and its areas of expertise. Examiners may evaluate all of a small bank's consumer loans taken together or select a category of consumer lending (*e.g.,* credit card, automobile) if those consumer loans are deemed to constitute a major product line.

2. Stakeholder Feedback on Retail Lending Product Lines

Stakeholders have expressed varying opinions on setting a threshold amount for determining major product lines in individual assessment areas. They have also diverged on whether a major product line designation should be based upon a percentage threshold of total loans, a certain level of lending volume by dollar amount, or a combination of the two. For example, some community group stakeholders have suggested that the retail lending threshold should be based on number of loans, rather than the dollar amount of loans, to emphasize the importance of smaller value loans to low- and moderate-income borrowers.

Stakeholders generally supported aligning the definitions of small business and small farm used for CRA purposes to the CFPB proposed definition of small business in its proposal to effect changes required by section 1071 of the Dodd-Frank Act. Stakeholders noted that harmonizing the definitions across the two rulemakings would bring more certainty in measuring CRA performance. It would also reduce burden related to data collection and reporting, particularly if institutions could submit data for CRA purposes under the format of the CFPB's Section 1071 Rulemaking.

For consumer lending, industry groups generally preferred to retain the current approach of having consumer loans considered at a bank's option and when such loans amount to a substantial majority of a bank's business. Community groups instead favored requiring consideration where consumer lending amounts reach a significant quantitative threshold and emphasized that predatory products should not receive CRA credit. Most stakeholders favored evaluating consumer loans as separate categories rather than as a single category considered in the aggregate.

B. Retail Lending Test Product Categories

In § __.22(a)(4), the agencies propose the following categories of retail lending for evaluation under the Retail Lending Test's metrics-based approach described in Section IX: Closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans.

1. Aggregating Closed-End Home Mortgage Loans

The agencies propose to analyze all closed-end home mortgage loans secured by a one-to-four unit dwelling as a single major product line under the Retail Lending Test. The approach streamlines the evaluation process for retail lending by consolidating several related mortgage loan purposes. The agencies propose to use metrics to evaluate all closed-end home mortgage loans under the approach described in Section IX. Multifamily loans would be evaluated as a product line separate from aggregated closed-end or aggregated open-end home mortgage loans.

Given the different credit needs that these loan purposes fulfill for low- and moderate-income borrowers and communities, the agencies seek feedback on whether to evaluate home purchase and home refinance loans separately. In general, the agencies also request feedback on whether aggregation may lead to less transparency in the

[176] 12 U.S.C. 2901.

[177] Current interagency guidance on when to consider large banks' consumer lending states, ''[t]he Agencies interpret 'substantial majority' to be so significant a portion of the institution's lending activity by number and dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded.'' *See* Q&A § __.22(a)(1)–2.

reported metrics when one loan purpose takes prominence over another. For example, a bank's home purchase lending performance could be obscured during periods of high home mortgage refinance lending, and a bank's mortgage refinance performance could be similarly obscured during periods of high home purchase activity. The agencies seek feedback on the magnitude of this risk, and whether it outweighs the efficiency gained from more streamlined closed-end home mortgage lending evaluations.

Similarly, the agencies also seek feedback on whether to evaluate home improvement loans and ''other purpose'' loans reported under HMDA only under the Retail Services and Products Test described in Section XI. Because home purchase and refinance mortgages significantly outnumber home improvement mortgages, aggregating these categories would give less emphasis to a bank's home improvement lending to low- or moderate-income individuals.

The agencies also propose to continue the current practice of aggregating home mortgage loans for owner-occupied units and non-owner-occupied properties together under the appropriate major product line, for example within closed-end home mortgage loans. This approach provides a fuller picture of the bank's total engagement in home mortgage lending across different borrower types and geographies.

The agencies also recognize that home mortgage loans for non-owner-occupied properties can facilitate the provision of affordable housing. As such, the proposal considers this aspect of a bank's home mortgage lending, along with other qualitative aspects of retail lending, under the Retail Services and Products Test.

2. Aggregating Open-End Home Mortgage Loans

The agencies propose to aggregate all open-end home mortgage loans secured by a one-to-four unit dwelling as a separate product line under the Retail Lending Test. This category would include home equity lines of credit loans and other open-end lines of credit secured by a dwelling. The proposal recognizes that open-end home mortgage loans and closed-end home mortgage loans serve distinct purposes to low- and moderate-income borrowers and communities that are different enough to warrant separate evaluation.

The agencies propose to use metrics to evaluate all open-end home mortgage loans under the approach described in Section IX. However, the agencies seek feedback on whether to instead evaluate open-end home mortgage loans qualitatively under the Retail Services and Products Test described in Section XI. A qualitative review would focus on the responsiveness of open-end home mortgage loans, which may be appropriate given the range of uses that an open-end home mortgage loan can have. Relatedly, lower lending volumes for open-end home mortgage loans may limit the usefulness of market benchmarks under the Retail Lending Test, particularly in assessment areas with very little open-end home mortgage lending.

3. Multifamily Loans

The agencies propose to evaluate multifamily loans as a separate product line under the Retail Lending Test. The approach recognizes the role of multifamily loans in helping to meet community credit needs by financing housing in different geographies and for tenants of different income levels. Consistent with the current approach, the proposal also considers the subset of multifamily loans that provide affordable housing to low- or moderate-income individuals under the Community Development Financing Test.

As with other home mortgage loan purposes under the Retail Lending Test, a bank's multifamily lending performance would be evaluated using loan count rather than the dollar amount. The agencies also propose to evaluate multifamily loans under only the geographic distribution test which would not consider the income of borrowers. Given that few multifamily loans are made to low- or moderate-income borrowers, borrower income would not meaningfully measure whether multifamily loans met community credit needs. And solely evaluating geographic distributions for multifamily loans would account for banks that are primarily multifamily lenders and might otherwise fail the borrower distribution test because they do not lend directly to low- or moderate-income individuals.

Alternatively, the agencies seek feedback on whether to evaluate multifamily loans only under the Community Development Financing Test, because a bank's record of serving the credit needs of its community through multifamily loans may not be effectively measured with only geographic distributions. For example, the geographic distribution of a bank's multifamily loans does not indicate whether low- or moderate-income individuals benefit from the loans. The location of the housing is likely a less significant indicator of serving local low- or moderate-income needs than its affordability to low- and moderate-income residents, which would be reviewed under the Community Development Financing Test. Relatedly, the number of multifamily loans made in low- and moderate-income census tracts may not adequately reflect its value to the community. Unlike home mortgages, one multifamily loan could represent housing for anywhere from five households to hundreds of households, which makes loan count a poor measure for how multifamily loans benefit local communities.

Under the Community Development Financing Test, examiners could alternately account for the affordability and degree to which multifamily loans serve low- or moderate-income tenants. This approach would also avoid double-counting of multifamily lending under retail lending and community development performance tests. The agencies also seek feedback on whether an alternative measure of geographic loan distribution for multifamily lending under the Retail Lending Test would be preferable. For example, the agencies could evaluate the number of units a bank's multifamily lending financed in low- or moderate-income census tracts. This measure may better accord with the benefit the bank's lending brought to its community.

4. Small Business and Small Farm Loans

The agencies propose to define ''small business'' and ''small farm'' in the CRA regulations in alignment with the CFPB's proposed definition of small business in its Section 1071 Rulemaking.[178] As such, the agencies propose to define ''small business'' as a business having gross annual revenues of $5 million or less for its preceding fiscal year.[179] The agencies propose to

[178] *See* 86 FR 56356 (Oct. 8, 2021), as corrected by 86 FR 70771 (Dec. 13, 2021). The CFPB proposed the following definition in its Section 1071 Rulemaking: ''Small business has the same meaning as the term 'small business concern' in 15 U.S.C. 632(a), as implemented in 13 CFR 121.101 through 121.107. Notwithstanding the size standards set forth in 13 CFR 121.201, for purposes of this subpart, a business is a small business if and only if its gross annual revenue, as defined in § 1002.107(a)(14) of this part, for its preceding fiscal year is $5 million or less.'' 86 FR at 56577.

[179] Under the CRA regulations, and as proposed until the agencies transition to using the CFPB's proposed data collection, a ''small business loan'' means a loan included in ''loans to small businesses'' as defined in the instructions for preparation of Call Report. *See* 12 CFR __.12(v) and proposed § __.12. Under the Call Report, a small business loan is defined as a loan made to a business in an amount of $1 million or less that is secured by nonfarm nonresidential properties or

Continued

define ''small farm'' as a farm having gross annual revenues of $5 million or less for its preceding fiscal year. Further, when these small business and small farm definitions become effective, the agencies would use updated definitions for ''small business loan'' and ''small farm loan.'' Specifically, a small business loan would be updated to mean a loan to a business with gross annual revenues of $5 million or less, and a small farm loan would be a loan to a farm with gross annual revenues of $5 million or less. The current definition of ''small business loan'' and ''small farm loan'' would remain in effect until the new definitions become effective.

The agencies expect the small business lending data proposed to be collected by the CFPB would be more comprehensive than the data currently collected and reported by large banks, and used by the agencies, under the current interagency CRA regulations. The CFPB's proposed data collection would represent an improvement over small business lending and small farm lending data currently captured under CRA in two ways, because the CFPB's small business definition would be based on the revenue size of the business or farm rather than loan size as is the case under the current CRA regulations.[180] First, the CFPB data would capture all lending, including larger loans, to small businesses and small farms meeting the CFPB's proposed definition. Second, the CFPB data would exclude loans made to large businesses and large farms.

The agencies are in the process of seeking approval from the SBA to use the proposed standard of gross annual revenues of $5 million or less, consistent with the size proposed by the CFPB in its Section 1071 Rulemaking, rather than the SBA's size standards.[181] The proposed CRA definitions of ''small business'' and ''small farm'' would enable the agencies to expand and improve the current analysis of CRA small business and small farm lending. The agencies' proposal to leverage the CFPB small business loan definition and associated data reporting would enable the agencies to use borrower and geographic distribution metrics that provide more insight into banks' performance relative to the demand for small business loans in a given geographic area. It would also allow for an analysis that uses an expanded data set measuring loans to small businesses of different revenue sizes, including—importantly—to the businesses and farms with gross annual revenues of $250,000 or less, as discussed in Section IX.

Importantly, the agencies' proposal to leverage the CFPB's definitions would reduce bank data collection and reporting burden under CRA regulations. The agencies would intend to eliminate the current CRA small business and small farm data collection and reporting and replace it with the CFPB's section 1071 data, once available, which covered banks would be required to collect and report under section 1071. The proposed approach is responsive to various stakeholders' request that the agencies coordinate the small business and small farm definitions across the two rulemakings. Should both rulemakings be finalized, the agencies anticipate making the compliance date similar to the compliance date in a final rulemaking by the CFPB.

5. Purchased Loans

The agencies propose to evaluate a bank's record of helping to meet community credit needs through the origination and purchase of retail loans under the Retail Lending Test by counting an examined bank's purchased retail loans as equivalent to its retail loan originations. The market for purchased loans can provide liquidity to banks and other lenders, such as CDFIs, and extend their capability to originate loans to low- and moderate-income individuals and in low- and moderate-income areas. Banks may also purchase loans to develop business opportunities in markets where they otherwise lack the on-the-ground ability to originate loans.

On the other hand, some stakeholders have argued that purchased loans should not receive the same consideration as originated loans for CRA credit because they require fewer business development and borrower outreach resources than originating loans. And generally, despite their potential value in increasing secondary-market liquidity, purchases of loans may do less to extend the availability of credit than new originations. This concern is particularly acute where loan purchases do not directly provide liquidity to the originator, such as with purchases of seasoned loans that have been sold once or more in the past.

In response, the agencies propose to adjust a retail lending conclusion where an examiner determines that loan purchases reflect loan churning, after conducting the retail lending volume and distribution analyses. Loan churning would occur where loans to targeted borrowers or census tracts were purchased and sold repeatedly by different banks, with the possibility of each bank receiving CRA credit equivalent to the banks that originated the loans. In such cases, the re-purchase of loans does not provide additional liquidity to the originating banks nor additional benefit for low- and moderate-income borrowers and areas.

The agencies' analysis of historical data suggests that some CRA-motivated repeat purchases of home mortgage loans may be occurring. A review of 2017 HMDA data found that bank purchased low- and moderate-income loans are over five times as likely to be repurchased by another bank within a year as other purchased home mortgage loans. The analysis found that 0.6 percent of home mortgage loans to non-low- and moderate-income borrowers purchased by commercial banks were sold to another commercial bank within the same year, whereas the share was 3.3 percent for low- and moderate-income borrower loans.

The agencies seek feedback on whether only loans purchased from the loan originator should be eligible for CRA consideration. The agencies also seek feedback on whether to engage in ongoing analysis of HMDA data to identify institutions that appear to engage in significant churning of mortgage loans, with proposed § __.22 describing this as the purchase of home mortgage loans for the sole or primary

categorized as a commercial or industrial loan. Also, under the CRA regulations, and as proposed until the agencies transition to using the CFPB's proposed data collection, ''small farm loan'' means a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Call Report. See 12 CFR __.12(w) and proposed § __.12. Under the Call Report, a small farm loan is defined as a loan to a farm in an amount of $500,000 or less that is secured by farmland (including farm residential and other improvements) or categorized as a loan to finance agricultural production or other loan to farmers.

[180] The agencies estimated the percentage of large banks that would have passed various potential retail lending volume thresholds at the assessment area level based on historical lending and deposits data. Comparing those that received ''very good'' or ''excellent'' conclusions (or ''High Satisfactory'' or ''Outstanding'' ratings if applicable) on the lending test in the assessment area to those that received ''poor'' conclusions (or ''Needs to Improve'' ratings), the agencies found that the largest difference in the estimated pass rate occurred at 30 percent of the market volume benchmark. As a caveat, note that these lending test conclusions were based on many factors in addition to the volume of retail lending, such as loan distributions and (for large banks) community development lending. Furthermore, examinations under current procedures do not use the retail lending volume screen the agencies are proposing to evaluate the amount of retail lending a bank engages in. These data can be referenced in the CRA Analytics Data Tables.

[181] This assumes the CFPB's section 1071 rulemaking is finalized as proposed with a ''small business'' defined as having gross annual revenues of $5 million or less.

purpose of inappropriately influencing their retail lending performance evaluation. Examiners could use such analysis to inform their review of a bank's retail lending for potential loan churning.

6. Treatment of Consumer Loans

Consumer lending can be important for fulfilling the credit needs of low- and moderate-income borrowers. The agencies propose to define a consumer loan as an automobile loan, credit card loan, or other secured or unsecured loan to one or more individuals for household, family, or other personal expenditures. However, apart from automobile loans, this category spans several product categories that are heterogeneous in meeting low- and moderate-income credit needs and are difficult to evaluate on a consistent quantitative basis. Therefore, the agencies propose to treat automobile lending as the sole consumer loan type evaluated under the metrics-based Retail Lending Test. The agencies propose to consider the qualitative aspects of all other consumer loans, including credit card loans, only under the Retail Services and Products Test.

Automobile Loans. The agencies propose to evaluate automobile lending under the Retail Lending Test. Under proposed § __.12, the agencies propose defining an automobile loan as a consumer loan extended for the purchase of and secured by a new or used passenger car or other vehicle, for personal use, as defined in Schedule RC–C of the Call Report. Automobile loans can be important in areas where jobs are a significant distance from where people reside and where public transportation is not readily available. Safe and sound automobile loans can also serve as a means of building a credit history.

As discussed further in Section XIX, the agencies propose requiring new automobile lending data collection and reporting by banks with assets of over $10 billion because the agencies recognize that credit reporting agency data and other existing market sources lack the comprehensiveness required to construct the necessary metrics to evaluate automobile lending. Collecting and maintaining automobile lending data would be optional for small banks that elect evaluation under the Retail Lending Test, for intermediate banks, and for banks with assets of $10 billion or less. Although limiting data collection and reporting requirements for automobile lending to only banks with assets of over $10 billion would have the benefit of tailoring these requirements such that they do not apply to banks under this asset level, it would also lead to less comprehensive metrics for all banks, particularly in areas where banks with assets of over $10 billion have a low market share of bank automobile lending.

Credit Card Loans and Other Consumer Loan Categories. The agencies propose to evaluate other consumer loan categories, including credit cards, qualitatively under the Retail Services and Products Test. The agencies define a credit card loan as a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a credit card. A bank's record of serving the credit needs of its community through credit card lending may not be effectively measured under the Retail Lending Test. Credit card lending is concentrated among a relatively small number of lenders, with many designated as limited purpose banks for which credit card lending is a large share of their overall lending activity. While some banks issue credit card loans as a small share of their business, most of these business lines would not meet a major product line threshold for inclusion in a CRA evaluation. Further, banks may not currently retain or have the capability to capture borrower income at origination or subsequently as cardholders maintain their accounts, location, or other data fields relevant to constructing appropriate benchmarks for credit card lending. As such, credit card-specific retail lending metrics would likely require new data collection and reporting from large banks.

Instead, the agencies propose to qualitatively review whether credit cards and other consumer loan categories meet low- or moderate-income credit needs under the Retail Services and Products Test. Under this approach examiners would review the responsiveness of these credit products by considering the number of low- and moderate-income customers using each selected product and how they use the product, including rates of successful repayment under the original loan terms. Other aspects of responsiveness could include the loan terms, underwriting, pricing, and safeguards that minimize adverse borrower outcomes.

The agencies' overall approach to consumer loans recognizes that with the exception of automobile lending, consumer products are originated, structured, and maintained differently than home mortgage, small business, and small farm loans. Accordingly, the agencies seek feedback on whether evaluating all consumer lending products, including automobile loans, qualitatively under the Retail Services and Products Test would better meet the overarching goals of CRA modernization.

Request for Feedback

Question 56. Should the agencies aggregate closed-end home mortgage loans of all purposes? Or should the agencies evaluate loans with different purposes separately given that the factors driving demand for home purchase, home refinance, and other purpose home mortgage loans vary over time and meet different credit needs?

Question 57. Should the agencies exclude home improvement and other purpose closed-end home mortgage loans from the closed-end home mortgage loan product category to emphasize home purchase and refinance lending? If so, should home improvement and other purpose closed-end home mortgage loans be evaluated under the Retail Lending Test as a distinct product category or qualitatively under the Retail Services and Products Test?

Question 58. Should the agencies include closed-end non-owner-occupied housing lending in the closed-end home mortgage loan product category?

Question 59. Should open-end home mortgage loans be evaluated qualitatively under the Retail Services and Products Test rather than with metrics under the Retail Lending Test?

Question 60. Should multifamily lending be evaluated under the Retail Lending Test and the Community Development Financing Test (or the Community Development Test for Wholesale or Limited Purpose Banks)? Or should multifamily lending be instead evaluated only under the Community Development Financing Test?

Question 61. Should banks that are primarily multifamily lenders be designated as limited purpose banks and have their multifamily lending evaluated only under the Community Development Financing Test?

Question 62. Should the agencies adopt a size standard for small business loans and small farm loans that differs from the SBA's size standards for purposes of the CRA? Is the proposed size standard of gross annual revenues of $5 million or less, which is consistent with the size standard proposed by the CFPB in its Section 1071 Rulemaking, appropriate? Should the CRA compliance date for updated ''small business,'' ''small business loan,'' ''small farm,'' and ''small farm loan'' definitions be directly aligned with a future compliance date in the CFPB's Section 1071 Rulemaking, or should the agencies provide an additional year after the proposed updated CRA definitions become effective?

Question 63. Should the agencies' current small business loan and small farm loan definitions sunset on the compliance date of the definitions proposed by the agencies?

Question 64. Should retail loan purchases be treated as equivalent to loan originations? If so, should consideration be limited to certain purchases—such as from a CDFI or directly from the originator? What, if any, other restrictions should be placed on the consideration of purchased loans?

Question 65. Would it be appropriate to consider information indicating that retail loan purchases were made for the sole or primary purpose of inappropriately influencing the bank's retail lending performance evaluation as an additional factor in considering the bank's performance under the metrics or should such purchased loans be removed from the bank's metrics?

Question 66. Do the benefits of evaluating automobile lending under the metrics-based Retail Lending Test outweigh the potential downsides, particularly related to data collection and reporting burden? In the alternative, should the agencies adopt a qualitative approach to evaluate automobile lending for all banks under the proposed Retail Lending Test?

Question 67. Should credit cards be included in CRA evaluations? If so, when credit card loans constitute a major project line, should they be evaluated quantitatively under the proposed Retail Lending Test or qualitatively under the proposed Retail Services and Products Test?

Question 68. What data collection and reporting challenges, if any, for credit card loans could adversely affect the accuracy of metrics?

Question 69. Should the agencies adopt a qualitative approach to evaluate consumer loans? Should qualitative evaluation be limited to certain consumer loan categories or types?

C. Major Product Line Approach

For banks evaluated under the Retail Lending Test, the agencies propose using a major product line standard for determining when to evaluate a bank's closed-end home mortgage, open-end home mortgage, multifamily, small business, small farm, and automobile lending. The agencies propose to use a different standard for automobile loans than the other product lines to account for the generally lower dollar value of automobile loans.

1. Closed-End Home Mortgage, Open-End Home Mortgage, Multifamily, Small Business, and Small Farm Major Product Line Standard

The agencies propose to define major product lines for each of a bank's facility-based assessment areas and, as applicable, for each of its retail lending assessment areas and the outside retail lending area as a retail lending product line constituting 15 percent or more of the dollar value of the bank's retail lending in the respective geography.

The proposal focuses on evaluating the retail lending products with the biggest impact at each bank and within its community. For large banks, the proposal would remove less significant, incidental home mortgage, small business, and small farm product lines currently evaluated by default in CRA examinations. Small banks that opt into the Retail Lending Test would benefit from the predictability associated with operating under a single defined standard for identifying major product lines. And all banks would benefit from more streamlined retail lending evaluations that focus only on their most significant retail lending products.

The proposed definition also ties the major product line designation to a bank's retail lending focus in individual markets. For example, by focusing on major product lines at the assessment area or geographical level, a bank that primarily extends home mortgage and small business loans, but also specializes in small farm lending in a handful of rural assessment areas would have its small farm lending considered in those rural assessment areas, but not in assessment areas where the bank makes few or no small farm loans. Lastly, by using a standard specific to each facility-based assessment area and retail lending assessment area, the approach captures lending that affects local communities even if it might not meet a 15 percent standard at the institution level.

The agencies propose to divide retail lending into six distinct categories (closed-end home mortgage, open-end home mortgage, multifamily, small business, small farm, and automobile lending). As such, every assessment area in which a bank conducts any retail lending would have at least one product that represents at least 16.6 percent of the dollar volume of its total retail lending. The agencies propose to set the major product line threshold below that number at 15 percent to preclude the possibility of a bank having no major product lines to evaluate.

The agencies request feedback on different standards for determining when to evaluate multifamily loans under the Retail Lending Test. For example, multifamily lending could be considered a major product line only where the bank is a monoline multifamily lender or is predominantly a multifamily lender within the applicable geographic area (*i.e.,* facility-based assessment area, retail lending assessment area, or outside of facility-based assessment areas and retail lending areas, as applicable, at the institution level). The ''predominantly'' standard could mean either that multifamily lending ranks first in the dollar amount of the bank's retail lending in an assessment area or that it accounts for a significant percentage of the dollar volume of a bank's retail lending, for example 50 percent. This approach helps ensure that the agencies assess a bank's relevant multifamily lending performance with respect to meeting community credit needs using the proposed Retail Lending Test's retail lending volume screen and geographic distribution measures.

2. Automobile Loan Major Product Line Standard

The agencies propose to use both the dollar volume and loan count of a bank's automobile lending to determine when to evaluate it as a major product line under the Retail Lending Test. Specifically, the agencies propose a 15 percent threshold based on the average of the percentage of automobile lending dollars out of total retail lending dollars, and the percentage of automobile loans by loan count out of total retail loan count in the relevant area. For example, if a bank's automobile lending accounts for 10 percent of its total retail lending dollars and 22 percent of its total retail loans by loan count in an applicable geographic area (facility-based assessment area, retail lending assessment area, or outside of facility-based assessment areas and retail lending assessment areas at the institution level), its combined percentage would be 16 percent, and automobile lending would be evaluated as a major product line.

As automobile loans generally have a lower dollar value than the other products considered under the Retail Lending Test, automobile loans would be rarely evaluated under the 15 percent dollar volume-only threshold applicable to the other product lines. Instead, by considering both the average of dollar volume and loan count percentage, the agencies' approach would treat automobile loans as a major product line for banks that would not otherwise meet a standard that considers only dollar volume. This approach would help account for the lower dollar value of automobile loans while also recognizing that among other categories of consumer loans, automobile loans can fulfill unique and important credit needs for low- and moderate-income borrowers and communities.

Request for Feedback

Question 70. Should the agencies use a different standard for determining when to evaluate closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm lending? If so, what methodology should the agencies use and why? Should the agencies use a different standard for determining when to evaluate automobile loans?

Question 71. Should the agencies use a different standard for determining when to evaluate multifamily loans under the Retail Lending Test? If so, should the standard be dependent on whether the lender is a monoline multifamily lender or is predominantly a multifamily lender within the geographic area? Relatedly, what should a ''predominantly'' standard be for determining whether multifamily loans constitute a major product line entail?

IX. Retail Lending Test Evaluation Framework for Facility-Based Assessment Areas and Retail Lending Assessment Areas

A. Overview of Proposed Retail Lending Test Approach

The agencies propose to use metrics and performance standards to evaluate a bank's lending to low-income and moderate-income borrowers, small businesses and small farms, and low-income and moderate-income neighborhoods in its assessment areas. The metrics and performance standards would apply to all large banks and intermediate banks. The approach is intended to make a bank's retail lending evaluation more transparent and predictable by specifying quantitative standards for lending consistent with achieving, for example, a ''Low Satisfactory'' or ''Outstanding'' conclusion in an assessment area.

The agencies propose two sets of metrics for this test. First, the agencies propose to use a retail lending volume screen that would assess a bank's volume of retail lending relative to its deposit base, compared to other banks in each facility-based assessment area. Second, the agencies propose a series of distribution metrics and dynamic thresholds to individually evaluate each of a bank's major product lines, in each facility-based assessment area, and, as applicable, in each retail lending assessment area and outside retail lending area. These metrics would separately evaluate the geographic distribution and borrower distribution of a bank's lending for each product line. As part of this evaluation, the metrics would distinguish between different income levels and business and farm sizes, with separate metrics for lending to low- and to moderate-income census tracts; to low- and to moderate-income borrowers; and to different sizes of small businesses and small farms. Each metric would be compared to thresholds that would differ across assessment areas and across different business cycles based on local data that reflects credit demand and lending opportunities, with the intent of incorporating performance context information directly into the metric-based approach.

Through these metrics and thresholds, the agencies propose to assign a score reflecting performance on each of a bank's major product lines in each assessment area and outside retail lending area, as applicable. For example, under the proposal, a bank may receive a score reflecting its closed-end home mortgage lending performance and a different score for its small business lending performance in a facility-based assessment area, providing transparency at the product-line level and showing more granularly how a bank is serving the credit needs of its communities. The scores across the various major product lines would be combined to determine a recommended Retail Lending Test conclusion for each assessment area, weighted by the dollar volume associated with each product line. This aggregation would allow strong performance in one product line to potentially offset weaker performance in another product line. The agencies also propose to consider specific additional factors discussed in § __.22(e) that would allow for adjusting a bank's recommended conclusion, such as the bank's dispersion of loans to different geographies in the assessment area, or missing or faulty data that affects the accuracy of the metrics or thresholds.

B. Background

1. Current Approach to Retail Lending Evaluations

Under the current CRA regulations, the lending test includes quantitative and qualitative criteria, but does not specify what level of lending is needed to achieve ''Satisfactory'' or ''Outstanding'' performance. Large banks are evaluated based on the volume of retail lending activity, in number and dollars, within their assessment areas as well as the geographic distribution and borrower distribution of retail lending.

Large bank lending activity is evaluated to determine whether the bank has a sufficient aggregate value of lending in its assessment areas given its performance context, including its capacity and the lending opportunities available in its assessment areas. Examiners consider the number and dollar amount of loans in assessment areas and the number of loans inside and outside of assessment areas. These approaches rely on examiner judgment to draw a conclusion about a bank's level of lending.

For the geographic distribution analysis, examiners evaluate the distribution of a bank's retail loans in low-income, moderate-income, middle-income, and upper-income census tracts. Examiners review the geographic distribution of home mortgage loans by income category and compare the percentage distribution of lending to the percentage of owner-occupied housing units in the census tracts. Similarly, in each income category of census tract, examiners compare small business lending to the percentage distribution of businesses; small farm lending to the percentage distribution of farms; and consumer lending to the percentage distribution of households in each category of census tract, as applicable.

For the borrower distribution analysis, examiners evaluate the distribution of a bank's retail loans based on specified borrower characteristics, such as the income level of borrowers for home mortgage lending. The comparators used to inform the borrower distribution analysis are families by income level for home mortgage lending; businesses with gross annual revenues of $1 million or less for small business lending; farms with gross annual revenues of $1 million or less for small farm lending; and households by income level for consumer lending. Examiners supplement these distribution analyses by also reviewing the dispersion of a bank's loans throughout census tracts of different income levels in its assessment areas to determine if there are conspicuous lending gaps.

Small banks are evaluated using similar, but simplified standards that do not rely on data collection or reporting. Instead of the lending activity criteria, a small bank is evaluated based on its loan-to-deposit ratio and the portion of its lending within its assessment areas. Performance for the loan-to-deposit calculation is based on the balance sheet dollar values at the institution level, and a review of the number of loans made inside and outside of assessment areas to determine whether a bank's lending activity is sufficient. The geographic and borrower distribution for small banks is similar to that for large banks but uses bank data collected in the normal course of business. The purpose of evaluating lending activity for both small and large banks is the same—to determine whether a bank has a sufficient aggregate value of lending in its assessment areas in light of a bank's performance context, including its capacity and the lending opportunities available in its assessment areas.

2. Stakeholder Feedback on Retail Lending Evaluations

Stakeholders generally supported using metrics to increase the clarity and transparency of retail lending evaluations. However, community stakeholders emphasized that the performance measures and thresholds should be sufficiently rigorous to ensure that banks help to meet credit needs in their communities. Stakeholders were mixed on whether the low- income and moderate-income categories of borrowers should be combined when calculating the distribution metrics, but many recommended analyzing them separately. And most stakeholders agreed that performance context and qualitative aspects of performance should continue as an important dimension of evaluations.

C. Retail Lending Volume Screen

In § __.22(c), the agencies propose a retail lending volume screen that measures the total dollar volume of a bank's retail lending relative to its presence and capacity to lend in a facility-based assessment area compared to peer lenders. Large banks that underperform on the retail lending volume screen would have, as applicable, a recommended ''Needs to Improve'' or ''Substantial Noncompliance'' Retail Lending Test conclusion in a facility-based assessment area.

The screen serves to ensure that a bank's performance evaluation reflects the amount of a bank's retail lending relative to its presence and lending capacity in an assessment area. A bank fails to meet the credit needs of its entire community if it makes too few loans relative to its community presence, capacity, and local opportunities, even if those loans happened to be concentrated among, for example, low- and moderate-income borrowers and low- and moderate-income census tracts.

1. Bank Volume Metric

In each facility-based assessment area, the agencies propose using a bank volume metric as the measure of how much of a bank's local capacity has been oriented toward retail lending. This measure is calculated as a ratio, with the average annual dollar amount of a bank's originations and purchases of all retail loans in the numerator—including home mortgage, multifamily, small business, small farm, and automobile loans. This overall retail lending amount would be divided by the annual average amount of its deposits collected from that assessment area in the denominator, if the bank collects and maintains this data.

As proposed in § __.42, collecting and maintaining deposits data would be required for large banks with assets of over $10 billion, and would be optional for small banks that elect evaluation under the Retail Lending Test, for intermediate banks, and for large banks with assets of $10 billion or less. For any bank evaluated under the Retail Lending Test that did not collect deposits data, the agencies propose to use the deposits assigned to the banks' branches in each assessment area as reported in the FDIC's Summary of Deposits to calculate the local deposit base in the denominator. As discussed elsewhere in this **SUPPLEMENTARY INFORMATION**, deposits data that are collected and reported as proposed in § __.42 would facilitate metrics that accurately reflect a bank's deposits inside and outside of its assessment areas. By contrast, the FDIC's Summary of Deposits data necessarily assigns all deposits to bank branch locations and does not identify the amount or percentage of deposits sourced from outside of a bank's facility-based assessment areas. As a result, for a bank with assets of $10 billion or less that, in fact, sources deposits from outside of its facility-based assessment areas, electing to collect and maintain deposits data could meaningfully increase the bank volume metric in a facility-based assessment area by decreasing the amount of deposits included in the denominator of that metric. Conversely, electing not to collect and maintain deposits for such a bank may result in a lower bank volume metric, because deposits sourced from outside of the assessment area would then be included in the denominator of the metric.

The proposed retail lending volume screen uses the dollar amount of a bank's retail lending instead of the number of loans. Although this approach gives more credit to larger loans, the agencies propose to use total dollar amount to measure how fully a bank has utilized its capacity, as measured using total deposit dollars. The dollars of deposits also serves as a measure of the extent of a bank's local presence.

2. Assessing Performance Using Market Volume Benchmark and Threshold

To assess the level of a bank's retail lending volume, as measured by the *bank volume metric,* relative to local opportunities, the agencies propose using a market volume benchmark that reflects the level of lending by all large banks in the facility-based assessment area. The market volume benchmark would measure the average annual dollar amount of retail originations in the assessment area by all large banks that operate a branch in the assessment area in the numerator, divided by the annual average amount of deposits collected by those same banks from that assessment area in the denominator. The dollars of deposits in the denominator would be based on reported data for large banks with assets of over $10 billion, and on the FDIC's Summary of Deposits for large banks with assets of $10 billion or less, using the deposits assigned to branches located in each assessment area for which the benchmark is calculated.

Under the proposal, the denominator of the market volume benchmark would not include deposits data voluntarily collected and maintained by a large bank with assets of $10 billion or less, because the agencies would not require a large bank of this size to also report that deposits data. Instead, the agencies would continue using FDIC's Summary of Deposits data for the market volume benchmark, even when a bank voluntarily collects and maintains more specific information for its own examination. The agencies acknowledge that there are tradeoffs to this approach. On the one hand, this approach reduces the burden of a bank that chooses to voluntarily collect and maintain deposits data by not also having to report that data. On the other hand, the agencies would not be able to use that collected and maintained deposits data to construct more accurate market volume benchmarks. This downside would be most pronounced in markets where banks with assets of $10 billion or less have a large market share. The agencies seek feedback about these tradeoffs and the alternative approach of requiring a large bank with assets of $10 billion or less to also report deposits data if it wants to voluntarily collect and maintain deposits data for use in its own examination.

The agencies also seek feedback on whether assigning FDIC's Summary of Deposits data to the county in which a bank has a branch, as provided in § __ .12, is the best way to allocate these deposits for purposes of constructing the market volume benchmark. An alternative approach to incorporating Summary of Deposits data into the market volume benchmark could be proportionately allocating the deposits associated with a branch of a large bank with assets of $10 billion or less to each of the counties of that bank's assessment area where the branch is located. However, without more data about the location of deposits, it is hard for the agencies to determine whether this method would be more or less accurate than assigning deposits to a single county.

Under the proposal, banks would pass the retail lending volume screen with a bank volume metric of at least 30 percent of the market volume benchmark. If a bank meets or exceeds this threshold, the agencies would evaluate the bank's major product lines under the distribution metrics approach, described in Sections IX.D and IX.E, and the bank would be eligible for any recommended performance conclusion.

The relatively low threshold set at 30 percent of the market volume benchmark helps ensure that passing the screen would not be onerous for banks with different business strategies. In particular, banks that generally hold loans on their balance sheet may have substantially lower bank volume metrics than banks that generally sell them on the secondary market. The agencies therefore propose to set the threshold at a level that is well below local averages, so banks with various business strategies could meet the threshold.

Based on an analysis of historical lending data and assessment area level conclusions on the Retail Lending Test, the agencies found that a threshold set at 30 percent of the market volume benchmark created the largest distinction in passing rates between banks whose performance was judged by their examiner to be poor from those whose performance was judged to be very good or excellent.[182] Barring additional mitigating information, banks that fail to meet 30 percent or more of the market volume benchmark are substantially underperforming their peers in terms of meeting the credit needs of their communities.

3. Additional Review

The proposal recognizes that not all performance context factors are captured in the metrics. Therefore, the proposal requires a review of specific performance context factors to determine whether there is an acceptable basis for a bank failing to meet the threshold for the retail lending volume screen in a facility-based assessment area. In particular, institutional capacity and constraints would be considered to determine if a bank's lending volume is sufficient. Institutional capacity and constraints may include the financial condition of a bank, the presence or lack thereof of other lenders in the geographic area, safety and soundness limitations, the bank's business strategy (for example if it holds loans in portfolio or sells them into the secondary market), or other factors that limit the bank's ability to lend in the assessment area. If the performance context assessment concludes that the bank failed to meet the threshold for the retail lending volume screen due to institutional capacity or other constraints, the bank would pass the retail lending volume screen and the agencies would then consider the retail loan distribution of its major product lines. If such capacity and constraints issues do not account for the bank's insufficient volume of bank retail lending in the assessment area, the agencies propose to consider the bank to have failed the retail lending volume screen.

Where a large bank fails the retail lending volume screen, barring the performance context assessment described above, the agencies propose to assign that bank either a ''Needs to Improve'' or ''Substantial Noncompliance'' conclusion on the Retail Lending Test in the assessment area. Which of these two conclusions the large bank receives would be determined by a consideration of additional factors, such as the margin by which the bank volume metric fell short of the threshold, and the bank's performance on the retail distribution metrics described in Sections IX.D and IX.E, below. The agencies propose that this approach would apply to both large banks with assets of over $10 billion and large banks with assets of $10 billion or less.

Where an intermediate bank or a small bank opting to be evaluated under the Retail Lending Test fails the retail lending volume screen, the agencies propose that the bank would not be limited to receiving only a conclusion of ''Needs to Improve'' or ''Substantial Noncompliance'' on the Retail Lending Test in that assessment area. Instead, the bank's outcome on the retail lending volume screen would be reviewed as an additional factor indicative of its lending performance and considered when reaching Retail Lending Test conclusions for facility-based assessment areas as discussed in Section IX.H.

This manual review accounts for the lower capacity of intermediate and small banks to ensure that their lending is commensurate with their deposits. In addition, this approach would account for the proposed use of FDIC's Summary of Deposits data to calculate the bank volume metric for intermediate banks and for small banks that opt into the Retail Lending Test (if the bank does not voluntarily collect and maintain deposits data under proposed § __.42). Specifically, the agencies have considered that the FDIC's Summary of Deposits data may not always accurately reflect the location of depositors, which could affect whether these banks underperform on the retail lending volume screen. As such, a manual review by examiners could account for factors related to a bank's performance, including the degree to which a bank gathers deposits and make loans outside of its facility-based assessment areas.

The agencies considered whether this approach of reviewing an intermediate or small bank's outcome on the retail lending volume screen as an additional factor, but not limiting the Retail Lending Test conclusion the bank could receive in an assessment area in which it failed the screen, should also be extended to large banks with assets of $10 billion or less. However, the agencies believe that these large banks have greater capacity to ensure their lending is commensurate with their deposits, and to voluntarily collect and maintain deposits data in cases where the bank's FDIC's Summary of Deposits data do not accurately reflect the location of the bank's depositors.

Request for Feedback

Question 72. For calculating the bank volume metric, what alternatives should

[182] The agencies estimated the percentage of large banks that would have passed various potential retail lending volume thresholds at the assessment area level based on historical lending and deposits data. Comparing those that received ''very good'' or ''excellent'' conclusions (or ''High Satisfactory'' or ''Outstanding'' ratings if applicable) on the lending test in the assessment area to those that received ''poor'' conclusions (or ''Needs to Improve'' ratings), the agencies found that the largest difference in the estimated pass rate occurred at 30 percent of the *market volume benchmark.* These lending test conclusions were based on many factors in addition to the volume of retail lending, such as loan distributions and (for large banks) community development lending. Furthermore, examinations under current procedures do not use the retail lending volume screen the agencies are proposing to evaluate the amount of retail lending a bank engages in. These data can be referenced in the CRA Analytics Data Tables.

the agencies consider to the proposed approach of using collected deposits data for large banks with assets of over $10 billion and for other banks that elect to collect this data, and using the FDIC's Summary of Deposits data for other banks that do not collect this data? For calculating the market volume benchmark, what alternatives should the agencies consider to the proposed approach of using reported deposits data for large banks with assets of over $10 billion, and using the FDIC's Summary of Deposits data for large banks with assets of $10 billion or less?

Question 73. Should large banks receive a recommended Retail Lending Test conclusion of ''Substantial Noncompliance'' for performance below a threshold lower than 30 percent (*e.g.,* 15 percent of the market volume benchmark) on the retail lending volume screen?

D. Bank Geographic Distribution Metrics and Borrower Distribution Metrics

In § __.22(d), the agencies propose to use a set of geographic distribution and borrower distribution metrics to measure bank performance for each major product line. The geographic distribution metrics measure the level of bank lending in low-income and moderate-income census tracts in an assessment area. The borrower distribution metrics measure the level of lending to low-income borrowers, moderate-income borrowers, small businesses or small farms with gross annual revenues of $250,000 or less, and small businesses or small farms with gross annual revenues greater than $250,000 but less than or equal to $1 million, depending on the product line being evaluated. The agencies would calculate these distribution metrics for each major product line evaluated under the Retail Lending Test in a facility-based assessment area or retail lending assessment area, as applicable.

1. Overview

To calculate these distribution metrics, the agencies propose using the number of a bank's loans, not the dollar amount of those loans. For example, under the proposed approach, one $250,000 home mortgage would count the same as one $80,000 home mortgage. This approach emphasizes the number of households, small businesses, and small farms served within each product line, and avoids weighting larger loans (and hence higher-income borrowers) more heavily than smaller loans, as would occur if the metrics instead used dollar amounts. As a result, the proposed approach reflects the importance and responsiveness of smaller value loans to meet the needs of lower-income borrowers, smaller businesses, and smaller farms. An approach that encouraged larger retail loans over smaller ones would not appropriately emphasize smaller-value loans that meet the credit needs of low- and moderate-income communities.

Table 3 shows the specific distribution metric components the agencies propose calculating for each product line evaluated under the Retail Lending Test.

TABLE 3 TO SECTION __.22—LENDING DISTRIBUTIONS CONSIDERED IN THE BANK METRICS

Retail lending product line	Geographic distribution metrics (percentage of bank loans for the following categories)	Borrower distribution metrics (percentage of bank loans for the following categories)
Closed-End Home Mortgage Lending	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Open-End Home Mortgage Lending	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Multifamily Lending	Low-Income Census Tracts	N/A.
	Moderate-Income Census Tracts.	
Small Business Lending	Low-Income Census Tracts	Small businesses with gross annual revenues of $250,000 or less.
	Moderate-Income Census Tracts	Small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million.
Small Farm Lending	Low-Income Census Tracts	Small farms with gross annual revenues of $250,000 or less.
	Moderate-Income Census Tracts	Small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million.
Automobile Lending	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.

The proposed distribution metrics draw upon measures that the agencies currently use as part of CRA evaluations. The agencies have historically evaluated both a bank's geographic and borrower distributions, and the proposal would both update and standardize these metrics. The agencies have long considered, and propose to continue considering, a bank's record of providing credit both to borrowers of different income or revenue levels as well as neighborhoods of different income levels to be important determinants of its overall record of helping to meet the credit needs of its entire community. This approach recognizes the importance of lending that benefits low-income and moderate-income communities, regardless of the income or revenue size of the particular borrower, and lending that benefits low-income and moderate-income individuals and smaller farms and businesses, regardless of where they are located.

2. Geographic Distribution Metrics

The agencies propose using two geographic distribution components/metrics for each product line:

- Loans in low-income census tracts; and
- Loans in moderate-income census tracts.

These components are reflected above in Table 3.

The proposed regulation refers to these geographic distribution metrics as geographic bank metrics. For each product line, the geographic bank metrics measure the number of a bank's loans located in low-income and moderate-income census tracts, respectively, relative to the total number of the bank's loans in the assessment area. For example, if Bank A originated 25 total closed-end home mortgage loans in an assessment area, and made 5 of those loans in low-income census tracts, then it has a low-income geographic bank metric of 0.2 because 20 percent of its total loans were made in low-income census tracts.

$$\frac{Bank\ Loans\ in\ Low\text{–}\ Income\ Tracts\ (5)}{Bank\ Loans\ (25)} = Geographic\ Bank\ Metric\ (20\%)$$

The agencies propose separately calculating a bank's record of lending in low-income census tracts and moderate-income census tracts, respectively. This approach recognizes the importance of evaluating lending performance in each census tract category. The agencies considered using a metric that combined performance in low-income census tracts and moderate-income census tracts in order to simplify the metrics approach. However, the agencies recognize that this could have the unintended effect of concealing poor performance for an income group. For example, a bank practice of avoiding lending in low-income census tracts in favor of moderate-income census tracts may not be apparent in the bank's performance evaluation when using only a combined income category. Such an outcome would be at odds with the objective of evaluating bank performance in *both* low-income and moderate-income census tracts, as befits a bank's obligation under the CRA to help meet the credit needs of its *entire* community.

For closed-end home mortgage, open-end home mortgage, and automobile loans, the agencies propose that loans to borrowers of any income would be included in the geographic distribution metrics if they are in low-income census tracts and moderate-income census tracts. The evaluation of the borrower income distribution of the bank's lending, described below, would ensure that a bank would not receive a positive rating by solely lending to middle- or upper-income borrowers in low- and moderate-income neighborhoods.

Certain assessment areas, particularly in rural areas, may have few or no low- or moderate-income census tracts within their boundaries. However, they may contain geographies with acute credit needs. The agencies seek feedback on whether the geographic distribution metrics described previously should be expanded to include bank performance in distressed and underserved middle-income census tracts in assessment areas with few or no low- or moderate-income census tracts.

3. Borrower Distribution Metrics

With the exception of multifamily lending, the agencies propose using two borrower distribution components for each product line. These components are reflected above in Table 3:

- For closed-end home mortgage loans, open-end home mortgage loans, and automobile lending, the two borrower distribution components would be:
  - ○ Loans to low-income borrowers; and
  - ○ Loans to moderate-income borrowers.
- For small businesses, the two borrower distribution components would be:
  - ○ Loans to small businesses with gross annual revenues of $250,000 or less; and
  - ○ Loans to small businesses with gross annual revenues above $250,000 and less than or equal to $1 million.
- For small farms, the two borrower distribution components would be:
  - ○ Loans to small farms with gross annual revenues of $250,000 or less; and
  - ○ Loans to small farms with gross annual revenues above $250,000 and less than or equal to $1 million.

The proposed regulation refers to these borrower distribution metrics as borrower bank metrics. For each product line, the borrower bank metrics measure the number of a bank's loans in each of the categories outlined above relative to the total number of the bank's loans in the assessment area. For example, if Bank A originated 100 total closed-end home mortgage loans in an assessment area, and made 20 of those loans to low-income borrowers, it has a low-income borrower bank metric of 0.2 because 20 percent of its total loans were made to low-income borrowers.

$$\frac{Bank\ Loans\ to\ Low\text{–}\ Income\ Borrowers\ (20)}{Bank\ Loans\ (100)} = Borrower\ Bank\ Metric\ (20\%)$$

For closed-end home mortgages, open-end home mortgages, and automobile lending, the agencies propose to separately calculate a bank's record of lending to low-income borrowers and moderate-income borrowers, respectively. Similar to the considerations for separately evaluating performance in low-income census tracts and moderate-income census tracts, this approach recognizes the importance of evaluating lending to individuals in both income categories. As noted with the proposal for geographic distribution metrics, the agencies have similar concerns about using a metric that combines performance for low-income borrowers and moderate-income borrowers because it could fail to identify banks that do not lend to low-income borrowers, despite available opportunities to do so. Such an outcome would be at odds with the objective of evaluating bank performance to *both* low-income and moderate-income borrowers.

The agencies propose to evaluate the geographic distribution of multifamily lending under the Retail Lending Test, but not the borrower distribution. Multifamily loans can help meet the credit needs of their communities by financing housing in different geographies and for tenants of different income levels. However, the income of the borrower—often a corporate entity—is less meaningful for evaluating the loans' benefit to the community. As discussed in Section XII, the agencies propose to evaluate the provision of affordable housing through multifamily lending under the Community Development Financing Test.

For small business and small farm loans, the agencies propose to separately calculate the bank's record of lending to small businesses or small farms with gross annual revenues of $250,000 or less, and those with gross annual revenues greater than $250,000 but less than or equal to $1 million, respectively. The agencies propose retaining the $1 million gross annual revenue threshold from the current regulation to identify smaller businesses and farms and adding an evaluation of lending to even smaller businesses and farms with gross annual revenue of $250,000 or less whose access to credit may be lacking. According to the 2022 Small Business Credit Survey on employer firms, employer firms with total annual revenues less than $1 million were substantially more likely to experience difficulties obtaining financing than employer firms with total annual revenues between $1 million and $5 million.[183] Furthermore, employer firms with total annual revenues less than $500,000, and particularly those with total annual revenues less than $100,000, were even more likely to report financing challenges.[184] The agencies therefore believe that making small business loans available to these very low-revenue firms is an important marker of a bank meeting the credit needs of its entire community. The agencies propose to evaluate bank lending to small businesses and small farms with gross annual revenues of $250,000 or less to maintain focus on the borrowers with the greatest need, while still capturing a large enough population of firms, particularly employer firms. The agencies seek feedback on whether this threshold should instead be set higher, for example at $500,000. A higher threshold would capture more firms, particularly employer firms. However, these somewhat higher-revenue small businesses and farms may not have very different credit needs than those with gross annual revenues between $500,000 and $1 million. The agencies also seek feedback on whether this threshold should instead be set lower, for example at $100,000. A lower threshold would tighten focus on the businesses and farms with the greatest unmet credit needs. However, these businesses and farms may be less likely to be employers and, as a result, this alternative may detract focus from small local employers also in need of credit.

For both the geographic distribution metric and the borrower distribution metric, the agencies propose using all loans to businesses or farms with gross annual revenues of $5 million or below, respectively, as the denominator for these calculations when measuring small business loan or small farm loan product lines. This approach would establish an appropriately comprehensive measure of overall bank lending to small businesses and farms. As explained above, the agencies propose to align the CRA's small business and small farm definitions with the CFPB's proposed ''small business'' definition under its Section 1071 Rulemaking using a $5 million gross annual revenue threshold. As described in Section XXI and proposed in appendix A, until the data reported under the Section 1071 Rulemaking is available, the agencies propose to calculate a borrower bank metric for only a single revenue category for small business lending and small farm lending: The percentage of a bank's small business or small farm loans that went to a business or farm with gross annual revenues less than $1 million. As discussed in Section XIX, the agencies seek feedback on whether to require banks, as applicable, to collect and report an indicator of whether a loan is to a business or farm with gross annual revenues of $250,000 or less prior to the use of section 1071 data.

Request for Feedback

Question 74. Should the geographic distribution evaluations of banks with few or no low- and moderate-income census tracts in their assessment areas include the distribution of lending to distressed and underserved census tracts? Alternatively, should the distribution of lending in distressed and underserved census tracts be considered qualitatively?

Question 75. Is the choice of $250,000 gross annual revenue an appropriate threshold to distinguish whether a business or farm may be particularly likely to have unmet credit needs, or should the threshold be lower (*e.g.,* $100,000) or higher (*e.g.,* $500,000)?

E. Methodology for Setting Performance Ranges

For each of a bank's distribution metrics described above, the agencies propose comparing a bank's level of lending to specific quantitative standards. These standards would be set using a methodology that leverages local data and existing CRA examination practices. As a result, the performance expectations established under this proposal would be tailored and, as a result, would vary from product-to-product and assessment area-to-assessment area.

While the proposal maintains some key parts of how examiners carry out examinations under the status quo, the proposal would set standardized and transparent performance expectations for the first time. This differs from current practice in CRA examinations, which does not specify how much lending is necessary to achieve, for example, a ''Low Satisfactory'' or ''Outstanding'' performance conclusion.

Under the proposed approach, the bank distribution metric for each distribution test, income category, and major product line would be compared to a set of ''performance ranges'' that would correspond to the following conclusion categories: ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' and ''Substantial Noncompliance.'' As a result, the performance ranges approach would comprehensively assess bank performance across all five conclusion categories. The proposed approach would produce separate assessments for each component described above in Table 3. For example, if a bank had a major product line for closed-end home mortgages, the proposed approach would separately assess the bank's closed-end home mortgage performance to low-income borrowers and moderate-income borrowers and in low-income census tracts and moderate-income census tracts in an assessment area.

1. Thresholds and Performance Ranges

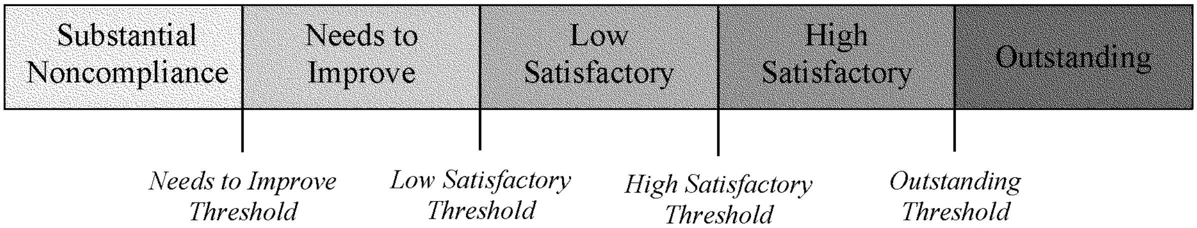
The agencies propose a transparent set of steps, set forth in § __.22 and appendix A of the proposed regulations, to define performance ranges for evaluating a bank's retail lending performance in each of its assessment areas. A consistent methodology would be used to establish thresholds and resulting performance ranges for each bank distribution metric in different product lines and income categories, and in different local markets. Yet, because the methodology relies on local data points, the resulting performance ranges are tailored to each local market and product line.

At its most basic level, the proposal involves defining four thresholds that would set the boundaries for each performance range. The four thresholds are represented below in Figure 1.

[183] Federal Reserve System, Small Business Credit Survey 2022. Data is available at *https://www.fedsmallbusiness.org/survey/2022/report-on-employer-firms.*

[184] *Id.*

Figure 1: Illustration of thresholds and performance ranges



- The ''Outstanding'' performance range would be set at or above the ''Outstanding'' threshold level.
- The ''High Satisfactory'' performance range would be set at or above the ''High Satisfactory'' threshold and below the ''Outstanding'' threshold.
- The ''Low Satisfactory'' performance range would be set at or above the ''Low Satisfactory'' threshold and below the ''High Satisfactory'' threshold.
- The ''Needs to Improve'' performance range would be set at or above the ''Needs to Improve'' threshold and below the ''Low Satisfactory'' threshold.
- The ''Substantial Noncompliance'' performance range would be set below the ''Needs to Improve'' threshold.

2. Using Local Data for Benchmarks

Under the proposal, the four thresholds are calculated using local data points referred to as benchmarks. By leveraging local data in the form of the proposed benchmarks, the approach seeks to tailor the CRA retail lending expectations to the assessment areas in which a bank lends. The benchmarks include both community benchmarks and market benchmarks. Community benchmarks reflect the demographics of an assessment area, such as the percentage of owner-occupied units that are in census tracts of different income levels, the percentage of families that are low-income, and the percentage of small businesses or small farms of different levels of revenue in an assessment area. Market benchmarks reflect the aggregate lending to targeted areas or targeted borrowers in an assessment area by all reporting lenders. Unlike the bank metrics, which include both loan purchases and originations, the market benchmarks are based only on originations by reporting lenders. While loan purchases can help improve the credit environment for borrowers and thus represent a way in which banks can help meet the credit needs of their community, the agencies do not consider the aggregate level of loan purchases to reflect the extent of local lending opportunities. Aggregate loan originations, in contrast, are directly tied to these opportunities.

The two sets of benchmarks provide complementary information about local lending opportunities. The community benchmarks measure the presence of potential borrowers but lack other information about local factors that might influence the local lending environment (such as an economic shock that causes local credit demand to be higher or lower than expected). The market benchmarks more closely reflect local demand by measuring the actual loan distribution resulting from aggregate lending in the area; however, they lack information about how well that aggregate lending actually serves all potential borrowers.

The proposed benchmarks and data sources used to measure them (described below) generally align with what examiners use today to evaluate bank retail lending performance, with some differences. Current CRA examinations use local data as points of comparison prescribed in the interagency examination procedures to aid examiners in assessing bank performance. However, the current CRA regulations and examination procedures give examiners discretion when evaluating bank lending in comparison to the local data points. While examiner judgment allows for tailoring to reflect local community needs, some stakeholders have noted that it can also lead to inconsistent outcomes.

The agencies considered several benefits of the proposed approach to setting quantitative thresholds for performance ranges based on local data. One benefit is that this approach would provide a bank with greater certainty about CRA performance expectations in an assessment area because the performance ranges are based on a consistent formula and set of data points. The agencies contemplate providing banks and the public with a means (*e.g.,* an online dashboard) to track bank performance over time. Another benefit of the proposal is that it would consistently tailor expectations to the unique conditions in different local communities across the country. For example, expectations for mortgage lending to low-income borrowers would be higher in markets that have proportionately more potential, and actual, low-income borrowers.

A third benefit of the proposed approach is that the threshold levels also automatically adjust over time in a way that can reflect changes in the business cycle because the market benchmarks follow overall lending activity in each assessment area. This approach reduces the need for the agencies to adjust the threshold levels and performance ranges through a rulemaking or other regulatory action, or for examiners to make a subjective adjustment. If, for example, a market downturn affected an assessment area by making low- and moderate-income lending relatively more difficult, the market benchmark would decrease, causing thresholds for the performance ranges (described below in Section IX.E.3) to adjust downward. Conversely, if overall low- and moderate-income lending opportunities expanded, the market benchmark would rise, creating greater expectations of local banks to make loans in low- and moderate-income census tracts, to low- and moderate-income borrowers, and to small businesses and small farms.

Closed-End and Open-End Home Mortgage Lending Benchmarks. For closed-end and open-end home mortgages, the proposed benchmarks and data sources are provided in Table 4 and are the same as examiners generally use today.

TABLE 4 TO SECTION __.22—BENCHMARKS FOR CLOSED-END HOME MORTGAGE AND OPEN-END HOME MORTGAGE LOANS

Distribution metric	Community benchmark	Market benchmark
Closed-End Home Mortgage, Open-End Home Mortgage		
Geographic Distribution Metric:		
Data Point	Percentage of owner-occupied residential units in low-income census tracts or moderate-income census tracts, as applicable, in assessment area.	Percentage of home mortgages in low-income census tracts or moderate-income census tracts in assessment area, as applicable, by all lender-reporters.
Data Source	American Community Survey (Census)	HMDA Data.
Borrower Distribution Metric:		
Data Point	Percentage of low-income families or moderate-income families, as applicable, in assessment area.	Percentage of home mortgages to low-income borrowers or moderate-income borrowers in assessment area, as applicable, by all lender-reporters.
Data Source	American Community Survey (Census)	HMDA Data.

For the geographic distribution metric, the proposed community benchmark is intended to measure the opportunities for home mortgage lending in the low-income and moderate-income census tracts of an assessment area. The proposed market benchmark is intended to show the overall level of mortgage lending taking place in the assessment area's low-income and moderate-income census tracts by all HMDA reporting lenders.

For the borrower distribution metric, the proposed community benchmark is intended to measure the opportunities for banks to lend to low-income or moderate-income families in a specific assessment area. The proposed market benchmark is intended to show the overall level of mortgage lending by all HMDA reporting lenders to low-income and moderate-income borrowers in the assessment area. The agencies propose to continue the practice commonly used by examiners under current procedures of using family counts to measure lending opportunities.

For the borrower distribution metric, the agencies also seek feedback on alternative community benchmark options. For example, one option could measure the share of low-income or moderate-income households in owner-occupied housing units in an assessment area. This alternative approximates the level of existing homeowners at these income levels, including households that recently became homeowners. A potential downside of this alternative is that it could be seen as failing to reflect the full level of opportunity for lending to low-income or moderate-income households.

For both of the home mortgage market benchmarks, the agencies propose using benchmarks that capture mortgage lending by all reporting lenders, not just mortgage lending by banks. Using HMDA reporter data enables this benchmark to reflect a larger percentage of the mortgage market, including bank and non-bank mortgage lending. The agencies propose to set bank performance expectations relative to all mortgage lending, as captured in HMDA data, in a community, rather than just to mortgage lending by banks. This measure is a more complete reflection of a community's total credit needs than is a measure that only captures those met by bank lenders.

Multifamily Mortgage Lending Benchmarks. For multifamily mortgage lending, the proposed benchmarks are in Table 5. The proposed community benchmarks and data sources would be comparable to what is used in evaluations today.

For the geographic distribution metric, the proposed community benchmark is intended to measure the opportunities for multifamily mortgage lending in the low-income or moderate-income census tracts of an assessment area; the proposed market benchmark is intended to show the overall level of mortgage lending taking place in low- and moderate-income census tracts by all HMDA reporting lenders.

TABLE 5 TO SECTION __.22—BENCHMARKS FOR MULTIFAMILY LOANS

Distribution metric	Community benchmark	Market benchmark
Multifamily		
Geographic Distribution Metric:		
Data Point	Percentage of multifamily units in low-income census tracts or moderate-income census tracts as applicable, in assessment area.	Percentage of multifamily mortgages in low-income census tracts or moderate-income census tracts in assessment area, as applicable, by all lender-reporters.
Data Source	American Community Survey (Census)	HMDA Data.

Small Business and Small Farm Lending Benchmarks. For small business and small farm lending, the proposed benchmarks are in Table 6. The proposed community benchmarks and data sources would be comparable to what is used in evaluations today, and the agencies propose using section 1071 data, once available, to develop market benchmarks.

TABLE 6 TO SECTION __.22—BENCHMARKS FOR SMALL BUSINESS AND SMALL FARM LOANS

Distribution metric	Community benchmark	Market benchmark
Small Business		
Geographic Distribution Metric:		
Data Point	Percentage of small businesses with gross annual revenue less than $5M in low income or moderate-income census tracts, as applicable, in assessment area.	Percentage of small business loans in low- income or moderate-income census tracts in assessment area, as applicable, by all lender-reporters.
Data Source	Third-party data provider	CFPB section 1071 data.*
Borrower Distribution Metric:		
Data Point	Percentage of small businesses with gross annual revenue more than $250K and less than or equal to $1M or $250K or less, as applicable, in assessment area.	Percentage of small business loans to small businesses with gross annual revenue more than $250K and less than or equal to $1M or $250K or less in assessment area, as applicable, by all lender-reporters.
Data Source	Third-party data provider	CFPB section 1071 data.*
Small Farm		
Geographic Distribution Metric:		
Data Point	Percentage of small farms with gross annual revenue less than $5M in low income or moderate-income census tracts, as applicable, in assessment area.	Percentage of small farms loans in low- income or moderate-income census tracts in assessment area, as applicable, by all lender-reporters.
Data Source	Third-party data provider	CFPB section 1071 data.*
Borrower Distribution Metric:		
Data Point	Percentage of small farms with gross annual revenue of more than $250K and less than or equal to $1M or $250K or less, as applicable, in assessment area.	Percentage of small farms loans to small farms with gross annual revenue or more than $250K and less than or equal to $1M or $250K or less in assessment area, as applicable, by all lender-reporters.
Data Source	Third-party data provider	CFPB section 1071 data.*

*As proposed in § __.51 and discussed in Section XXI, the agencies would continue to maintain the current definitions related to small business loans and small farm loans until, and subject to a transition period, such time as the CFPB finalizes and implements its Section 1071 Rulemaking and section 1071 data becomes available.

For the geographic distribution metric, the proposed community benchmark is intended to measure the opportunities for small business lending in, respectively, the low-income and moderate-income census tracts of an assessment area. The proposed market benchmark is intended to show the overall level of small bank or small farm lending taking place in low-income and moderate-income census tracts in the assessment area by all section 1071 reporting lenders.

For the borrower distribution metric, the proposed community benchmark is intended to measure the opportunities for banks to lend to small businesses or small farms with gross annual revenues of $250,000 or less and gross annual revenues more than $250,000 and less than or equal to $1 million in an assessment area. The proposed market benchmark is intended to show the overall level of small business or small farm lending to businesses or farms using the same gross annual revenue thresholds. As described in Section XXI, until the data reported under the Section 1071 Rulemaking is available, the agencies propose to calculate a borrower market benchmark for only a single revenue category for small business lending and small farm lending: The percentage of all reporter banks' small business or small farm loans that went to a business or farm with gross annual revenues of less than $1 million. Likewise, the agencies propose to calculate a borrower community benchmark for only a single revenue category: The percentage of all small businesses or farms with gross annual revenues of less than $1 million—until the data reported under the Section 1071 Rulemaking is available.

Automobile Lending Benchmarks. For automobile lending, the proposed benchmarks are in Table 7. The proposed community benchmarks and data sources would be comparable to what is currently used in evaluations, and the agencies propose using new data collection and reporting for large banks with assets of over $10 billion, once available, to develop market benchmarks.

TABLE 7 TO SECTION __.22—BENCHMARKS FOR AUTOMOBILE LOANS

Distribution metric	Community benchmark	Market benchmark
Automobile		
Geographic Distribution Metric:		
Data Point	Percentage of households in low-income or moderate-income census tracts, as applicable, in assessment area.	Percentage of automobile loans in low-income or moderate-income census tracts in assessment area, as applicable, by all lender-reporters.
Data Source	American Community Survey (Census)	CRA reported data.
Borrower Distribution Metric:		

TABLE 7 TO SECTION __.22—BENCHMARKS FOR AUTOMOBILE LOANS—Continued

Distribution metric	Community benchmark	Market benchmark
Data Point	Percentage of low-income or moderate-income households, as applicable in assessment area.	Percentage of automobile loans to low-income, or moderate-income borrowers, in assessment area as applicable, by all lender-reporters.
Data Source	American Community Survey (Census)	CRA reported data.

For the geographic distribution metric, the proposed community benchmark is intended to measure the opportunities for automobile lending in the low-income or moderate-income census tracts of an assessment area. The proposed market benchmark is intended to show the overall level of automobile lending taking place in low-income and moderate-income census tracts in an assessment area by banks with assets of over $10 billion. For the borrower distribution metric, the proposed community benchmark is intended to measure the opportunities for automobile lending to low-income or moderate-income households in an assessment area. The proposed market benchmark is intended to show the overall level of automobile lending by all large banks to low-income or moderate-income borrowers in an assessment area.

For both the geographic and borrower community benchmarks, the agencies propose to use household counts to measure lending opportunities. The market benchmark would involve comparing a bank's automobile lending only to the automobile lending by banks with assets of over $10 billion. This reflects that only banks with assets of over $10 billion evaluated under CRA would be required to report automobile lending data under this proposal.

The agencies considered not developing market benchmarks for automobile lending to avoid introducing an additional data collection and reporting requirement for banks with assets of over $10 billion, but believe that a lack of benchmarks would diminish the value in adopting a metrics-based approach to evaluating a bank's automobile lending. Without a market benchmark, a bank's automobile lending could only be compared to the community benchmark, which could lead to performance expectations that are too high in some markets, such as metropolitan areas with accessible public transportation.

The agencies also considered whether credit bureau data could be used as a data source for creating market benchmarks for automobile lending. However, the agencies found that credit bureau data could not be used to construct a market benchmark for the borrower distribution metric since sufficiently accurate borrower income information is not available from the credit bureaus. The agencies instead propose to require data collection and reporting in order to construct market benchmarks for both distribution metrics—geographic distribution metric and borrower distribution metric—rather than pursuing an incomplete metrics approach using credit bureau data.

Timing Issues for Using Benchmarks. For all the community benchmarks described in this section, the agencies are considering whether to calculate them using the most recent data available as of the first day of a bank's CRA examination. This would provide the most accurate possible picture of the potential borrowers in the bank's community during an evaluation period. However, under this approach, the values of the community benchmarks may not be known at the outset of the evaluation period if additional data subsequently becomes available in later years, which may result in the benchmarks changing. The agencies seek feedback on alternative methods to set the community benchmark. An alternative approach would be to lock in the community benchmarks at the outset of the evaluation period, using the most recent data available at that time. This approach would provide more certainty to banks, but the thresholds in place could be out-of-date by the end of a performance evaluation period.

Another approach would be to lock in the community benchmark at the outset of the evaluation period using data available then, but let the benchmark decrease if demographic data collected during the evaluation period would lead to a lower benchmark. This ''float down'' approach has the advantage of both giving banks a pre-specified bar to clear, while also providing leniency if lending opportunities worsen during their evaluation period. However, the agencies have also considered that this alternative may reduce the expectations for banks to meet the credit needs of their communities under certain market conditions.

For all the market benchmarks, the agencies are considering measuring the benchmarks using all the available reported data from the years of the bank's evaluation period, recognizing that some evaluation periods could include a year for which reported data is not yet available. Similarly, the market volume benchmark described in Section IX.C and proposed appendix A would be calculated using reported lending data from the bank's evaluation period. In some cases, this approach has the potential to create a mismatch between the economic conditions described by the market benchmarks and those faced by the bank during the full course of its evaluation period. The agencies seek feedback on whether this approach to comparing bank metrics to market benchmarks is appropriate. An alternative approach would be to only include in the bank distribution metrics and bank volume metrics data from the same years that the market distribution benchmarks and market volume benchmarks are able to be measured over. This approach would have the advantage of setting performance standards for banks that correspond to the period (and the economic conditions during that period) over which an agency is evaluating a bank's performance. However, this approach has the disadvantage of, in some circumstances, not fully covering the recent lending a bank has done.

3. Setting Thresholds Using Benchmarks

The agencies propose to translate the proposed benchmarks into the four thresholds. First, the community benchmark and market benchmark would each be calibrated using defined percentages, referred to in proposed appendix A as a community multiplier and a market multiplier. The multipliers are proposed as follows, with the objective of aligning the benchmarks with the agencies' performance expectations:

- 33 percent of the market benchmark and 33 percent of the community benchmark are intended to reflect performance expectations for the ''Needs to Improve'' threshold.
- 80 percent of the market benchmark and 65 percent of the community benchmark are intended to reflect performance expectations for the ''Low Satisfactory'' threshold.

• 110 percent of the market benchmark and 90 percent of the community benchmark are intended to reflect performance expectations for the ''High Satisfactory'' threshold.

• 125 percent of the market benchmark and 100 percent of the community benchmark are intended to reflect performance expectations for the ''Outstanding'' threshold.

Second, the four thresholds would be set by selecting, for each conclusion category, the lesser of the calibrated market benchmark (the product of the market multiplier times the market benchmark) and calibrated community benchmark (the product of the community multiplier and the community benchmark). This proposed approach is reflected in Table 8.

TABLE 8 TO SECTION __.22—THRESHOLDS FOR DEFINING PERFORMANCE RANGES

	Market multiplier and market benchmark		Community multiplier and community benchmark
Select the Lesser of the Two Values			
''Needs to Improve'' Threshold	33% of the Market Benchmark	OR	33% of the Community Benchmark.
''Low Satisfactory'' Threshold	80% of the Market Benchmark	OR	65% of the Community Benchmark.
''High Satisfactory'' Threshold	110% of the Market Benchmark	OR	90% of the Community Benchmark.
''Outstanding'' Threshold	125% of the Market Benchmark	OR	100% of the Community Benchmark.

The agencies propose to set thresholds as the lesser of the two calibrated benchmarks because, as described below, this establishes standards that are achievable everywhere, while still ensuring that the performance standards are set appropriately in markets in which low- and moderate-income individuals and census tracts, and small businesses and small farms may be underserved. Specifically, the agencies' proposal would tend to assign better ratings in markets where more banks were meeting the credit needs of the community. At the same time, it would also prevent thresholds from becoming too stringent in markets with fewer opportunities to lend to lower-income communities or smaller establishments.

To demonstrate the importance of using both benchmarks in this manner, the agencies outline a hypothetical assessment area in which the market benchmark is close to or above the community benchmark and one in which the market benchmark is well below the community benchmark. First, in the area with a higher market benchmark, lower-income communities or smaller establishments are receiving loans at close to the same rate as higher income or larger establishments. The calibrated community benchmark, with its lower multipliers, would set the threshold for performance ranges there. Local lenders—whose strong performance is the reason for the high market benchmark—would generally perform well on the performance ranges set by the community benchmark. The proposal would therefore reward more banks for contributing to the overall strong distribution of credit in such a market.

In the second area, the low level of the market benchmark may be due to reduced lending opportunities not reflected in the community benchmark, so basing performance ranges on the community benchmark there could set thresholds unattainably high. However, the low level of the market benchmark could also reflect local lenders failing to meet their community's credit needs. By setting thresholds based on the calibrated market benchmark with its higher multipliers, the proposal would assign lower conclusions to more banks in these potentially underserved markets, while ensuring that satisfactory or better conclusions are attainable by the better local performers.

The agencies also seek feedback on an alternative approach to determining the thresholds based on the market and community benchmarks to address potential concerns that the proposed approach may set performance expectations too low in places where all lenders, or a significant share of lenders, are underserving the market and failing to meet community credit needs. In cases where the calibrated community benchmark is higher than the calibrated market benchmark, instead of using the lower of the calibrated community and market benchmark as proposed, an alternative approach could instead calculate a weighted average of the calibrated benchmarks for each threshold. The agencies are considering applying a weight ranging between 10 percent and 30 percent to the calibrated community benchmark, and a weight of 70 percent to 90 percent to the calibrated market benchmark, for purposes of computing the weighted average. However, in cases in which the calibrated community benchmark is lower than the calibrated market benchmark, the calibrated community benchmark alone would be used to set the threshold.

In places where all lenders, or a significant fraction of lenders, are underserving the market and failing to meet community credit needs, this weighted average approach would ensure that in such a community, the performance ranges are based on a combination of community characteristics and market lending patterns, both of which reflect local credit needs and opportunities. However, for components of the retail lending distribution metrics in which the calibrated community benchmark is much higher than the calibrated market benchmark due to limited lending opportunities (such as low demand), this alternative approach could set thresholds higher in some areas than may be desirable.

Under this alternative, the agencies would apply more weight to the calibrated market benchmark than to the calibrated community benchmark. This is intended to adequately reflect changes in credit demand and lending opportunities over time that are not reflected in the community benchmark, such as the emergence of new products and services, or economic shocks that affect the level of low- and moderate-income credit needs and opportunities. Furthermore, a lower weight on the community benchmark lessens the risk of setting the effective thresholds unattainably high in circumstances in which the calibrated community benchmark is much higher than the calibrated market benchmark. In determining the exact weighting that would be used under this alternative approach, the agencies consider a weight on the calibrated community benchmark as high as 30 percent may give a strong emphasis on local demographic factors and to aim towards equitable lending outcomes for individuals and communities of all income levels. However, a lower weight on the community benchmark of 10 percent may make the resulting thresholds more responsive to changes in lending conditions over time and would capture more information about credit demand that is better reflected by the market benchmark than the community benchmark.

4. Proposed Multiplier Levels

The agencies have proposed threshold levels—using the proposed multipliers identified in Table 8—that recognize the existing strong retail lending performance of many banks while also seeking to appropriately strengthen performance expectations for a ''Satisfactory'' Retail Lending Test conclusion. The agencies analyzed historical bank lending data under the proposed metrics-based approach with these multipliers. The analysis, and the estimated conclusions banks would have received, are presented in Section X.E. The implied outcomes, as measured by the distribution of conclusions that would have been assigned under the proposed approach historically, indicate that the proposed multipliers are producing a level of stringency that the agencies believe to be appropriate.

A discussion of each set of proposed multipliers follows:

Proposed Multipliers for ''Needs to Improve'' Threshold. The agencies propose multipliers for the needs to improve threshold as shown in Table 8.

	Market multiplier and market benchmark		Community multiplier and community benchmark
Select the Lesser of the Two Values			
''Needs to Improve'' Threshold	33% of the Market Benchmark	OR	33% of the Community Benchmark.

The agencies propose setting both the market multiplier and the community multiplier at 33 percent for the ''Needs to Improve'' threshold, reflecting bank performance that is extremely poor relative to opportunities. Performance that falls below this threshold would be in the ''Substantial Noncompliance'' performance range.

The agencies propose that performance serving less than 33 percent of the market average is an appropriate dividing line between performance low enough to warrant the lowest conclusion category and performance that is not satisfactory but is more appropriately recognized as needing improvement. Similarly, the agencies propose that 33 percent of the community benchmark is also appropriate for distinguishing between ''Substantial Noncompliance'' performance and ''Needs to Improve'' performance.

The agencies considered setting both of these multipliers at 25 percent but considered that this would set standards that may be too narrow for ''Substantial Noncompliance'' performance. Similarly, the agencies considered that setting a higher set of percentages for these multipliers, such as 50 percent, may be too wide for ''Substantial Noncompliance'' performance and may reduce the effectiveness of the ''Needs to Improve'' category.

Proposed Multipliers for ''Low Satisfactory'' Threshold. The agencies propose multipliers for the ''Low Satisfactory'' threshold as shown in Table 8.

	Market multiplier and market benchmark		Community multiplier and community benchmark
Select the Lesser of the Two Values			
''Low Satisfactory'' Threshold	80% of the Market Benchmark	OR	65% of the Community Benchmark.

The agencies propose setting the market multiplier at 80 percent and the community multiplier at 65 percent for the ''Low Satisfactory'' threshold, reflecting performance that is adequate relative to opportunities. Performance that falls below this threshold would be in the ''Needs to Improve'' performance range.

The agencies consider the industry's performance to be broadly, although not universally, satisfactory and, as such, the proposed 80 percent market multiplier is meaningfully below the average performance of banks in an assessment area. This would provide banks with average performance—100 percent of the market benchmark—with a passing conclusion on a distribution metric in the ''Low Satisfactory'' performance range.

While the agencies consider that this proposed market multiplier would appropriately calibrate the ''Low Satisfactory'' threshold to capture some performance below the market average, this proposal is also intended to set strong performance expectations necessary to achieve a ''Low Satisfactory'' conclusion. The agencies considered alternative market multipliers of 75 percent and 70 percent, but considered that these levels may be too far below average for performance necessary to demonstrate adequately meeting community credit needs.

For the proposed community multiplier, the agencies propose to select a percentage below the market multiplier to account for the fact that the community benchmark figures are generally higher, and therefore more difficult to achieve. While the agencies believe that it is appropriate to raise standards for the market multiplier, the agencies believe that 65 percent for the community multiplier is more appropriate for the ''Low Satisfactory'' threshold. The agencies considered a community multiplier of 55 percent for the ''Low Satisfactory'' threshold. However, the agencies considered that performance just above 50 percent of the community benchmark—reflecting, for example, the percentage of low-income or moderate-income families in an assessment area—may be too low for performance necessary to demonstrate adequately meeting community credit needs.

Proposed Multipliers for ''High Satisfactory'' Threshold. The agencies propose multipliers for the ''High

Satisfactory'' threshold as shown in Table 8.

	Market multiplier and market benchmark		Community multiplier and community benchmark
Select the Lesser of the Two Values			
''High Satisfactory'' Threshold	110% of the Market Benchmark	OR	90% of the Community Benchmark.

The agencies propose setting the market multiplier for a ''High Satisfactory'' conclusion at 110 percent. This reserves the ''High Satisfactory'' conclusion for banks that are not just average, but a meaningful increment above the average of local lenders. A community multiplier of 90 percent would establish a recommended ''High Satisfactory'' conclusion if a bank achieved close to per-capita parity in its lending across different income groups.

Proposed Multipliers for ''Outstanding'' Threshold. The agencies propose multipliers for the ''Outstanding'' threshold as shown in Table 8.

	Market multiplier and market benchmark		Community multiplier and community benchmark
Select the Lesser of the Two Values			
''Outstanding'' Threshold	125% of the Market Benchmark	OR	100% of the Community Benchmark.

The agencies propose to set the market multiplier at 125 percent for an ''Outstanding'' conclusion. This sets a threshold well in excess of the average of local lenders, while still being an attainable target for many better performers. The agencies recognize that many banks, especially large banks, frequently employ dedicated CRA teams with strong relationships to the community to ensure that the bank appropriately identifies and helps to meet community credit and community development needs. Thus, the agencies propose to set the threshold for an ''Outstanding'' conclusion at a point that is attainable for banks that are actively working and making choices to be leaders in helping to meet community credit and community development needs. At the same time, the agencies propose not to set the ''Outstanding'' conclusion threshold too low to ensure that an ''Outstanding'' conclusion is awarded only to banks that have demonstrated an exceptional level of performance.

The agencies propose to set the community multiplier at 100 percent. As bank metrics and market benchmarks are usually substantially below the community benchmark, the agencies considered that a 100 percent multiplier represents an aspirational goal. Furthermore, it represents equal per-capita lending to communities of different income levels.

Example of Performance Ranges Methodology. For example, in an assessment area with 30 percent of owner-occupied housing units and where 25 percent of all closed-end home mortgage loans were in moderate-income census tracts, the closed-end home mortgage moderate-income geographic community and market benchmarks would be 30 percent and 25 percent, respectively.

A bank making 18 loans in moderate-income census tracts out of 100 total closed-end home mortgage loans in the assessment area would have a bank metric of 18 percent for this component of lending. The bank metric would fall into the ''Needs to Improve'' performance range because it is between the threshold (8.25 percent and 19.5 percent) for the ''Needs to Improve'' conclusion.

Thresholds for the relevant performance ranges are calculated using the multipliers in Table 8 as follows:

- For the ''Low Satisfactory'' category: the calibrated market benchmark is 80 percent of the market benchmark (0.8×25 percent = 20 percent), and the calibrated community benchmark is 65 percent of the community benchmark (0.65×30 percent = 19.5 percent). The threshold for a ''Low Satisfactory'' conclusion would be 19.5 percent, the lesser of these two calibrated benchmarks.
- For the ''Needs to Improve'' category: the calibrated market benchmark is 33 percent of the market benchmark (0.33×25 percent = 8.25 percent), and the calibrated community benchmark is 33 percent of the Community Benchmark (0.33×30 percent = 9.9 percent). The threshold for a ''Needs to Improve'' conclusion would be 8.25 percent, the lesser of these two calibrated benchmarks.

The Board has developed a search tool, which includes illustrative examples of the thresholds and performance ranges in a given geography, using past lending data. Specifically, this tool provides illustrative examples of the thresholds for the relevant performance ranges in each MSA, metropolitan division, and county based on historical lending from 2017–2019. This tool can be found on the Board's website at *https://www.federalreserve.gov/consumers communities/performance-thresholds-search-tool.htm*.

Request for Feedback

Question 76. Should the community benchmarks be set using the most recent data available at the time of the examination? Would an alternative method that establishes benchmarks earlier be preferable?

Question 77. Should the bank volume metric and distribution bank metrics use all data from the bank's evaluation period, while the market volume benchmark and distribution market benchmarks use only reported data available at the time of the exam? Would an alternative in which the bank volume metrics and distribution bank metrics were calculated from bank data covering only the same years for which that reported data was available be preferable?

Question 78. Are the proposed community benchmarks appropriate, including the use of low-income and moderate-income family counts for the borrower distribution of home mortgage lending? Would alternative benchmarks be preferable? If so, which ones?

Question 79. Should automobile lending for all banks be evaluated using benchmarks developed only from the lending of banks with assets of over $10 billion?

Question 80. Are the proposed market and community multipliers for each conclusion category set at appropriate levels? If not, what other set of multipliers would be preferable? In general, are the resulting thresholds set at an appropriate level for each conclusion category?

Question 81. How should the agencies use the calibrated market benchmark and calibrated community benchmark to set performance thresholds? Should the agencies set thresholds based on the lower of the calibrated market benchmark or calibrated community benchmark?

Question 82. How should the agencies address the potential concern that the proposed approach may set performance expectations too low in places where all lenders, or a significant share of lenders, are underserving the market and failing to meet community credit needs? Should the agencies consider an alternative approach to setting the performance thresholds that would use a weighted average of the calibrated market benchmark and calibrated community benchmark?

F. Developing Product Line Scores in Each Assessment Area

For each major product line in an assessment area, the agencies propose to use a product line score to synthesize lending performance in the geographic and borrower distribution metrics. For example, a bank's closed-end home mortgage product line score in an assessment area would encompass its lending within four categories: (i) In low-income census tracts and (ii) in moderate-income census tracts (both are geographic distribution metrics); and (iii) to low-income borrowers and (iv) to moderate-income borrowers (both are borrower distribution metrics). The agencies propose combining the conclusions into a product line score for each major product to enable stakeholders to better understand performance by providing greater transparency and to differentiate lending performance for each major product line in the same assessment area. The approach could also highlight exemplary performance in a product line and provide context for why a bank received a particular recommended Retail Lending Test conclusion.

Scoring Approach. The agencies propose that the two income categories within each distribution test receive a conclusion ranging from ''Outstanding'' to ''Substantial Noncompliance,'' associated with a point value as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). As a result, each major product line in an assessment area would receive four scores, except that multifamily lending would receive two scores for the geographic distribution metrics only.

This proposed mapping between conclusion categories and point values fulfills two purposes. First, it creates a meaningful difference between each category, including between the ''Low Satisfactory'' and ''High Satisfactory'' categories. Second, it makes the difference between ''Low Satisfactory'' and ''High Satisfactory'' less than the differences between the other categories. This choice emphasizes that ''Low Satisfactory'' and ''High Satisfactory'' represent different degrees of performance within the broader ''Satisfactory'' range.

The agencies also considered an alternate mapping that would use a four-point scale with uniform spacing of point values between the conclusion categories (*i.e.,* each category would be assigned an integer from 0 through 4). However, under the method of deriving assessment area, state, multistate MSA, and institution-level conclusions described below and in Section X.D, this four-point scale would have the tendency to cause more banks to receive one of the ''Satisfactory'' conclusions, as these two categories would cover a greater fraction of the range of possible scores. The agencies found that the proposed 10-point scale better allowed a distinction between the strongest- and weakest-performing banks and those with closer to average performance.

Combining Income Categories. After assigning each category a score, a weighted average of the scores for the two income categories (or revenue categories for small business and small farm borrower distribution metrics) would then be taken to produce a geographic income average for the geographic distribution metrics scores and a borrower income average for the borrower distribution metrics scores for that product line within each assessment area.

The agencies propose to weight these two scores by the community benchmark to make the scores proportional to the population of potential borrowers in the assessment area. For example, for the closed-end home mortgage borrower distribution metrics, the weights are based on the percentage of families in the assessment area that are either low-income or moderate-income. In a hypothetical assessment area in which twice as many low-income families as moderate-income families resided, the low-income borrower score would carry twice the weight of the moderate-income borrower score in forming the borrower income average for closed-end home mortgage lending.

Combining Borrower Distribution and Geographic Distribution Averages. For each major product line, the two distribution income averages (geographic income average and borrower income average) are then averaged to arrive at the product line average. The scores from the two distribution metrics are weighted equally to ensure parity between the borrower and geographic distribution metrics. The agencies believe that both geographic and borrower distributions are important measures of how a bank is meeting its community's credit needs, and an equal weighting ensures that both distributions are important to overall conclusions and ratings. The agencies seek feedback on whether the equal weighting approach is appropriate or if the geographic distribution score should be weighted less heavily than the borrower distribution, and whether this would account for banks operating in rural areas, or other areas with few low- and moderate-income census tracts. In assessment areas with no low- and moderate-income census tracts, and hence no geographic distribution scores, the agencies propose to set the product line average equal to the borrower income average.

Request for Feedback

Question 83. Should the agencies weight the two distribution results equally? Should the borrower distribution conclusion be weighted more heavily than the geographic distribution conclusion to provide an additional incentive for lending to low- and moderate-income borrowers in certain areas? Are there circumstances under which the geographic distribution conclusion should be weighed less heavily, such as in rural areas with few low- and moderate-income census tracts or where the number of investor loans is increasing rapidly?

G. Using Weighted Average of Product Line Scores To Create Recommended Retail Lending Test Conclusion

The agencies propose to develop a recommended conclusion on the Retail Lending Test for each assessment area by combining the scores the bank received on each of its major product lines in that assessment area. The proposal recognizes the importance of using a clear and transparent method that appropriately weights product lines when creating a recommended Retail Lending Test conclusion for each assessment area. The agencies propose weighting each product by the dollar volume of lending the bank engaged in for that product line within that assessment area, so that assessment area conclusions reflect performance in each of a bank's major product lines, with more weight assigned to a bank's larger major product lines.

The recommended Retail Lending Test conclusion for an assessment area would be derived by taking a weighted average of all the product line scores, weighting each product by the dollar volume of lending the bank engaged in each product line in that assessment area. The resulting score would be rounded to the nearest conclusion category using the same point value correspondence as before: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). This would be the recommended conclusion on the Retail Lending Test for the assessment area. The examiner would determine a final conclusion based on this metric-derived recommendation, as well as a consideration of additional factors described in Section IX.H.

This approach would give proportionate weight to a bank's product offerings so that more prominent product lines, as measured in dollars, have more weight on the bank's overall conclusion in an assessment area. The test is, thus, tailored to individual bank business model, as evaluations are based on the lending a bank specializes in locally. Moreover, weighing product lines by dollar recognizes the continued importance of home mortgage and small business lending to low- and moderate-income communities, which have been a focus of the CRA, while also accounting for the importance of consumer loans to low- and moderate-income individuals.

Considering the role of consumer loans to low- and moderate-income communities, the agencies seek feedback on alternatives to the proposed weighting approach, including incorporating loan count with dollar volume. For example, averaging the percentage by dollar volume and the percentage by number of loans would give consumer lending more weight than under an approach that only considers dollar volume. This alternative recognizes that loan size can vary among different product lines (*e.g.,* automobile loans versus home mortgage loans) and seeks to balance the value of dollars invested in a community with the number of borrowers served.

Request for Feedback

Question 84. Should the agencies use loan count in conjunction with, or in place of, dollar volume in weighting product line conclusions to determine the overall Retail Lending Test conclusion in an assessment area?

H. Additional Factors Considered for Retail Lending Test Conclusion

While the proposed metrics and benchmarks are calibrated to reflect differences in local market conditions, bank capacities, business models and strategies, there are a limited number of additional factors that would not be captured in the proposed metrics and benchmarks that the agencies believe should be considered when evaluating a bank's retail lending performance. Therefore, the agencies propose to consider additional factors that are indicative of a bank's lending performance or lending opportunities, but are not captured in the metrics, when reaching Retail Lending Test conclusions for facility-based assessment areas. The agencies propose to limit this consideration to a prescribed set of factors to create more certainty regarding when to depart from a recommended conclusion derived from the metrics and performance ranges. The agencies seek feedback on whether the agencies should consider a different or broader set of additional factors. For example, the agencies seek feedback on whether oral or written comments about a bank's retail lending performance, as well as the bank's responses to those comments, should be considered by the agencies in developing Retail Lending Test conclusions.

Specifically, under the proposal, performance context related to a bank's retail lending performance that is not reflected in the metrics, such as information related to the bank's capacity and constraints, could raise the assigned conclusion under the ranges approach. The proposal also recognizes that lowering an assigned conclusion may be warranted in other situations as provided in proposed § __.22(e). For example, an assigned conclusion could be lowered where a bank manipulated loan data to obtain better scores under the distribution tests. Examples of manipulation could include loan churning, defined as the purchase of loans for the sole or primary purpose of influencing a bank's retail lending performance evaluation, as evidenced by the subsequent resale of some or all of those loans within a short time period, or when some or all of the loans were considered in multiple banks' CRA evaluations.

The geographic dispersion of loans is another aspect of performance not captured in the retail lending measures. For example, an assigned conclusion may be lowered where geographic lending patterns exhibit gaps in census tracts served that cannot be explained by performance context.

Further, the proposal allows for consideration of data anomalies that could produce an inappropriate recommended conclusion. For example, where there are very few banks reporting retail lending and deposits data, or where one bank has an outsized market share, the proposed benchmarks may not provide an accurate measure of local opportunities. Measurement errors in the data could also cause issues: For example, due to sampling noise, the American Community Survey might indicate a particular assessment area had zero owner-occupied units in low- or moderate-income census tracts (and hence no *geographic income average*) in an assessment area that the bank did do some mortgage lending in low- or moderate-income census tracts. Another problem could occur if a monoline multifamily lender were evaluated in an assessment area with no low- or moderate-income census tracts. The metric approach would not be appropriate in such a situation, as the bank would have neither a geographic nor a borrower distribution conclusion.

An additional approach that the agencies are considering is to use data to identify assessment areas in which lenders may be underperforming in the aggregate and the credit needs of substantial parts of the community are not being met. This information about the assessment area could be used as an additional factor to consider when assigning Retail Lending Test conclusions. In such an assessment area, the agencies may consider that the market benchmark is not an accurate measure of the credit needs and opportunities of low- and moderate-income communities, small businesses, or small farms, because lenders as a whole are not meeting their obligations. The agencies would apply additional qualitative review of retail lending in these assessment areas, the results of which could be used to adjust the recommended conclusion produced by the bank metrics and performance ranges.

One way the agencies could implement such an approach would be by developing statistical models that predict the level of the market benchmark that would have been expected in each assessment area based on its demographics (*e.g.,* income distributions, household compositions), housing market conditions (*e.g.,* housing affordability, the share of housing units that are rentals), and economic activity (*e.g.,* employment growth, cost of living). A model could be estimated using data at the census tract or county level that are collected nationwide. An assessment area in which market benchmarks fell significantly below their expected levels would be considered underperforming for the relevant product line, distribution test, and income level.

The agencies could identify underperforming markets using a relative standard—for example, assessment areas in which the difference between the market benchmark and its expected value was two standard deviations below average. They could also identify underperforming markets using an absolute standard—for example, assessment areas in which the market benchmark was less than 75 percent of its expected value. Alternatively, rather than designate a specific set of underperforming markets, the agencies could use the difference between the actual and expected market benchmarks as an additional factor to consider in every assessment area.

Request for Feedback

Question 85. Would identifying underperforming markets appropriately counter the possibility that the market benchmarks might be set too low in some assessment areas? If so, what data points should be used to set expectations for the market benchmark? How far below this expectation should an observed market benchmark be allowed to fall before the market is designated as underperforming?

Question 86. Should the agencies consider other factors, such as oral or written comments about a bank's retail lending performance, as well as the bank's responses to those comments, in developing Retail Lending Test conclusions?

X. Retail Lending Test: Evaluation Framework for Retail Lending Test Conclusions at the State, Multistate MSA, and Institution Level

The agencies propose a transparent and standardized approach to determining Retail Lending Test conclusions at the state, multistate MSA, and institution level. The proposed approach would leverage performance in a bank's local assessment areas. In addition, the agencies also propose evaluating a large bank's retail lending performance in areas outside of its assessment areas, referred to as the outside retail lending area. This approach is intended to complement the proposed retail lending assessment areas, as described in Section VI. The agencies propose a tailored application of this approach for intermediate banks. Specifically, the agencies propose evaluating an intermediate bank's retail lending performance outside of its facility-based assessment areas only if it does more than 50 percent of its lending outside of its facility-based assessment areas.

As discussed in Section VI, the agencies recognize that changing technology increasingly allows banks to reach consumers with loans and deposit products without any in-person contact at a branch office. As a result, a bank's lending may be geographically dispersed, without concentrations in particular local markets that would be captured by the proposed retail lending assessment areas. As shown in Table 1 in Section VI, the agencies estimate that approximately 11 percent of home mortgage loans and 16 percent of small business loans originated by large banks would fall outside of facility-based assessment areas or the proposed retail lending assessment areas.

A. Background

Under the current CRA regulations, lending test ratings are assigned at the state, multistate MSA, and institution levels using conclusions reached about performance on the various performance criteria in a bank's assessment areas. Retail lending conducted outside of assessment areas is not evaluated using the Lending Test criteria. However, the Interagency Questions and Answers do allow for consideration of loans to low- or moderate-income persons, and small business and small farm loans outside of a bank's assessment areas.[185]

The current process relies on examiner judgment to reach conclusions (inside assessment areas and outside when applicable), using the descriptions of performance under each of the criteria and ratings categories.[186] Conclusions are then aggregated to reach lending test ratings at each of the rated areas—state and multistate MSA levels. Examiners aggregate conclusions considering the significance of the bank's lending in the area compared to the bank's overall activities as well as information about the number and activities of other banks, lending opportunities, and demographic and economic conditions in the rated areas.

B. Overview

The agencies propose to assign conclusions on the Retail Lending Test at the state and multistate MSA levels based on the conclusions reached at individual facility-based and retail lending assessment areas, as applicable. The weight assigned to each assessment area level conclusion in determining the state or multistate MSA rating would be measured as a combination of the percentage of the banks' retail loans made in that assessment area, and the percentage of the banks' deposits sourced from that assessment area. The use of the combination of retail lending and deposits is intended to ensure that a bank's ratings reflect its performance in the communities where most of its borrowers and depositors live.

The agencies also propose to assign conclusions on the Retail Lending Test at the institution level by similarly combining conclusions from a bank's facility-based and retail lending assessment areas, as applicable. In addition, large banks and certain intermediate banks would be assigned a conclusion on their retail lending performance in outside retail lending areas, which are the areas outside of a bank's facility-based and retail lending assessment areas, as defined in proposed § __.12. This conclusion would factor into the institution-level Retail Lending Test conclusion for these banks just as assessment area conclusions do, with a weight measured as a combination of the percentage of the banks' retail loans made, and the percentage of the banks' deposits sourced from, outside any facility-based or retail lending assessment area.

For intermediate banks, the agencies propose to perform an evaluation of outside-assessment area retail lending only if greater than 50 percent of the bank's retail lending, by dollar volume, occurred outside its assessment areas during the evaluation period. The agencies recognize that most intermediate banks perform the bulk of their lending within their assessment

[185] See Q&A § __.22(b)(2) and § __.22(b)(3)–4.

[186] *See* Appendix A to part __—Ratings.

areas.[187] Tailoring the evaluation approach for these banks is intended to reflect the more limited capacity of intermediate banks relative to large banks, and to reflect that their business models are generally focused on their facility-based assessment areas.

The agencies seek feedback on whether all large banks should be evaluated on their retail lending outside of facility-based and retail lending assessment areas, as applicable. An alternative option would be to evaluate outside-assessment area retail lending only for large banks for which outside-assessment area lending met some minimum threshold. For example, large banks that originated or purchased more than 80 percent of their retail loans, by dollar amount, within their facility-based and retail lending assessment areas could be exempted from an evaluation of their outside-assessment area retail lending.

To develop conclusions for a bank's outside retail lending area performance, the agencies propose to use distribution metrics to evaluate each of a bank's major product lines. As with the procedure for developing a recommended conclusion for each assessment area, the bank's outside retail lending area metrics would be compared to a set of benchmarks. These benchmarks, described below in Section X.C, would be established as tailored combinations of the market and community benchmarks from the outside retail lending area geographies in which the bank was engaged in retail lending. As in the bank's assessment areas, focusing on major product lines tailors the evaluation to the bank's business model by assessing how it met the credit needs of its community in the products it specializes in.

Request for Feedback

Question 87. Should all large banks have their retail lending in their outside retail lending areas evaluated? Should the agencies exempt banks that make more than a certain percentage, such as 80 percent, of their retail loans within facility-based assessment areas and retail lending assessment areas? At what percentage should this exemption threshold be set?

[187] Using data from the CRA Analytics Data Tables, the agencies found that the median bank with assets greater than $600 million evaluated under the intermediate small bank exam procedures conducted almost 80 percent of its retail lending, by dollar volume, within its assessment areas. Additionally, over 90 percent of the sampled banks conducted the majority of their retail lending within their assessment areas.

C. Outside Assessment Area Lending

For the reasons described in Section VIII, the agencies propose using the same major product line standards and bank geographic and borrower distribution metrics to evaluate a bank's retail lending activity in an outside retail lending area. In addition, the agencies propose only performing this evaluation at the institution level. This means that retail lending activity outside a bank's assessment areas would only be evaluated if that lending meets the major product line standard. Because this retail lending activity would be aggregated nationwide, the agencies propose a modified approach to setting performance expectations that draws on the approach used for assessment areas but reflects the larger geographic area.

1. Establishing Performance Expectations for Bank Distribution Metrics

Similar to the proposed method for reaching recommended conclusions in individual assessment areas, the agencies propose to set expectations for bank performance via a standardized methodology as described in Section IX.E.1. The bank distribution metrics for each income level, distribution test (geographic or borrower), and major product line would be compared to a set of performance ranges that correspond to the different conclusion categories.

a. Tailoring Benchmarks To Match the Bank's Geographic Footprint

Banks that engage in retail lending outside of their assessment areas do not all have the same regional distributions of lending across the country. As such, the lending opportunities in the communities served by different banks in outside retail lending areas are not the same. The agencies propose to tailor performance expectations for outside retail lending areas to match the opportunities in the regions in which the bank lends.

The agencies propose to tailor performance expectations by setting performance ranges relative to bank-specific tailored benchmarks. These tailored benchmarks are calculated as the average of local market and community benchmarks across the country, weighted by the retail lending the bank does in each region. Specifically:

- For each major product line, the agencies would calculate market benchmarks and community benchmarks for the geographic and borrower distribution tests for every MSA, and the non-MSA portion of every state, in the country. Calculations of these benchmarks would follow the method described in Section IX.E.2.
- Each MSA and the non-MSA portion of each state is assigned a weight, calculated as the percentage, by dollar volume, of the bank's outside retail lending that was in that MSA or non-MSA portion of a state.
- Tailored community benchmarks and tailored market benchmarks are then calculated as the weighted average of the community benchmarks and market benchmarks in every MSA and the non-MSA portion of every state, weighted by the percentage of the bank's outside retail lending in that region.

For example, suppose that 75 percent of a particular bank's outside-assessment area retail lending, by dollar amount, occurred in an MSA that had a closed-end home mortgage moderate-income borrower market benchmark of 10 percent. Suppose that the remaining 25 percent of the bank's outside-assessment area retail lending took place in the non-MSA portion of a state, in which the same market benchmark was 8 percent. The bank's tailored market benchmark for closed-end home mortgage lending to moderate-income borrowers would then be $(0.75 \times 0.1) + (0.25 \times 0.08) = 0.095$, or 9.5 percent.

Performance ranges for the bank's outside retail lending area would be established following the method described in Section IX.E.2, with the tailored community benchmark and the tailored market benchmark substituted for the community benchmark and market benchmark. A comparison of the outside-assessment area bank metric to these performance ranges produces a recommended conclusion for each major product line, distribution test, and income level.

This proposed tailored benchmark approach would set expectations for a bank's outside-assessment area retail lending to match the opportunities in the markets it lends in. The weighting by the volume of the bank's lending ensures that the more of a bank's lending occurs in a particular market, the more the agencies' performance expectations for the bank mirror opportunities in that market. Markets in which the bank did zero lending would get zero weight, and hence have no influence on the performance ranges.

The agencies seek feedback on whether the tailored benchmarks described above appropriately set performance standards for outside retail lending areas. An alternative proposal would be to create nationwide market and community benchmarks that apply to all banks, regardless of where their lending is concentrated. These nationwide benchmarks could be calculated as the benchmarks described in Section IX.E.2, using all census tracts in the nation as the geographic base. Another alternative would be to tailor benchmarks using weights that are individualized by the dollar amount of lending specific to each major product line, rather than the sum of all of a bank's outside-assessment area retail lending. For example, if a bank did a majority of its outside-assessment area closed-end home mortgage lending in MSA A, and a majority of its outside-assessment area small business lending in MSA B, the closed-end home mortgage tailored benchmarks would be weighted towards the benchmarks from MSA A, while the small business tailored benchmarks would be weighted toward MSA B. These alternatives trade off the degree of tailoring performance expectations to the bank's opportunities against their level of complexity, with the agencies' proposed approach striking a balance between the two.

2. Creating Recommended Retail Lending Test Conclusions

Similar to individual assessment areas, the agencies propose to calculate a metrics-based recommended conclusion for overall outside-assessment area retail lending by developing and averaging product line scores, following the method described in Sections IX.F and IX.G.

Request for Feedback

Question 88. Does the tailored benchmark method proposed above for setting performance ranges for outside retail lending areas achieve a balance between matching expectations to a bank's lending opportunities, limiting complexity, and setting appropriate performance standards? Should the agencies instead use less tailored benchmarks by setting a uniform outside retail lending areas benchmarks for every bank? Or should the agencies use a more tailored benchmarks by setting weights on geographies by individual product line?

D. Calculating Retail Lending Test Conclusions at the State, Multistate MSA, and Institution Level

1. Scoring Performance in Facility-Based Assessment Areas, Retail Lending Assessment Areas, and Outside Lending

Each facility-based assessment area, retail lending assessment area, and the outside retail lending area, if applicable, would be assigned a Retail Lending Test conclusion. The agencies propose to assign a numerical performance score to the bank's performance in each of these areas using the following mapping: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points). As described in Section IX.F.1, this mapping would provide a distinction between all conclusion categories, while recognizing that ''Low Satisfactory'' and ''High Satisfactory'' reflect degrees of difference within a more comprehensive ''Satisfactory'' category.

To produce Retail Lending Test conclusions at the state, multistate MSA, and institution level, the agencies propose to combine the performance scores for facility-based assessment areas, retail lending assessment areas, and outside retail lending areas, as applicable, using a standardized weighted average approach, as described in the following sections. The proposed approach would ensure that the bank's retail lending performance in every one of its markets would influence Retail Lending Test conclusions at the state, multistate MSA, and institution level conclusions.

2. State and Multistate MSA Retail Lending Test Conclusions

The agencies propose to assign Retail Lending Test conclusions for states and multistate MSAs based on a weighted average of conclusions from facility-based assessment areas and retail lending assessment areas within each respective state and multistate MSA. The agencies propose that the weights would be calculated as the simple average of:

- The dollars of deposits the bank sourced from an assessment area, as a percentage of all the bank's deposits sourced from facility-based assessment areas or retail lending assessment areas in the state or multistate MSA; and
- The dollars of retail lending the bank made in an assessment area, as a percentage of all the bank's retail loans in facility-based assessment areas or retail lending assessment areas in the state or multistate MSA.

The agencies believe that a bank's presence in a particular community, and hence the importance of its performance there in an overall evaluation of its retail lending, depends on its customer bases for both deposits and loans. Basing weights purely on deposits, for example, would mean that if a bank did a very large amount of its lending in a market from which it drew few deposits, its lending performance there would have only a small influence on its overall conclusion. In an extreme case, most of a bank's lending might effectively get ignored under such a weighting approach. Alternatively, basing weights purely on lending would mean that a bank's record of serving the credit needs of the communities from which it draws deposits would have little bearing on its overall conclusion. For example, if a bank failed the retail lending volume screen in a facility-based assessment area due to making very few loans there, its low level of retail lending would mean that the resulting assessment area conclusion carries little weight in its institution-level conclusion for the Retail Lending Test. Therefore, the agencies believe weighting performance based on a combination of loans and deposits is more appropriate.[188]

For deposits data, the agencies propose to use the annual average amount of a bank's deposits collected from each assessment area averaged over the years of the relevant evaluation period, if the bank collects and maintains this data. As proposed in § _ _.42, collecting and maintaining deposits data would be required for large banks with assets of over $10 billion. Collecting and maintaining deposits data would be optional for small banks that elect evaluation under the Retail Lending Test, for intermediate banks, and for large banks with assets of $10 billion or less. For any banks evaluated under the Retail Lending Test that do not collect deposits data, the agencies propose to use the deposits assigned to the banks' branches in each assessment area, as reported in the FDIC's Summary of Deposits, averaged over the years of the relevant evaluation period.

Because the FDIC's Summary of Deposits data assigns all deposits to branch locations, and all branches would be located in a facility-based assessment area, the deposits assigned to retail lending assessment area performance scores for banks that do not collect and maintain deposits data would always be zero. The weight on the retail lending assessment area performance score for such a bank would, therefore, be one half of the percentage of dollars of retail lending the bank made outside its facility-based assessment areas. For example, if a bank conducted 50 percent of the dollar

[188] The agencies propose to also use the same weighting methodology discussed above—a simple average of a bank's share of deposits and share of lending—to weight facility-based assessment area performance, and other geographic areas as applicable, when developing state, multistate, and institution conclusions for the Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test. The details of how this weighting methodology is used for these other performance tests are discussed in Sections XI, XII, and XIII.

amount of its retail lending in a single retail lending assessment area and did not collect and maintain deposits data under § __.42 of the proposal, then the weight for that retail lending assessment area would be 25 percent. As a result, for a large bank with assets of $10 billion or less or an intermediate bank that obtains deposits from outside of its facility-based assessment areas, electing to collect and maintain deposits data could meaningfully increase the weight placed on the bank's performance in its retail lending assessment areas and outside retail lending area, as applicable, and decrease the weight placed on its facility-based assessment areas. As noted earlier, the agencies believe that using an average of a bank's share of lending and share of deposits remains a preferable weighting approach to only using a bank's share of lending to weight performance across different geographic areas, which could result in areas with high amounts of deposits but low levels of lending being overlooked in a bank's Retail Lending Test conclusion. The agencies seek feedback on the tradeoffs involved with tailoring deposits data requirements, particularly regarding the impact of using the FDIC's Summary of Deposits data, on the proposed weighting methodology and other aspects of the proposal.

Using the weights described above, a weighted average of the performance scores from each assessment area in the state or multistate MSA would be calculated, and a corresponding conclusion would be assigned by rounding to the nearest point value of a conclusion category. For example, a bank with an averaged performance score in a particular state of 4.7 would fall between a ''Needs to Improve'' (3) and ''Low Satisfactory'' (6). Because the averaged performance score is closer to 6 than to 3, the bank would fall into the ''Low Satisfactory'' conclusion category.

Along with the conclusion category, the agencies are proposing to report the averaged performance score in the bank's performance evaluation. This score would provide more information as to which end of the performance range a bank receiving a particular conclusion fell. In the example above, the bank with a 4.7 averaged performance score is toward the lower end of the ''Low Satisfactory'' range. In contrast, a bank with, for example, a 6.3 averaged performance score would be on the higher end of the ''Low Satisfactory'' range. Both banks would receive the same conclusion, but the second bank's performance was stronger. By publishing the averaged performance score, the agencies would provide the public with more detailed information about how well the bank performed on the Retail Lending Test in each of its states and multistate MSAs.

In the following example of the proposed approach to assigning conclusions, suppose a bank had one facility-based assessment area and one retail lending assessment area in a state.

- In the facility-based assessment area, the bank made $10 million in retail loans and collected $90 million in deposits, and
- In the retail lending assessment area, the bank made $10 million in retail loans and collected $10 million in deposits.
- The bank receives an ''Outstanding'' conclusion (10 points) in its facility-based assessment area, and
- The bank receives a ''Needs to Improve'' conclusion (3 points) in its retail lending assessment area.

Calculating Weights

- Facility-based assessment area: the bank collects 90 percent of its assessment area deposits ($\frac{\$90M}{\$90M+\$10M}$) and makes 50 percent of its assessment area retail loans ($\frac{\$10M}{\$10M+\$10M}$) in the facility-based assessment area, so the weight on that assessment area's conclusion would be $\frac{90+50}{2} = 70$ percent.
- Retail lending assessment area: the bank collects 10 percent of its assessment area deposits ($\frac{\$10M}{\$90M+\$10M}$) and makes 50 percent of its assessment area retail loans ($\frac{\$10M}{\$10M+\$10M}$) in the retail lending assessment area, so the weight on that assessment area's conclusion would be $\frac{10+50}{2} = 30$ percent.

Retail Lending Test conclusion for the state: The state average performance score would then be (0.7 × 10) + (0.3 × 3) = 7.9. This score is closer to the ''High Satisfactory'' value (7 points) than the ''Outstanding'' value (10) points, so the bank would be within the ''High Satisfactory'' conclusion category for its Retail Lending Test conclusion in the state.

3. Institution Retail Lending Test Conclusions

The agencies propose to assign institution-level conclusions similarly to state and multistate MSA level ratings by taking a weighted average of the conclusions from individual assessment areas. In addition, the agencies propose that the institution-level weighted average for large banks and certain intermediate banks would incorporate the Retail Lending Test conclusion for outside assessment area lending.

As described above in Section X.D.1, the agencies propose to assign performance scores to each facility-based assessment area and retail lending assessment area according to the Retail Lending Test conclusion reached in each specific assessment area. The same mapping would be used to assign a performance score in an outside retail lending area, depending on the conclusion this lending received: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).

To develop the Retail Lending Test conclusion for the institution, the agencies propose calculating a weighted average of a bank's facility-based assessment area, retail lending assessment area, and outside retail lending area performance scores. The weights for assessment areas and the outside assessment area lending would be calculated analogously to the assessment area weights for the state and multistate MSA conclusions. Accordingly, the agencies propose to weight each assessment area and outside retail lending area performance score calculated as the simple average of:

- The dollars of deposits the bank sourced from an assessment area, or outside retail lending area, as applicable, as a percentage of all the bank's deposits; and
- The dollars of retail lending the bank made in an assessment area, or outside retail lending area, as applicable, as a percentage of all the bank's retail loans.

As under the proposed approach for developing state and multistate MSA Retail Lending Test conclusions, the share of deposits used to calculate these weights would be assigned to geographies according to the reported deposits data for large banks with assets of over $10 billion, and according to collected deposits data for other banks evaluated under the Retail Lending Test that elect to collect and maintain the data. For banks that are evaluated under the Retail Lending Test that do not collect and maintain deposits data, the FDIC's Summary of Deposits data would be used to measure dollars of deposits by location. Because the Summary of Deposits data assigns all deposits to branch locations, and all branches would be located in a facility-based assessment area by rule, the deposits assigned to a retail lending assessment area and outside retail lending area performance scores for banks that do not collect and maintain deposits data would always be zero. The weight on the retail lending assessment area and outside retail lending area performance scores for such a bank would therefore be one half of the percentage of dollars of retail lending the bank made outside its facility-based assessment areas. The agencies seek feedback on the tradeoffs involved with tailoring deposits data requirements, particularly regarding the impact of using the FDIC's Summary of Deposits data, on the proposed weighting methodology and other aspects of the proposal.

Using the above weights, a weighted average of the performance scores from each assessment area and outside retail lending area, as applicable, would be calculated. This averaged performance score would also be paired with the appropriate conclusion category (*e.g.,* ''Low Satisfactory'') by rounding the performance score to the nearest point value of a conclusion category. Just as for Retail Lending Test conclusions at the state and multistate MSA level, the agencies are proposing to report the average performance score at the institution level. This would provide more detailed information about how well the bank performed on the Retail Lending Test overall.

For example, consider the same example bank described above in Section X.D.2 with the following performance:

- The bank made $5 million in retail loans in its outside retail lending area but drew no additional deposits.
- The bank received an ''Outstanding'' conclusion (10 points) for its outside retail lending area.

As before, under this example, the bank did $10 million in retail lending, and collected $90 million in deposits from its facility-based assessment area, which received an ''Outstanding'' conclusion (10 points). The bank also made $10 million in retail loans and collected $10 million in deposits from its retail lending assessment area, which received a ''Needs to Improve'' (3 points) conclusion.

Calculating Weights

- Facility-based assessment area: this assessment area accounts for 90 percent of institution-level deposits and 40 percent of institution-level retail loans $\left(\frac{\$10M}{\$10M+\$10M+\$5M}\right)$, so the weight on that assessment area's conclusion would be $\frac{90+40}{2} = 65\%$.
- Retail lending assessment area: this assessment accounts for 10 percent of institution-level deposits and 40 percent of institution-level retail loans $\left(\frac{\$10M}{\$10M+\$10M+\$5M}\right)$, so the weight on that assessment area's conclusion would be $\frac{10+40}{2} = 25 \text{ percent}$.
- Outside retail lending area: the bank made 20 percent of institution-level retail loans $\left(\frac{\$5M}{\$10M+\$10M+\$5M}\right)$ outside of its assessment areas and collected 0 percent of its deposits there, so the weight on the outside retail lending area would be $\frac{0+20}{2} = 10 \text{ percent}$

Retail Lending Test conclusion for the bank: The bank's average performance score would then be (0.65 × 10) + (0.25 × 3) + (0.1 × 10) = 8.25. This score is closer to the ''High Satisfactory'' value (7 points) than the ''Outstanding'' value (10) points, so the bank falls into the ''High Satisfactory'' conclusion category for its institution-level Retail Lending Test conclusion.

The agencies seek feedback on whether weighting facility-based assessment area, retail lending assessment area, and outside retail lending area performance scores by the average of the percentage of a bank's retail lending and deposit dollars from each of those geographies is the best way to combine local-level retail lending performance conclusions to the state, multistate MSA, and institution levels.

Request for Feedback

Question 89. Should assessment area and outside retail lending area conclusions be weighted by the average of a bank's percentage of loans and deposits there? Is the proposed approach for using FDIC's Summary of Deposits data for banks that do not collect and maintain deposits data appropriate? Should the agencies use another method for choosing weights?

E. Analysis of Proposed Approach Using Historical CRA Performance Evaluation Data

To help inform certain aspects of the proposed Retail Lending Test approach, the agencies have analyzed historical bank lending performance under the proposed retail lending volume screen and metric-based performance ranges, using historical CRA performance evaluation data in the CRA Analytics Data Tables as well as other historical data. Where possible, this analysis approximates the recommended retail lending conclusion each assessment area would have received and the weights each assessment area would be assigned in computing the institution-level Retail Lending Test conclusion. This approximation does not take into account aspects of the proposal that would involve examiner judgment, such as the additional factors listed in proposed § __.22(e). The agencies also compared historical performance under the retail lending metrics across categories of bank asset size, assessment area location and type, and time period to evaluate how the proposal may affect banks or communities in particular circumstances.

While the agencies believe this analysis is informative, the agencies also recognize its limitations, including the fact that the analysis is backwards looking and, therefore, is not a prediction of future evaluation results. In addition, there are a number of data limitations that impact the analysis and, therefore, should be taken into consideration when interpreting the results. These include a number of differences between the proposed metrics and the historical lending analysis run by the agencies, due largely to data availability. For example, small business loans were identified in the analysis based on loan amount, as occurs under the status quo, rather than borrower revenue size, as is proposed by the agencies. In addition, no data on small business lending specifically to borrowers with gross annual revenues of $250,000 or less is available. On deposits data, deposit locations were approximated by the county of the bank branch they were assigned to in the FDIC's Summary of Deposits rather than based on the address of the depositor. In addition, the analysis combines all home mortgage loans together in a single category as distinctions between closed-end and open-end home mortgages were not available until the 2018 HMDA data. Finally, the analysis is based solely on mortgage and small business lending. The estimates shown here, therefore, should be understood only as approximations of how banks actually would have performed under the proposed retail lending metrics.

Bank Asset Size. The agencies propose using metrics and performance ranges to evaluate large and intermediate banks, with the denominators of the bank volume metric and distributional bank metrics tailoring the metrics to account for institutional size and capacity.

Table 9 provides an analysis of mostly large bank performance under the proposed retail lending volume screen and performance ranges approach using existing and available data. The results reflect aggregated performance at the institution level, reflecting performance across facility-based assessment areas, retail lending assessment areas, and outside retail lending areas, as appropriate. The agencies used lending, deposits, and demographic data from 2017 through 2019 to estimate the percentage of banks whose historical performance in those years would have been associated with each Retail Lending Test conclusion category from ''Substantial Noncompliance'' to ''Outstanding.'' For data availability reasons, this analysis is restricted to banks that were both CRA and HMDA reporters and is thus primarily an analysis of large banks.[189] Wholesale, limited purpose, and strategic plan banks were also excluded from this analysis.

For purposes of this analysis, these banks, which were primarily large banks, were divided into three asset size categories: Assets less than $10 billion, assets between $10 billion and $50 billion, and assets above $50 billion. The various asset size groupings of banks appear to have roughly similar performance under the metrics, with the majority of banks falling into a ''Satisfactory'' category, and ''Low Satisfactory'' being somewhat more common than ''High Satisfactory.'' As shown in Table 9, those banks with assets under $10 billion had higher frequencies of both ''Outstanding'' and ''Needs to Improve'' Retail Lending Test conclusions. This result is due, in part, to these banks having fewer assessment areas, so a ''Needs to Improve'' or ''Outstanding'' performance conclusion in an individual assessment area tends to have a greater impact when averaging performances across all assessment areas. Larger banks typically have many more assessment areas, so very good or very poor performances in a few assessment areas can have less impact overall when averaged with stronger performance in other assessment areas, leading to more conclusions in the ''Low Satisfactory'' or ''High Satisfactory'' categories.

TABLE 9 TO SECTION __.22—DISTRIBUTION OF REPORTER BANKS ESTIMATED RETAIL LENDING TEST CONCLUSIONS, BY BANK ASSETS

Bank assets	<$10B		$10B–$50B		>$50B	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
''Substantial Noncompliance''	0	0	0	0	0	0
''Needs to Improve''	52	10	6	9	1	4
''Low Satisfactory''	235	46	31	48	15	58
''High Satisfactory''	189	37	24	37	10	38
''Outstanding''	39	8	4	6	0	0

Notes: Table 9 shows the estimated distribution of Retail Lending Test conclusions based on agency analysis of home mortgage and small business lending, deposits, and demographic data from the CRA Analytics Data Tables, over the years 2017–2019. Institution-level conclusions were derived from the weighted average of assessment area level recommended conclusions. The boundaries of facility-based assessment areas were estimated using reported assessment areas, along with the restrictions that assessment areas must generally lie entirely within a single MSA or the non-MSA portion of a single state, and generally consist of (at least portions of) a contiguous set of counties. Analysis included banks that were both CRA and HMDA reporters, and excluded wholesale, limited purpose, and strategic plan banks. Bank asset categories were assigned using the annual average of the prior two years of quarterly assets relative to the exam year. Percentages were rounded to the nearest whole number.

Table 10 reflects performance for small, intermediate, and large banks, as defined in the proposal, on aspects of the proposed Retail Lending Test approach. The agencies propose to evaluate intermediate banks under the same retail lending volume screen, as well as retail lending distribution metrics and performance ranges as large banks (although with different rules for evaluating lending volume and lending outside of facility-based assessment areas). However, the agencies propose to continue evaluating small banks under current procedures unless they opt into the proposed Retail Lending Test.

Table 10 provides an analysis of small, intermediate, and large bank performance at the institution level under the performance ranges portion of the proposed Retail Lending Test. Because the bank volume metric could not be calculated for some banks included in this analysis, the analysis in Table 10 omits the retail lending volume screen for every bank, and simulated conclusions are based solely on the geographic and borrower distributions of their retail lending. As shown in Table 10, intermediate bank performance under the performance ranges appears similar to large bank performance. Small banks were notably more likely to end up with either a ''Needs to Improve'' or ''Outstanding'' conclusion. However, as noted earlier, small banks would only be evaluated under the proposed Retail Lending Test at their option and could otherwise remain under the status quo small bank lending test.

TABLE 10 TO SECTION __.22—DISTRIBUTION OF ESTIMATED RETAIL LENDING CONCLUSIONS AMONG BANKS BY ASSET SIZE, WITHOUT APPLYING THE RETAIL LENDING VOLUME SCREEN

	Assets <$600m		Assets $600M–$2B		Assets >$2B	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
''Substantial Noncompliance''	1	1	0	0	0	0
''Needs to Improve''	27	14	5	7	3	7
''Low Satisfactory''	48	24	28	38	17	40

[189] Some banks voluntarily report CRA data, despite not reaching the asset size threshold to be designated a large bank under current regulations. These banks were included in the analysis of CRA and HMDA reporter banks.

TABLE 10 TO SECTION __.22—DISTRIBUTION OF ESTIMATED RETAIL LENDING CONCLUSIONS AMONG BANKS BY ASSET SIZE, WITHOUT APPLYING THE RETAIL LENDING VOLUME SCREEN—Continued

	Assets <$600m		Assets $600M–$2B		Assets >$2B	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
"High Satisfactory"	61	31	32	43	18	43
"Outstanding"	61	31	9	12	4	10

Notes: Table 10 shows the estimated distribution of Retail Lending Test conclusions based on agency analysis of home mortgage and small business lending, deposits, and demographic data from the CRA Analytics Data Tables. Institution-level conclusions were derived from the weighted average of assessment area level recommended conclusions. The boundaries of facility-based assessment areas for small and intermediate-small banks were derived from data collected from the bank's performance evaluation. The boundaries of facility-based assessment area for large banks were derived from a combination of the data collected from the bank's performance evaluation and its reported assessment area data. Analysis included banks that had a CRA examination begin in 2018 or 2019, and excluded wholesale, limited purpose, and strategic plan banks. Bank asset categories were assigned using the annual average of the prior two years of quarterly assets relative to the examination year. Percentages were rounded to the nearest whole number.

Assessment Area Location. The agencies propose to use the same metrics and performance ranges in different geographic markets, as the benchmarks are intended to adjust for differences in lending opportunities in different areas. Table 11 reflects an estimate of the percentage of bank facility-based assessment area performance broken out between assessment areas located in MSAs and assessment areas located in non-MSAs. This analysis uses 2017–2019 data for CRA and HMDA reporter banks, primarily reflecting large banks. As shown in Table 11, bank performance is fairly similar in MSA and non-MSA assessment areas.

TABLE 11 TO SECTION __.22—DISTRIBUTION OF REPORTER BANK ASSESSMENT AREA ESTIMATED RETAIL LENDING CONCLUSIONS, BY LOCATION

	MSA		Non-MSA	
	Freq.	Percent	Freq.	Percent
"Substantial Noncompliance"	46	1	33	2
"Needs to Improve"	796	16	284	16
"Low Satisfactory"	1669	33	484	27
"High Satisfactory"	1803	35	638	35
"Outstanding"	760	15	359	20

Notes: Table 11 shows the estimated distribution of Retail Lending Test conclusions based on agency analysis of home mortgage and small business lending, deposits, and demographic data from the CRA Analytics Data Tables, over the years 2017–2019. Assessment area-level recommended conclusions are shown. The boundaries of assessment areas were estimated using reported assessment areas, along with the restrictions that assessment areas must generally lie entirely within a single MSA or the non-MSA portion of a single state, and generally consist of (at least portions of) a contiguous set of counties. Analysis included 606 banks that were both CRA and HMDA reporters, and excluded wholesale, limited purpose, and strategic plan banks. Percentages were rounded to the nearest whole number.

Retail Lending Assessment Areas and Outside Retail Lending Areas. The agencies propose to evaluate the retail lending performance of large banks outside of facility-based assessment areas in retail lending assessment areas. The agencies also propose to evaluate the retail lending of large banks outside of any assessment area (as well as that of certain intermediate banks) in the overall outside retail lending area. To understand how banks may have performed, historically, in these areas, the agencies estimated the distribution of recommended Retail Lending Test conclusions that banks reporting both HMDA and CRA data would have received in areas they would have been required to designate as retail lending assessment areas, as well as in the outside retail lending areas. Results using 2017–2019 data are shown in Table 12. Compared to the facility-based assessment area results shown above, these mostly large banks were more likely to receive a "Needs to Improve" conclusion in retail lending assessment areas and outside retail lending areas. Under the proposal, intermediate banks would not be required to designate retail lending assessment areas. Additionally, an intermediate bank with more than 50 percent of lending outside of its facility-based assessment areas would be evaluated on outside retail lending area performance under the proposal, while other intermediate banks would only be evaluated on facility-based assessment area performance.

TABLE 12 TO SECTION __.22—DISTRIBUTION OF ESTIMATED REPORTER BANK RETAIL LENDING CONCLUSIONS, IN RETAIL LENDING ASSESSMENT AREAS AND OUTSIDE RETAIL LENDING AREAS

	Retail lending AA		Outside retail lending area	
	Freq.	Percent	Freq.	Percent
"Substantial Noncompliance"	37	2	11	2
"Needs to Improve"	531	32	175	29
"Low Satisfactory"	646	39	268	45
"High Satisfactory"	360	22	129	21

TABLE 12 TO SECTION __.22—DISTRIBUTION OF ESTIMATED REPORTER BANK RETAIL LENDING CONCLUSIONS, IN RETAIL LENDING ASSESSMENT AREAS AND OUTSIDE RETAIL LENDING AREAS—Continued

	Retail lending AA		Outside retail lending area	
	Freq.	Percent	Freq.	Percent
''Outstanding''	96	6	21	3

Notes: Table 12 shows the estimated distribution of Retail Lending Test conclusions based on agency analysis of home mortgage and small business lending, deposits, and demographic data from the CRA Analytics Data Tables, over the years 2017–2019. Assessment area-level and outside retail lending area recommended conclusions are shown. The boundaries of facility-based assessment areas were estimated using reported assessment areas, along with the restrictions that assessment areas must generally lie entirely within a single MSA or the non-MSA portion of a single state, and generally consist of at least a portion of a contiguous set of counties. Analysis included 604 banks engaged in retail lending outside any assessment area, and 147 that would have been designated based on the proposed retail lending assessment areas definition. Sample was limited to banks that were both CRA and HMDA reporters, and excluded wholesale, limited purpose, and strategic plan banks. Percentages were rounded to the nearest whole number.

Time Period. The agencies propose using a consistent set of retail lending metrics and multipliers over time, although the proposed approach is intended to be dynamic and set thresholds that adjust for changes in lending opportunities over time. Specifically, by using the market volume benchmark and distributional market benchmarks as the foundation for setting performance expectations, the agencies intend the resulting thresholds to adjust across communities and over time. Using further historical data from banks that report both HMDA and CRA data, Table 13 reflects an analysis of the percentage of banks that would have received a recommended Retail Lending Test conclusion in three different time periods: 2005–2007, 2009–2011, and 2017–2019. The percentage of banks that would have fallen below a ''Low Satisfactory'' is fairly stable over time, suggesting that the metrics are appropriately correcting for variation in loan demand over the business cycle. Notably, however, there is a clear trend of declining rates of ''Outstanding'' conclusions, and rising ''Low Satisfactory'' conclusions, in a way that does not align with the business cycle. Factors that shift the benchmarks relative to the lending by a typical bank—for example, if nonbank lenders capture a larger share of home mortgage lending to low-income borrowers—can lead to overall shifts in measured bank performance over time for reasons other than market downturns or changes in the business cycle.

TABLE 13 TO SECTION __.22—DISTRIBUTION OF REPORTER BANK ESTIMATED RETAIL LENDING CONCLUSIONS, BY TIME PERIOD

	2005–2007		2009–2011		2017–2019	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
''Substantial Noncompliance''	5	1	0	0	0	0
''Needs to Improve''	68	8	93	12	59	10
''Low Satisfactory''	207	24	238	31	281	46
''High Satisfactory''	368	42	289	38	223	37
''Outstanding''	222	26	138	18	43	7

Notes: Table 13 shows the estimated distribution of Retail Lending Test conclusions based on agency analysis of home mortgage and small business lending, deposits, and demographic data from the CRA Analytics Data Tables, over the years 2005–2007, 2009–2011, and 2017–2019. Institution-level conclusions shown were derived from the weighted average of assessment area level recommended conclusions. The boundaries of facility-based assessment areas were estimated using reported assessment areas, along with the restrictions that assessment areas must generally lie entirely within a single MSA or the non-MSA portion of a single state, and generally consist of (at least portions of) a contiguous set of counties. Analysis included banks that were both CRA and HMDA reporters, and excluded wholesale, limited purpose, and strategic plan banks. Percentages were rounded to the nearest whole number.

XI. Retail Services and Products Test

In § __.23, the agencies propose a Retail Services and Products Test that would evaluate the following for large banks: (i) Delivery systems; and (ii) credit and deposit products responsive to low- and moderate-income communities' needs. The proposed Retail Services and Products Test would use a predominately qualitative approach while incorporating quantitative measures as guidelines. The delivery systems part of the proposal seeks to achieve a balanced evaluation framework that considers a bank's branch availability and services, remote service facility availability, and its digital and other delivery systems. The credit and deposit products part of the proposal aims to evaluate banks' efforts to offer products that are responsive to low- and moderate-income communities' needs. Overall, the agencies seek to draw on the existing approach to evaluate a bank's retail services, while also updating and standardizing the evaluation criteria and reflecting the now widespread use of mobile and online banking.

The agencies propose a tailored approach to the Retail Services and Products Test based on a large bank's asset size. For large banks with assets of $10 billion or less, the agencies propose making certain components optional in order to reduce the data burden of new data collection requirements for banks within this asset category. For large banks with assets of over $10 billion, the agencies propose requiring the full evaluation under the proposed Retail Services and Products Test.

A. Overview

1. Current Approach to Retail Services

The current service test, which only applies to large banks (currently defined as having assets of at least $1.384 billion as of December 31 of both of the prior two calendar years), establishes four criteria for evaluating retail services: (i)

The distribution of branches among low-, moderate-, middle-, and upper-income census tracts; (ii) a bank's record of opening and closing branches and its effects, particularly on low- and moderate-income census tracts or low- and moderate-income individuals; (iii) the availability and effectiveness of alternative systems for delivering retail banking services (or non-branch delivery systems) in low- and moderate-income census tracts and to low- and moderate-income individuals; [190] and (iv) the range of services provided in low-, moderate-, middle-, and upper-income census tracts and the degree to which the services are tailored to meet the needs of those census tracts, including the reasonableness of business hours and services offered at branches.[191]

The first two of these evaluation criteria involve reviewing a bank's branch locations, primarily from information gathered from a bank's public file. First, using varying methods, the agencies evaluate the distribution of branches across census tracts of different income levels relative to the percentages of census tracts by income level, households (or families), businesses and population in the census tracts. Next, the agencies evaluate a bank's branch openings and closings during the evaluation period relative to its current branch distribution and consider if any changes impacted low- or moderate-income census tracts and accessibility for low- or moderate-income individuals.[192]

For the third evaluation criterion, guidance includes a variety of factors to aid examiners in determining whether a bank's non-branch delivery systems, which includes ATMs, are available and effective in providing retail banking services in low- and moderate-income areas and to low- and moderate-income individuals.[193] This includes, for example, the ease of access and use, reliability of the system, range of services delivered, cost to consumers as compared with the bank's other delivery systems, and rate of adoption and use.[194] Guidance also advises examiners to consider any information a bank maintains and provides to examiners demonstrating that the bank's alternative delivery systems are available to, and used by, low- or moderate-income individuals, such as data on customer usage or transactions.[195] Although examiners may consider several factors, evaluations of non-branch delivery systems generally focus on the distribution of the bank's ATMs across low-, moderate-, middle-, and upper-income census tracts, and a comparison of that distribution to the percentage of census tracts by income level, households (or families), businesses or populations across these census tracts, particularly low- and moderate-income census tracts. Examiners also review the types of services offered by a bank's ATMs (*i.e.,* deposit-taking and cash-only) and consider other qualitative factors that improve access to ATMs in low- and moderate-income census tracts.

The fourth criterion—the range of services and degree to which the services are tailored to meet the needs of those geographies—is the primary consideration given to deposit products in the current retail service test. Examiners consider information from the bank's public file and other information provided by the bank related to the range of services generally offered at their branches, such as loan and deposit products, and the degree to which services are tailored to meet the needs of particular geographies. Current guidance explains that examiners will consider retail banking services that improve access to financial services or decrease costs for low- or moderate-income individuals.[196] Examiners also review data regarding the costs and features of deposit products, account usage and retention, geographic location of accountholders, and any other relevant information available demonstrating that a bank's services are tailored to meet the convenience and needs of its assessment areas, particularly low- and moderate-income geographies or low- and moderate-income individuals.[197]

2. Stakeholder Feedback

Delivery Systems. Community and consumer organizations generally favored the current evaluation approach to evaluating branch delivery systems but have suggested that the agencies place more focus on assessing branch closures in low- and moderate-income and other underserved areas, and enhanced branch-based services supporting financial inclusion. Industry stakeholders expressed support for greater flexibility in the analysis (*e.g.,* receiving credit for a branch outside of a low- and moderate-income census tract that is routinely accessed by low- and moderate-income individuals from outside of that tract). While there was divergence among the stakeholders regarding whether CRA examinations should credit branch presence and activities in middle- and upper-income census tracts, there was widespread support that areas without branches should also be defined and better reflected in the evaluation, including greater identification of how banks are serving these areas.

Stakeholders generally supported the evaluation of non-branch delivery systems but encouraged flexibility and the continued development of standards for evaluating and reporting. Industry stakeholders opposed the use of quantitative benchmarks to evaluate non-branch delivery systems, noting that these services are difficult to quantify and that there is lack of consistent available data. They instead favor the adoption of a flexible approach with optional data reporting and a qualitative review for CRA evaluations. In contrast, community and consumer group stakeholders suggested that the framework should provide standards for what banks may report to demonstrate the effectiveness of their non-branch delivery channels in reaching low- and moderate-income consumers. For example, these stakeholders suggested using rates of usage of online and mobile services by customers grouped by census tract. Overall, stakeholders noted that banks would need to provide more data for agencies and the public to adequately assess performance of banks' non-branch delivery systems.

Deposit Products. Stakeholders have broadly acknowledged the importance of banks offering low-cost transaction accounts that are responsive to the needs of the low- and moderate-income population but have had diverging opinions on whether available data could determine impact for low- and moderate-income customers. Community and consumer groups have supported a separate evaluation of deposit products at the assessment area level to ensure banks meet the needs of low- and moderate-income consumers. Some industry groups have supported the evaluation of deposit products as its own evaluation component. Other industry groups have not supported including a component to evaluate a bank's deposit products or have indicated support if the evaluation component were optional or used as performance context. Industry

[190] The agencies' current CRA regulations provide a non-exhaustive list of alternative systems for delivering retail banking services which include: ''ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs.'' *See* 12 CFR __.24(d)(3).

[191] *See* 12 CFR __.24(d).

[192] *See* 12 CFR __.24(d)(2); Q&A § __.24(d)–1.

[193] *See* Q&A § __.24(d)(3)–1.

[194] *Id.*

[195] *See* Q&A § __.24(d)(3)–1.

[196] *See* Q&A § __.24(a)–1.

[197] See Q&A § __.24(d)(4)–1.

stakeholders were also divided on what level to evaluate deposit products with some favoring at the institution-level and others at the assessment area level provided it is at the bank's option.

Stakeholders offered several suggestions concerning the types of data that would be beneficial and readily available for determining whether deposit products are responsive to the needs of low- and moderate-income consumers and used by low- and moderate-income consumers. Many stakeholders suggested incorporating data on usage by low- and moderate-income customers, such as the number of accounts with safe account features opened for low- and moderate-income consumers and comparing these numbers to a bank's other offerings.[198] This approach would involve an assessment of the types of products offered, including an assessment of the features and the costs. Stakeholders indicated that this approach could be accomplished by inquiring whether the bank has an account that meets the Bank On National Account Standards from the Cities for Financial Empowerment Fund and reviewing that data.[199] Greater consideration for impact of a deposit product on consumers was also suggested as measured by whether a consumer graduated from an entry-level product or eventually acquired credit or a wealth-building product. Lastly, many banks acknowledged the difficulty of measuring impact on low- and moderate-income deposit customers because stated income data, which would be necessary to determine low- and moderate-income status, is currently unavailable. Further, while some banks indicated such data would be difficult to collect, adding greater administrative burden in their view, other banks acknowledged that there are existing options to approximate low- and moderate-income status, such as using the census tract income level associated with an accountholder's address.

B. Delivery Systems Evaluation

For large banks with assets of over $10 billion, the agencies propose evaluating the full breadth of bank delivery systems by maintaining an emphasis on branches and increasing the focus on digital and other delivery channels. Specifically, the proposed approach for delivery systems would evaluate three components of the bank's performance: (i) Branch availability and services, (ii) remote service facility availability, and (iii) digital and other delivery systems. For large banks with assets of $10 billion or less, only the first two components would be evaluated, unless the bank requests additional consideration of its digital and other delivery systems and collects the requisite data. The proposed approach for evaluating a large bank's delivery systems would leverage quantitative benchmarks to inform the branch and remote service facility availability analysis and provide favorable qualitative consideration for branch locations in certain geographies. The agencies also propose more fully evaluating digital and other delivery systems, as applicable, in recognition of the trend toward greater use of online and mobile banking.

1. Branch Availability and Services

For the branch availability and services component, the agencies propose evaluating three factors: Branch distribution, branch openings and closings, and banking hours of operation and services responsive to low- or moderate-income individuals and in low- or moderate-income communities. Local branches remain important to communities for accessing credit,[200] and as such the availability of branches and services provided is important for the evaluation of retail services.

a. Branch Distribution and Use of Benchmarks

Building on current practice, the agencies propose to evaluate a bank's distribution of branches among low-, moderate-, middle-, and upper-income census tracts, compared to a series of quantitative benchmarks that reflect community and market characteristics. This approach would provide a more transparent, comprehensive assessment of the physical distribution of branches in facility-based assessment areas while maintaining the importance of branch locations in the assessment of retail services.

Building on a practice used currently in some evaluations, the agencies propose using data specific to individual, facility-based assessment areas, referred to as benchmarks, as points of comparison when evaluating a bank's branch distribution among low-, moderate-, middle-, and upper income geographies. The benchmarks would be based on the distribution of census tracts, households, businesses, and total bank branches by census tract income level. Each income level and data point (census tracts, households, businesses, and branches) would have a benchmark, specific to each assessment area. The benchmarks would be used in conjunction with examiner judgment and are intended to promote more transparency and consistency in the evaluation process.

Table 14 describes the proposed community benchmarks and their respective data sources. These benchmarks would allow examiners to compare a bank's branch distribution to local data to help determine whether branches are accessible in low- or moderate-income communities, to individuals of different income levels, and to businesses in the assessment area. The agencies considered it important to include three community benchmarks in order to provide additional context for each assessment area. The first proposed benchmark is the percentage of census tracts in a facility-based assessment area by income level. This benchmark enables the agencies to compare a bank's distribution of branches in census tracts of each income level, to the overall percentage of those census tracts in the assessment area. For example, if 20 percent of a bank's branches are located in low-income census tracts in an assessment area, and 10 percent of census tracts in the assessment area are low-income, the agencies may consider the bank to have a relatively high concentration of branches in low-income census tracts.

The second and third proposed community benchmarks are the percentage of households, as well as the percentage of total businesses and farms, in the facility-based assessment area by census tract income level. The agencies considered these benchmarks to be important complements to the first

[198] Safe account features are generally understood to mean features that conform to the Cities for Financial Empowerment Fund's Bank On National Account Standards or the FDIC's Model Safe Accounts Template. *See* Bank On National Account Standards at *https://cfefund.org/bank-on-national-account-standards-2021-2022/* and the FDIC Model Safe Accounts Template at *https://www.fdic.gov/consumers/template/*.

[199] *See* Cities for Financial Empowerment Fund, *Bank on National Account Standards (2021–2022), https://cfefund.org/bank-on-national-account-standards-2021-2022/*.

[200] *See, e.g.,* Hoai-Luu Q. Nguyen, ''Are Credit Markets Still Local? Evidence from Bank Branch Closings,'' American Economic Journal: Applied Economics, 11(1): 1–32 (2019), *http://faculty.haas.berkeley.edu/hqn/nguyen_aej_201901.pdf;* O. Ergungor, ''Bank Branch Presence and Access to Credit in Low- to Moderate-Income Neighborhoods,'' Journal of Money, Credit and Banking, 42(7), 1321–1349 (2010), *https://www.jstor.org/stable/40925690;* Robert M. Adams, Kenneth P. Brevoort, and John C. Driscoll, ''Is Lending Distance Really Changing? Distance Dynamics and Loan Composition in Small Business Lending,'' Board, Finance and Economics Discussion Series 2021–011 (Feb. 2021), *https://doi.org/10.17016/FEDS.2021.011;* Elliot Anenberg, Andrew C. Chang, Serafin Grundl, Kevin B. Moore, and Richard Windle, ''The Branch Puzzle: Why Are there Still Bank Branches?,'' Board, FEDS Notes (Aug. 20, 2018), *https://doi.org/10.17016/2380-7172.2206*.

benchmark, because households, businesses, and farms reflect a bank's potential customer base, and may not be distributed evenly across census tracts. For example, an assessment area with a relatively large concentration of households and businesses in low-income census tracts may have a higher low-income benchmark for households and businesses, and a relatively low low-income benchmark for census tracts. The agencies would thus consider the levels of all the benchmarks to inform a judgment about the bank's branch distribution in the market.

TABLE 14 TO SECTION __.23—COMMUNITY BENCHMARKS FOR RETAIL SERVICES—BRANCH DISTRIBUTION

Benchmark(s)	Data source
Percentage of census tracts in a facility-based assessment area by census tract income level	American Community Survey (Census).
Percentage of households in a facility-based assessment area by census tract income level	American Community Survey (Census).
Percentage of total businesses and farms in a facility-based assessment area by census tract income level.	Third-party data provider.

The agencies are also proposing a new aggregate measurement of branch distribution—referred to as a market benchmark—that would measure the distribution of all bank branches in the same facility-based assessment area by census tract income. Table 15 provides an overview of the proposed market benchmark and the associated data source.

TABLE 15 TO SECTION __.23—MARKET BENCHMARK FOR RETAIL SERVICES—BRANCH DISTRIBUTION

Benchmark(s)	Data source
Percentage of all bank branches [201] in a facility-based assessment area by census tract income level	FDIC Summary of Deposits Survey.

The use of a market benchmark would improve the branch distribution analysis in several ways. First, having such data would give examiners more information for determining how much opportunity or competition exists for providing retail services in census tracts of different income levels. Second, examiners would have market data on branch dispersion within facility-based assessment areas to identify areas with high or low branch concentration relative to community benchmarks. For example, if a bank has a branch in a low-income or moderate-income census tract where few other lenders have branches, this could indicate particularly responsive or meaningful branch activity for the bank.

Table 16 provides an example of the community and market benchmarks that could be used in evaluating a bank's branch distribution.

TABLE 16 TO SECTION __.23—GEOGRAPHIC BRANCH DISTRIBUTION

Tract income levels	Branches		Community benchmarks				Market benchmark	
	Total branches		Census tracts		Households	Businesses	Total branches from FDIC summary of deposits as of 6/30/2018	
	Number	Percent	Number	Percent	Percent	Percent	Number	Percent
Low	0	0.0	11	8.5	7.9	5.4	9	4.9
Moderate	2	25.0	30	23.3	25.7	20.1	40	22.0
Middle	4	50.0	53	41.1	40.0	43.1	91	50.0
Upper	2	25.0	35	27.1	26.3	31.4	42	23.1
Unknown	0	0.0	0	0.0	0.0	0.0	0	0.0
Totals	8	100.0	129	100.0	100.0	100	182	100.0

Along with performance context, examiners would use the bank's branch distribution and community benchmarks to draw conclusions on whether the bank's branches are accessible in low- and moderate-income communities, to individuals of different income levels, and to businesses in the assessment area.

In the example above, the bank has eight total branches in an assessment area with none of those branches in low-income census tracts and two in moderate-income census tracts. An examiner would compare the community benchmarks with the bank's lack of branches in low-income census tracts. Specifically, in the example above, 8.5 percent of all census tracts are low-income, and 7.9 percent of all households in the assessment area are in low-income census tracts. The examiner would also compare the bank's lack of branches in low-income census tracts with the market benchmark showing that 4.9 percent of branches for all banks in the assessment area are in low-income census tracts. These benchmarks would highlight that the bank's lack of branches in low-income census tracts lags the corresponding benchmarks, though the low-income benchmarks themselves are also low in this example.

[201] The aggregate number of branches in an assessment area figure is comprised of full-service and limited-service branch types as defined in the FDIC's Summary of Deposits.

Similarly, the examiner would also compare the percentage of the bank's branches located in moderate-income census tracts in the assessment area (25 percent) with the above community benchmarks. For example, 25.7 percent of all households are located in moderate-income census tracts, and 23.3 percent of all census tracts in the assessment area are moderate-income census tracts. The examiner would also compare the bank's distribution of branches in moderate-income census tracts with the market benchmark showing that 22.0 percent of branches for all banks in the assessment area are in moderate-income census tracts. From comparing the bank's share of branches in moderate-income census tracts to the moderate-income benchmarks, the benchmarks could help inform a conclusion that the bank's distribution of branches in moderate-income census tracts was strong.

An examiner could evaluate these data in different ways depending on performance context. For example, an examiner could consider performance context and the market benchmark in low-income census tracts indicating that existing bank branches are adequately serving the needs of low-income households. As part of this performance context, an examiner might also consider the proximity of the bank's branches in moderate-income census tracts to the low-income census tracts in the assessment area.

b. Considerations for Branch Availability: Approaches To Designating Low Branch Access and Very Low Branch Access Census Tracts

Delivery Systems in Low and Very Low Branch Access Geographies. The agencies propose providing favorable consideration for banks that operate branches within or nearby census tracts defined as having low or very low branch access. As branches continue to play a critical role in meeting the credit needs of low- and moderate-income individuals and communities, the agencies consider it important to evaluate the accessibility of banking services in a bank's assessment area.[202]

The agencies propose defining two categories for census tracts with limited access to bank branches: Low branch access and very low branch access. A census tract would qualify as low branch access or very low branch access based on the number of bank branches, including branches of commercial banks, savings and loan associations, and credit unions, found within a certain distance of the census tract's center of population.[203] Low branch access census tracts would be those in which there is only one branch within this distance or within the census tract itself, and very low branch access census tracts would be those in which there are zero branches within this distance or within the census tract itself. The agencies considered two approaches, one proposed (referred to in the **SUPPLEMENTARY INFORMATION** as the ''fixed distance approach'') and one alternative (referred to in the **SUPPLEMENTARY INFORMATION** as the ''local approach''), to determine the relevant distance threshold for each census tract. The agencies also considered a second alternative which does not set specific geographic distances in the identification of areas which may experience limited access to branches.

Proposed Approach to Low and Very Low Branch Access (Fixed Distance Approach). In the proposed approach, a fixed distance threshold would be established based on whether the census tract is in an urban, suburban, or rural area.[204] This approach reflects stakeholder feedback that distance thresholds for measuring branch access should account for variation in spatial density and transit modes across different geographies. Recognizing these differences, the agencies selected distance thresholds to reflect reasonably expected travel distances for urban, suburban, and rural geographies. Urban areas would have a distance threshold of two miles, suburban areas would have a distance threshold of five miles, and rural areas would have a distance threshold of 10 miles.

Alternative Approach to Low and Very Low Branch Access (Local Approach). In the alternative approach, a separate local area would be identified for each set of central counties of a metropolitan area and metropolitan division, the outlying counties of each metropolitan area and metropolitan division, and the nonmetropolitan counties of each state. Each of these areas are defined by the Office of Management and Budget through its delineations of metropolitan areas. This would result in the identification of over 650 distinct local areas. For each area, a locally-determined distance threshold would be computed based on the distance at which 90 percent of the local area's population encounters the nearest bank branch, traveling from the population center of their census tract. As a result, this alternative approach would determine the distance thresholds for defining low and very low branch access census tracts relative to local variation in population density and land-use patterns. The distance thresholds in this approach would also adjust over time as branches open and close. For example, a new branch opening in an area, and existing branches remaining open, may result in the distance thresholds that apply to all census tracts in the area becoming smaller. The agencies could update the local distances and identification of low branch access and very low branch access census tracts on a regular basis, such as annually, or every five years (along with the updates to low- and moderate-income census tract designations).

Using the current distribution of branches, the locally-determined distances identified using this approach vary from under one mile for a number of local areas with more dense concentrations of residents and bank branches to over ten miles for areas with more sparse distributions of residents and bank branches. Around two-thirds of local areas have locally-determined distances between one and five miles, which includes several of the nonmetropolitan areas of states. Over four-fifths of the metropolitan areas of

[202] FDIC, ''How America Banks,'' *supra* note 145.

[203] As used by the U.S. Census Bureau, ''The concept of the center of population . . . is that of a balance point. The center of population is the point at which an imaginary, weightless, rigid, and flat (no elevation effects) surface . . . would balance if weights of identical size were placed on it so that each weight represented the location of one person''; centers of population are periodically calculated for each census tract. *See https://www.census.gov/geographies/reference-files/time-series/geo/centers-population.2010.html*. Using centers of population, rather than geographic centers of census tracts, captures the average distance between bank branches and the people at the census-tract level as accurately as possible.

[204] The agencies are proposing that ''urban areas'' would refer to census tracts located primarily within the principal city components of MSAs. Under the proposal, ''suburban areas'' would refer to census tracts located primarily outside of the principal city components of MSAs and ''rural areas'' would refer to census tracts located in non-MSAs. Principal cities are defined by the U.S. Office of Management and Budget, ''2020 Standards for Delineating Core Based Statistical Areas'': ''The principal city (or cities) of a CBSA will include: (a) The largest incorporated place with a 2020 Census population of at least 10,000 in the CBSA or, if no incorporated place of at least 10,000 population is present in the CBSA, the largest incorporated place or census designated place in the CBSA; and (b) Any additional incorporated place or census designated place with a 2020 Census population of at least 250,000 or in which 100,000 or more persons work; and (c) Any additional incorporated place or census designated place with a 2020 Census population of at least 50,000, but less than 250,000, and in which the number of workers working in the place meets or exceeds the number of workers living in the place; and (d) Any additional incorporated place or census designated place with a 2020 Census population of at least 10,000, but less than 50,000, and at least one-third the population size of the largest place, and in which the number of workers working in the place meets or exceeds the number of workers living in the place.'' 86 FR 37770, 37776 (July 16, 2021).

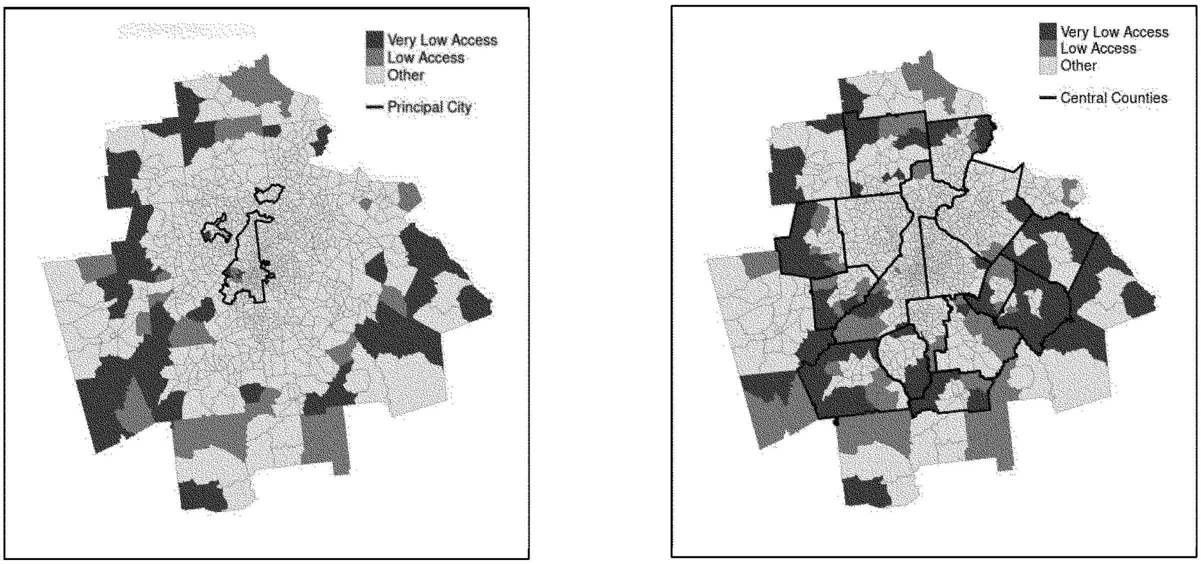
states have distances between five and ten miles.

While the proposed (fixed distance) and alternative (local) approaches would determine distance thresholds in different ways, both approaches would determine whether a census tract is a low or very low branch access census tract by assessing whether the census tract has either one or zero branches within the applicable distance threshold.

Illustration of Proposed and Alternative Approaches. In Figure 2, a case study of the Atlanta-Sandy Springs-Alpharetta, GA MSA highlights the areas of low and very low branch access identified by the proposed (fixed distance) approach on the left, and the areas identified by the alternative (local) approach on the right. There are distinct differences between the two approaches.

Figure 2 to Section __.23: Case study of low and very low branch access approaches in the Atlanta-Sandy Springs-Alpharetta, GA MSA

Panel A. Proposed (fixed distance) approach *Panel B. Alternative (local) approach*



First, the fixed distance approach would encompass a varying portion of each region's population because branch and population densities vary across the country. In the case study above, 3.9 percent of the population lives in very low branch access census tracts, and an additional 2.6 percent live in low branch access census tracts. These areas are determined by two different distance thresholds: Two miles for census tracts primarily located in the principal cities of the MSA and five miles for census tracts outside of the principal cities in the MSA. For principal-city census tracts, 2.9 percent of the population lives in very low branch access census tracts and 3.0 percent lives in low branch access tracts. For census tracts outside the principal cities, 4.0 percent of the population lives in very low branch access census tracts and 2.5 percent lives in low branch access census tracts. These values vary across metropolitan areas and rural regions.

The alternative (local) approach would encompass a similar portion of each local area's population in very low branch access census tracts by design. In the illustrated case, the distance threshold for the central counties of the MSA is 2.77 miles, and the distance threshold for the outlying counties of the MSA is 6.1 miles. For census tracts in the central counties, 8.0 percent of the population lives in very low branch access census tracts and 5.9 percent lives in low branch access census tracts. For census tracts in outlying counties, 9.3 percent of the population lives in very low branch access census tracts and 11.8 percent lives in low branch access census tracts. By using the local distribution of bank branches to construct the distance threshold, nearly one tenth of each area's population would be considered to live in very low branch access census tracts using this approach.

Second, the geographic areas over which thresholds are applied differ between the two approaches. In the illustrated case, the fixed distance approach applies the urban threshold of 2 miles in principal-city census tracts, which encompass 12.3 percent of the MSA population, and the suburban threshold of 5 miles in non-principal-city census tracts, which encompass 87.7 percent of the MSA population. The local area approach applies a locally-determined threshold of 2.77 miles to the central counties of the MSA, which encompass 91.3 percent of the MSA population, and 6.1 miles in outlying counties, which encompass 8.7 percent of the MSA population in the case study. These patterns differ across MSAs and metropolitan divisions.

Table 17 below highlights information about areas across the United States identified as low and very low branch access under the proposed and alternative definitions.

TABLE 17 TO SECTION __.23—COVERAGE OF LOW AND VERY LOW BRANCH ACCESS CENSUS TRACTS

Description	Fixed distance approach		Local approach	
	Very low branch access	Low branch access	Very low branch access	Low branch access
Percentage of U.S. population	3.1	3.2	8.0	8.6
By census tract geography type—nationwide				
Percentage of urban/central county census tract population	1.8	2.1	8.0	7.9
Percentage of suburban/outlying county census tract population	4.1	3.7	8.6	12.7
Percentage of rural nonmetropolitan census tract population	2.6	3.7	7.7	10.1
By census tract income level—nationwide				
Percentage of low-income census tract population	3.2	3.3	7.1	8.1
Percentage of moderate-income census tract population	3.5	3.6	8.2	8.9
Percentage of middle-income census tract population	3.5	3.6	8.7	9.3
Percentage of upper-income census tract population	3.2	3.2	9.1	9.3

Source: Agencies' calculations using S&P Global Intelligence, SNL Banking Analytics; U.S. Census Bureau American Community Survey 5-year estimates (2015–2019); OMB Files (Sept. 2018).

Notes: (1) Census tracts are defined as either having low or very low branch access.

(2) Percentages indicate the share of the population meeting the condition indicated in the column.

(3) The Fixed Distance Approach and Local Approach use different strategies to divide metropolitan census tracts into categories: The Fixed Distance Approach identifies urban and suburban census tracts based on whether they are primarily inside or outside of principal cities; the Local Approach divides census tracts on the basis of whether they are in central or outlying counties of the metropolitan area.

Under the proposed (fixed distance) approach, 3.1 percent of the U.S. population lives in census tracts that are found to have very low branch access; another 3.2 percent of the population lives in census tracts that are found to have low branch access. Across geography types, concentrations of very low branch access census tracts are heaviest in suburban areas, in which 4.1 percent of the population lives in a very low branch access census tract, and are lowest in urban areas, where 1.8 percent of the population lives in a very low branch access census tract.

Under the alternative (local) approach, geographic and population coverage is broader: 8.0 percent of the U.S. population lives in census tracts that are found to have very low branch access, while another 8.6 percent of the population lives in census tracts that are found to have low branch access. Across geography types, concentrations of low branch access census tracts are heaviest in outlying counties of metropolitan areas, where 12.7 percent of the population lives in a low branch access census tract, and lowest in central counties of metropolitan areas, where 7.9 percent of the population lives in a low branch access census tract. Table 17 also shows the percentage of the population, by census tract income level, living in a low or very low branch access census tract under fixed distance and local approaches, respectively.

In general, defining a broader set of areas as low and very low branch access creates more opportunities for banks to receive qualitative consideration for branching activities. On the other hand, tailoring the areas considered low and very low branch access directs banks to focus more closely on the areas in greatest need of branch access.

Both the proposed and the alternative approaches are intended to address challenges that low- and moderate-income individuals and businesses can face in accessing retail products and services in communities that have few or no bank branches. The agencies propose providing the following scenarios with favorable consideration: (i) A bank opens a branch that alleviates one or more census tracts' very low branch access status; or (ii) a bank maintains a branch in one or more census tracts' low branch access status. In addition, the agencies propose assessing whether a bank provides effective alternatives for reaching low- and moderate-income individuals, communities and businesses when closing a branch that would lead to one or more census tracts being designated low or very low branch access.

Qualitative Approach to Evaluating Areas with Few or No Branches. Under a second, more qualitative alternative approach, the agencies would not define "low branch access census tract," "very low branch access census tract," or any similar term. Instead, in addition to considering the bank's branch distribution metrics compared to benchmarks and record of opening and closing branches for each facility-based assessment area, the agencies would undertake a qualitative consideration of certain factors related to low- and moderate-income census tracts with few or no branches. These factors may include considering the availability of a bank's branches; the bank's actions to maintain branches; the bank's actions to otherwise deliver banking services; and specific and concrete action by a bank to open branches in these areas. The agencies could also consider these factors, as appropriate, in: (i) Middle- and upper-income census tracts in which branches deliver services to low- or moderate-income individuals; (ii) distressed or underserved nonmetropolitan middle-income census tracts; (iii) distressed or underserved nonmetropolitan middle-income census tracts with few or no branches; and (iv) Native Land Areas. These additional geographic designations are further discussed below in Section XI.B.1.c.

The qualitative alternative is intended to address the same challenges as the proposed approach and the first alternative presented, without invoking specific distance thresholds. One benefit of this exclusively qualitative alternative is that it would provide the agencies with broad flexibility to consider a bank's actions to improve access to banking services in areas with limited branch access. However, because this second alternative does not clearly identify where banks would receive consideration, it leaves considerable discretion with the agencies' examiners.

c. Considerations for Branch Availability: Other Geographic Designations

In addition to designating low branch access census tracts and very low branch access census tracts, the agencies propose providing qualitative consideration for operating branches in other geographic areas as well. These areas would be favorably considered when evaluating overall accessibility of delivery systems, including to low- and moderate-income populations.

The agencies propose qualitatively considering retail branching in middle- and upper income census tracts if a bank can demonstrate that branch locations in these geographies deliver services to low- or moderate-income individuals. Low- and moderate-income families having access to retail services wherever they reside is integral to their financial well-being. While stakeholder feedback has varied on whether to provide qualitative consideration for branch presence and activities in middle- and upper-income census tracts, stakeholders generally suggested that the agencies should consider factors such as the geographic location of the branches and data provided by the bank to demonstrate low- or moderate-income usage of these branches.

In addition, the agencies are proposing to provide qualitative consideration for banks that operate branches in distressed or underserved nonmetropolitan middle-income geographies. The agencies have previously used the distressed and underserved definitions to qualify certain community development activities and have not used these definitions for purposes of evaluating a bank's retail services. As proposed, a geography is defined as a *distressed* nonmetropolitan middle-income area geography if it exhibits certain economic conditions such as high unemployment, excessive poverty rates, or severe population loss. Similarly, as proposed, a geography is defined as an *underserved* nonmetropolitan area if, due to its population size and density, securing financing for community needs is challenging. Residents, businesses, and farms in these geographies may have limited access to financial services given the economic characteristics of these areas. Additionally, in some of these areas there are few or no low- and moderate-income census tracts, and considering branch availability in distressed or underserved census tracts could provide examiners with additional insight into the bank's branch availability.

Lastly, the agencies propose providing positive qualitative consideration if banks operate branches in *Native Land Areas* as defined in proposed § __.12. The agencies recognize that branch access is limited for many Native communities,[205] and consider it appropriate to emphasize bank placement of branches and remote service facilities in Native Land Areas.

d. Branch Openings and Closings

In reviewing a bank's branch availability, the agencies propose reviewing a bank's record of opening and closing branch offices in facility-based assessment areas since the previous examination. This would build on current practice in which the evaluation includes an assessment of whether branch openings and closings improved or adversely affected the accessibility of its delivery systems, particularly to low- and moderate-income census tracts and low- and moderate-income individuals or whether alternative delivery systems are effective in providing needed services to low- and moderate-income census tracts and individuals.

e. Branch Hours of Operation and Services

As part of the third factor of branch availability and services, the agencies propose evaluating the reasonableness of branch hours in low- and moderate-income census tracts compared to middle- and upper-income census tracts, including whether branches offer extended and weekend hours; and the range of services provided at branches in low-, moderate-, middle-, and upper-income census tracts. Regarding the range of services, this includes services provided at branch locations discrete from the credit and deposit products discussed below in Section XI.C. that improve access to financial services or decrease costs for low- or moderate-income individuals. Examples of such services include, but are not limited to:

- Extended business hours, including weekends, evenings, or by appointment;
- Providing bilingual/translation services;
- Free or low-cost check cashing services, including government and payroll check cashing services;
- Reasonably priced international remittance services; and
- Electronic benefit transfer accounts

This part of the proposal would focus on the range of services exclusively offered in branch settings and represents a change in current practice for two reasons. First, current guidance looks at the range of services in its totality by the bank and does not distinguish between services offered in branches or via an alternative delivery system.[206] Second, the agencies propose separately evaluating the availability of deposit accounts, whereas in current practice the availability of low-cost deposit products is considered as part of the evaluation of a bank's range of services. The proposed approach focuses on the importance of branch-based services by directing examiners to conduct a more focused examination of whether services offered in branches are tailored to meet the particular needs of low- and moderate-income individuals in a bank's facility-based assessment areas.

In addition to the examples listed, the agencies seek feedback on whether there are other branch-based services that could be considered as responsive to low- and moderate-income needs.

2. Remote Service Facility Availability

The agencies propose evaluating remote service facility[207] availability as the second component of the delivery system evaluation. Under current guidance,[208] remote service facility availability is qualitatively evaluated as one of several non-branch delivery systems, so it can be unclear how much consideration and weight is given to a bank's remote service facility availability, its placement of various types of remote service facilities or its partnerships to improve access to remote service facilities in low- and moderate-income census tracts. The agencies' proposal would evaluate remote service facilities separately from digital and other delivery systems in order to focus on the availability of these facilities and leverage community benchmarks in the evaluation.

The agencies propose introducing three data points in the remote service facility availability analysis that would complement a qualitative evaluation. Like the branch distribution analysis, these data points, referred to as benchmarks, would be specific to individual, facility-based assessment

[205] *See* Miriam Jorgensen and Randall K.Q. Akee, "Access to Capital and Credit in Native Communities: A Data Review, Native Nations Institute (Feb. 2017), *https://www.novoco.com/sites/default/files/atoms/files/nni_find_access_to_capital_and_credit_in_native_communities_020117.pdf.*

[206] *See* Q&A § __.24(d)(4)–1.

[207] In proposed § __.12 remote service facility means an automated, virtually staffed, or unstaffed banking facility owned or operated by, or operated exclusively for, the bank, such as an ATM, interactive teller machine, cash dispensing machine, or other remote electronic facility at which deposits are received, cash dispersed, or money lent.

[208] *See* Q&A § __.24(d)(3)–1.

areas and used as points of comparison when evaluating a bank's remote service facility availability among low-, moderate-, middle-, and upper income census tracts. The evaluation would also include an assessment of remote service facilities in low- and moderate-income census tracts and changes to the placement of remote service facilities since the previous examination.

Table 18 below describes the three proposed community benchmarks and their respective data sources. The use of benchmarks would allow for comparison of a bank's remote service facility availability to local data (*i.e.,* percentage of census tracts, households, and total businesses) to help determine whether remote service facilities are accessible in low- or moderate-income communities, to individuals of different income levels, and to businesses or farms in the assessment area.

TABLE 18 TO SECTION __.23—COMMUNITY BENCHMARKS FOR RETAIL SERVICES—REMOTE SERVICE FACILITY AVAILABILITY

Benchmark(s)	Data source
Percentage of census tracts in a facility-based assessment area by census tract income level	American Community Survey (Census).
Percentage of households in a facility-based assessment area by census tract income level	American Community Survey (Census).
Percentage of total businesses and farms in a facility-based assessment area by census tract income level.	Third-party data provider.

In addition to using the community benchmarks, the agencies propose evaluating bank remote service facility partnerships with retailers for expanded remote service facility access and participation in remote service facility fee-waiver alliances for out-of-network usage. These types of partnerships may contribute to expanded access to financial services and may assist with lowering access costs, which can be particularly important for a bank's low- and moderate-income individuals.

3. Digital and Other Delivery Systems

The agencies propose to evaluate the availability and responsiveness of a bank's digital delivery systems (*e.g.,* mobile and online banking services) and other delivery systems (*e.g.,* telephone banking, bank-by-mail, bank-at-work programs), including to low- and moderate-income individuals. This component of the delivery system evaluation would be required for large banks with assets of over $10 billion, and would be optional for large banks with assets of $10 billion or less in order to tailor the approach for banks that may have less capacity to meet new data collection requirements. The agencies seek feedback on whether the proposed approach appropriately tailors the evaluation for large banks with assets of $10 billion or less.

The agencies believe that it is important to evaluate a bank's retail banking services and products comprehensively and recognize that banks deliver services beyond branch and remote service facilities. According to the 2019 FDIC Survey of Household Use of Banking and Financial Services, the primary method that banked households used to access their accounts was through digital delivery systems, representing 34.0 percent and 22.8 percent for mobile banking and online banking, respectively.[209] The usage of online and mobile banking delivery systems is expected to continue to grow. These trends support renewed focus on the evaluation of digital and other delivery systems while also recognizing that many consumers continue to rely on branches.

Current guidance states that the agencies evaluate the availability and effectiveness of alternative systems for delivering retail banking services, which is defined to include the use of ATMs.[210] The agencies propose using the word ''responsiveness'' instead of ''effectiveness'' in order to use more consistent terminology throughout the regulation, and the agencies believe the meaning of both terms are comparable. To reflect more updated terminology, the agencies propose using the term ''digital and other delivery systems'' instead of ''alternative systems'' or ''non-branch delivery systems.'' Additionally, under the proposal, the digital and other delivery systems component would not include an evaluation of ATMs or other remote service facilities, since the agencies propose a separate review of remote service facilities for all large banks.

The agencies propose using three factors to evaluate the availability and responsiveness of a bank's digital and other delivery systems: (i) Digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, (ii) the range of digital and other delivery systems, and (iii) the bank's strategy and initiatives to serve low- and moderate-income individuals with digital and other delivery systems. The proposed factors would promote improved clarity and consistency in evaluating whether a bank's digital and other delivery systems are available and responsive in providing financial services to low- and moderate-income geographies and individuals.

With respect to the first factor, the agencies would measure digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, and proposed § __.23 provides examples of data that could be used to inform this analysis. Specifically, the examples in proposed § __.23 include the number of checking and savings accounts opened digitally, and accountholder usage data by type of digital and other delivery system. The agencies propose evaluating this data using census tract income level, which is an approach sometimes used in current practice, since banks have stated that they do not routinely collect customer income data at account opening. These data points would help the agencies better understand how banks continue to serve their communities as technology and bank business models evolve.

With respect to the second and third factors, the agencies would qualitatively consider the range of a bank's digital and other delivery systems, including but not limited to online banking, mobile banking, and telephone banking. In addition, the agencies would consider a bank's strategies and initiatives to meet low- and moderate-income consumer needs through digital and other delivery systems, such as marketing and outreach activities to increase uptake of these channels by low- and moderate-income individuals or partnerships with community-based organizations serving targeted populations.

The agencies are also considering appropriate comparators to help examiners assess the degree to which a bank is reaching consumers in low- or moderate-income census tracts through

[209] *See* FDIC, ''How America Banks,'' *supra* note 145.

[210] See Q&A § __.24(d)(3)–1.

digital and other delivery systems. For example, the agencies are considering a comparator evaluating the proportion of a bank's deposit accounts opened through online and mobile banking channels in low- or moderate-income census tracts. The agencies also seek feedback on whether a standardized template with defined data fields would capture alternative delivery systems more consistently.

Request for Feedback

Question 90. Should the agencies use the percentage of families and total population in an assessment area by census tract income level in addition to the other comparators listed (*i.e.,* census tracts, households, and businesses) for the assessment of branches and remote service facilities?

Question 91. Are there other alternative approaches or definitions the agencies should consider in designating places with limited branch access for communities, such as branch distance thresholds determined by census tract population densities, commuting patterns or some other metric? For example, should the agencies not divide geographies and use the more flexible, second alternative approach?

Question 92. How should geographies be divided to appropriately identify different distance thresholds? Should they be divided according to those in the proposed approach of urban, suburban, and rural areas; those in the alternative approach of central counties, outlying counties, and nonmetropolitan counties; or some other delineation?

Question 93. How narrowly should designations of low branch access and very low branch access be tailored so that banks may target additional retail services appropriately?

Question 94. Is a fixed distance standard that allows the concentration of low and very low branch access areas to vary across regions, such as that in the proposed approach, or a locally-determined distance threshold that identifies a similar concentration of low and very low branch access areas within each local area, such as that in the alternative approach, most appropriate when identifying areas with limited branch access?

Question 95. Should the agencies take into consideration credit union locations in any of the proposed approaches, or should the analysis be based solely on the distribution of bank branches? For example, in the proposed or local approach, having a credit union within the relevant distance of a census tract population center would mean that the census tract would not be a very low branch access census tract (if there were no bank branch present).

Question 96. If the local approach were adopted, how frequently should the local distances be updated?

Question 97. What other branch-based services could be considered as responsive to low- and moderate-income needs?

Question 98. Should branches in distressed or underserved middle-income nonmetropolitan census tracts receive qualitative consideration, without documenting that the branch provides services to low- or moderate-income individuals?

Question 99. Should the agencies provide favorable qualitative consideration for retail branching in middle-income and upper-income census tracts if a bank can demonstrate that branch locations in these geographies deliver services to low- or moderate-income individuals? What information should banks provide to demonstrate such service to low- or moderate-income individuals?

Question 100. How could the agencies further define ways to evaluate the digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, as part of a bank's digital and other delivery systems evaluation?

Question 101. Should affordability be one of the factors in evaluating digital and other delivery systems? If so, what data should the agencies consider?

Question 102. Are there comparators that the agencies should consider to assess the degree to which a bank is reaching individuals in low- or moderate-income census tracts through digital and other delivery systems?

Question 103. Should the evaluation of digital and other delivery systems be optional for banks with assets of $10 billion or less as proposed, or should this component be required for these banks? Alternatively, should the agencies maintain current evaluation standards for alternative delivery systems for banks within this tier?

D. Credit and Deposit Products Evaluation

The agencies propose a second part of the Retail Services and Products Test that would focus on the availability of credit and deposit products and the extent to which these products are responsive to the needs of low- and moderate-income individuals, small businesses, and small farms, as applicable. Evaluating credit and deposit products would incorporate important qualitative factors that capture a bank's commitment to serving low- and moderate-income individuals, small businesses, and small farms.

Under the proposal, the agencies would separately evaluate: (i) The responsiveness of credit products and programs to the needs of low- and moderate-income individuals, small businesses, and small farms; and (ii) deposit products responsive to the needs of low- and moderate-income individuals. Both the credit product and deposit product components would be assessed at the institution level and would be required for large banks with assets of over $10 billion. For banks with assets of $10 billion or less, only the first component—the responsiveness of credit products and programs—would be required. For large banks with assets of $10 billion or less, the deposit product component would not be required.

1. Responsiveness of Credit Products and Programs to the Needs of Low- and Moderate-Income Individuals, Small Businesses, and Small Farms

The agencies propose evaluating the responsiveness of a large bank's credit products and programs to the needs of low- and moderate-income individuals (including through low-cost education loans),[211] small businesses, and small farms under the Retail Services and Products Test. The agencies recognize that credit needs vary from community to community and that bank retail lending products and programs, as a result, can vary to meet these different needs. To that end, the proposal does not provide a specific list of retail lending products and programs that qualify under this provision. The agencies believe that such an approach could have the unintended consequence of constraining bank efforts to meet the credit needs of its communities.

Instead, the proposal states that responsive credit products and programs provided in a safe and sound manner may include, but are not limited to, the following three categories: (i) Credit products and programs that facilitate mortgage and consumer lending for low- or moderate-income borrowers in a safe and sound manner; (ii) Credit products and programs that meet the needs of small businesses and small farms, including to the smallest businesses and smallest farms, in a safe and sound manner; and (iii) Credit products and programs that are conducted in cooperation with MDIs, WDIs, LICUs,[212] or Treasury Department-certified CDFIs in a safe and sound manner.

The proposal focuses on evaluating the responsiveness of a bank's retail

[211] 12 U.S.C. 2903(d).

[212] This is consistent with 12 U.S.C. 2903(b).

lending products and programs. The agencies intend for this evaluation to emphasize the impact of the product or program in helping to meet the credit needs of low- and moderate-income individuals, small businesses, and small farms. The current regulation provides consideration for a bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies.[213] The agencies believe that using *responsiveness* as part of the proposed evaluation standard instead of *innovative* and *flexible* would better capture the focus on community credit needs, though these terms are often used interchangeably. The agencies also believe that using the term *responsiveness* would also help improve consistency of terminology throughout the proposed regulation. In addition, the agencies recognize that examples of innovative and flexible retail lending products under existing guidance may also meet the responsiveness standard under this proposal.

The agencies propose considering responsive retail lending products and programs under the Retail Services and Products Test, rather than the Retail Lending Test, for several reasons. First, the proposed approach combines the review of responsive credit products and responsive deposit products into the same test. This is a change from the current regulations, which consider innovative and flexible retail lending practices under the lending test and deposit products under the service test. The agencies' proposal intends to provide a more holistic evaluation of credit and deposit products, which work in tandem to facilitate credit access for low- and moderate-income individuals. Second, the agencies considered that it may be preferable to pair a qualitative evaluation of the responsiveness of a bank's retail lending products and programs with other qualitative criteria under the Retail Services and Products Test rather than include it as part of the more metrics-based Retail Lending Test. The agencies seek feedback on whether decoupling qualitative consideration of retail lending credit products and programs from the Retail Lending Test is appropriate, and if not, how should the agencies incorporate qualitative performance into a metrics-driven approach for retail lending.

To qualify for qualitative consideration under the proposal, the agencies would consider relevant information about the retail lending products and programs, including information provided by the bank and from the public. Additionally, banks would have to demonstrate that their products or programs are provided in a safe and sound manner.

Credit Products and Programs that Facilitate Home Mortgage and Consumer Lending for Low- and Moderate-Income Borrowers. The proposal includes credit products and programs that facilitate mortgage and consumer lending targeted to low- or moderate-income borrowers as one category of responsive credit products or programs. Specific examples of responsive credit products or programs that could be considered under this category are described below.

First, small-dollar mortgages could be an example of a responsive home mortgage product in this category. Small-dollar mortgages are generally considered to be in the amount of $100,000 or less, although the agencies recognize that home prices can vary across different communities.[214] The agencies believe that small-dollar mortgages for lower-value properties can often be challenging for consumers to obtain, in part because originating these loans generally generates less revenue for a bank than originating larger loans. At the same time, small-dollar mortgages are especially important for low- and moderate-income first-time homebuyers, who may not be able to afford a down payment or monthly payments for a more expensive home. In addition, access to small-dollar mortgages is vital for individuals in areas where housing prices are generally lower, including many rural communities.

Second, consumer lending programs that utilize alternative credit histories in a manner that would benefit low- or moderate-income individuals, consistent with safe and sound underwriting practices, could be an example of a responsive credit product or program in this category. The agencies understand that low- or moderate-income individuals with limited conventional credit histories can face challenges in obtaining access to credit. For individuals who do not qualify for credit based on the use of conventional credit reports, alternative credit history with rent and utility payments, for example, may supplement an assessment of their credit profile. Under current guidance, the use of alternative credit histories, consistent with safe and sound lending practices, may be considered as an innovative or flexible lending practice.[215]

The agencies seek feedback on whether the regulation should list special purpose credit programs as an example of a responsive credit product or program that facilitates mortgage and consumer lending targeted to low- or moderate-income borrowers. Under ECOA and Regulation B, financial institutions can establish special purpose credit programs to meet special social needs.[216]

Credit Products and Programs that Meet Credit Needs of Small Businesses and Small Farms. The proposal includes credit products and programs that meet the needs of small businesses and small farms, including the smallest businesses and smallest farms, as another category of responsive credit products or programs. These credit product and programs might include microloans (such as loans of $50,000 or less), loans to businesses with gross annual revenues of $250,000 or less, and patient capital to entrepreneurs through longer-term loans.

Currently, the agencies consider lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies, but the current regulation does not specifically mention the credit needs of small businesses and small farms. To recognize the unique credit needs of small businesses, including smaller businesses and smaller farms, and to align with the consideration of small business lending in other parts of the regulation, the agencies propose to specifically create this category focused on products and practices meeting the credit needs of small businesses and small farms.

Credit Products and Programs that are Conducted in Cooperation with MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs. Finally, the proposal includes credit products and programs that are conducted in cooperation with MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs as category of responsive credit products and programs.[217] [218] Under this category, the agencies would consider, for example, home mortgage loans and small

[213] 12 CFR __.22(b)(5).

[214] *See, e.g.,* Alanna McCargo, Bing Bai, Taz George, and Sarah Strochak, ''Small-Dollar Mortgages for Single-Family Residential Properties,'' Research Report, Urban Institute (April 2018), *https://www.urban.org/sites/default/files/publication/98261/small_dollar_mortgages_for_single_family_residential_properties_2.pdf.*

[215] *See* Q&A § __.22(b)(5)–1.

[216] 15 U.S.C. 1691(c).

[217] This is consistent with 12 U.S.C. 2903(b).

[218] *See* Investing in the Future of Mission-Driven Banks: A Guide to Facilitating New Partnerships, FDIC, Washington, DC (Oct. 2020), *https://www.fdic.gov/mdi.* For printable version, *https://www.fdic.gov/regulations/resources/minority/mission-driven/guide.pdf.*

business loans that banks purchase from MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs. Bank purchases can provide necessary liquidity to these lenders and extend their capability to originate loans to low- and moderate-income individuals, low- and moderate-income areas, and to small businesses and farms. The agencies recognize the importance of supporting these institutions in their efforts to provide access to credit and other financial services in traditionally underserved communities.[219]

The agencies seek feedback on whether there are other categories of responsive credit products and programs, offered in a safe and sound manner, that the agencies should take into consideration when deciding whether to give qualitative consideration to credit products and programs.

2. Deposit Products Responsive to the Needs of Low- and Moderate-Income Individuals

The agencies considered several factors that suggest an emphasis on deposit products would be appropriate. Deposit products play a critical role in providing an entry point to the banking system for low- and moderate-income individuals.[220] Having a bank account provides the means to receive, transact, and safely save funds; it is also a pathway for a bank customer to establish an ongoing relationship with a bank. Moreover, a bank account provides the cash flow data that some financial companies use to underwrite credit.[221] For these reasons, the agencies propose modernizing the existing evaluation of a bank's products and services by adding a more explicit focus on the financial inclusion potential of these products and by adding specific measures for evaluation, such as availability and usage.

For large banks with assets of over $10 billion, the agencies would evaluate the availability and usage of a bank's deposit products responsive to the needs of low- and moderate-income individuals. This evaluation would be optional for large banks with assets of $10 billion or less.

a. Availability of Deposit Products Responsive to the Needs of Low- and Moderate-Income Individuals

In evaluating the availability of deposit products responsive to the needs of low- and moderate-income individuals, the agencies would evaluate whether the bank offers deposit products that have features and cost characteristics including but not limited to deposit products with the following types of features, consistent with safe and sound operations: (i) Low-cost features, (ii) features facilitating broad functionality and accessibility, and (iii) features facilitating inclusivity of access.

First, deposit products with low-cost features would be considered responsive deposit products. Examples of deposit products with low-cost features include but are not limited to: (i) Accounts with no overdraft or insufficient fund fees, (ii) accounts with no or low minimum opening balance, (iii) accounts with no or low monthly maintenance fees, and (iv) free or low-cost checking and bill payment services. These examples are consistent with current guidance, which includes low-cost transaction accounts among the examples of services that improve access to financial services and decrease costs for low- and moderate-income individuals.[222] Moreover, cost issues remain a prevalent reason cited by unbanked individuals as to why they do not have a bank account.[223]

Second, deposit products with features facilitating broad functionality and accessibility would be considered responsive deposit products. Examples of deposit products with such features could include deposit products with in-network ATM access, debit cards for point-of-sale and bill payments, and immediate access to funds for customers cashing government, payroll, or bank-issued checks. The ability to conduct transactions and access funds in a timely manner is highly relevant for lower-income individuals or unbanked and underserved individuals, who otherwise might acquire financial services at a higher cost from non-bank sources.

Third, deposit products with features facilitating inclusive access by persons without banking or credit histories, or with adverse banking histories, would be considered responsive deposit products. Regarding this proposal, the agencies have considered research indicating that former bank account problems remain barriers for consumers who are unbanked.[224]

The agencies propose taking these three types of features into consideration when evaluating whether a particular deposit product has met the ''responsiveness to low- and moderate-income needs'' standard.[225] The agencies seek feedback on the appropriateness of the features proposed to describe whether a deposit product is responsive to low- and moderate-income individuals. Additionally, to inform the assessment of the availability of responsive deposit products, the agencies are considering reviewing the locations where the responsive account can be acquired and assessing whether there is variation in the terms or features across facility-based assessment areas that would disadvantage low- and moderate-income individuals. The agencies seek feedback on whether to include in the evaluation a review of the locations where the responsive deposit product is made available.

b. Usage of Deposit Products Responsive to the Needs of Low- and Moderate-Income Individuals

The agencies also propose evaluating usage of responsive deposit products by considering, for example: (i) The number of responsive accounts opened and closed during each year of the evaluation period in low-, moderate-, middle-, and upper-income census tracts, respectively; (ii) the percentage of total responsive deposit accounts compared to total deposit accounts for each year of the evaluation period; and (iii) marketing, partnerships, and other activities that the bank has undertaken to promote awareness and use of responsive deposit accounts by low- and moderate-income individuals.

[219] *See* FDIC, ''2019 Minority Depository Institutions: Structure, Performance, and Social Impact'' (2019), *https://www.fdic.gov/regulations/resources/minority/2019-mdi-study/full.pdf.*

[220] *See, e.g.,* Ryan M. Goodstein, FDIC, Alicia Lloro, Board, Sherrie L. Rhine, FDIC, and Jeffrey M. Weinstein, FDIC, *Journal of Consumer Affairs 55,* ''What accounts for racial and ethnic differences in credit use?'' (2021); National Survey of Unbanked and Underbanked Households, 2017 FDIC Survey (October 2018); Michael Barr, University of Michigan Law School, Jane K. Dokko, Board, and Benjamin J. Keys, University of Michigan, ''And Banking for All?,'' Board, FEDS Series, Working Paper No. 2009–34 (2009), *https://www.federalreserve.gov/pubs/feds/2009/200934/200934pap.pdf.*

[221] *See, e.g.,* Kelly Thompson Cochran, Federal Reserve Bank of San Francisco, ''The Next Frontier: Expanding Credit Inclusion with New Data and Analytical Techniques,'' Federal Reserve Bank of San Francisco, Community Development Publications (Aug. 19, 2021), *https://www.frbsf.org/community-development/publications/community-development-investment-review/2021/august/the-next-frontier-expanding-credit-inclusion-with-new-data-and-analytical-techniques/*; CFPB, ''CFPB Data Point: Becoming Credit Visible,'' The CFPB Office of Research (June 2017), *https://files.consumerfinance.gov/f/documents/BecomingCreditVisible_Data_Point_Final.pdf.*

[222] *See* Q&A § __.24(a)–1.

[223] *See* FDIC, ''How America Banks,'' *supra* note 145.

[224] *See id.*

[225] Product examples that meet the responsiveness standard include accounts certified by the Cities for Financial Empowerment as meeting the Bank On National Account standard, and ''second-chance accounts.'' Savings accounts targeted towards low- or moderate-income individuals such as Individual Development Accounts, are another example of a product that would be considered responsive.

In evaluating the usage of responsive deposit accounts, proposed § __.23 provides as an example the number of responsive deposit accounts opened and closed, which would involve a bank providing the total number of responsive accounts opened and closed during each year of the evaluation period, aggregated by census tract income level (*e.g.,* all low-income census tracts in the bank's facility-based assessment areas). This information would be an approximate indicator of the extent to which the needs in low- or moderate-income areas are being met. Data on number of account openings could be used to measure the penetration of the responsive product in low- or moderate-income areas. The number of account closings, on the other hand, could reveal whether the product is actually meeting the needs of consumers. Account openings and closings data, when paired together, would better indicate the responsiveness of these accounts to consumers' needs, and the bank's effectiveness in meeting consumers' needs, than either of those numbers would indicate on their own.

Relatedly, the agencies also propose to consider the share of a bank's total account activity represented by responsive deposit products. This would be accomplished by comparing at the end of each year of the evaluation period, the total number of active *responsive* deposit accounts to *all* active consumer deposit accounts offered by the bank. The comparison is intended to give a sense of the magnitude of the commitment to broadening the customer base to include low- and moderate-income individuals.

The agencies also propose considering outreach activity undertaken to promote awareness and use of responsive deposit accounts by low- and moderate-income individuals. Bank outreach may contribute to the successful take-up of a deposit product targeted to low- and moderate-income individuals. Therefore, the agencies propose giving qualitative consideration to marketing, partnerships, and other activities to attract low- and moderate-income individuals.

Request for Feedback

Question 104. Are there additional categories of responsive credit products and programs that should be included in the regulation for qualitative consideration?

Question 105. Should the agencies provide more specific guidance regarding what credit products and programs may be considered especially responsive, or is it preferable to provide general criteria so as not to discourage a bank from pursuing impactful and responsive activities that may deviate from the specific examples?

Question 106. Should special purpose credit programs meeting the credit needs of a bank's assessment areas be included in the regulation as an example of loan product or program that facilitates home mortgage and consumer lending for low- and moderate-income individuals?

Question 107. Are the features of cost, functionality, and inclusion of access appropriate for establishing whether a deposit product is responsive to the needs of low- and moderate-income individuals? What other features or characteristics should be considered? Should a minimum number of features be met in order to be considered 'responsive'?

Question 108. The agencies wish to encourage retail banking activities that may increase access to credit. Aside from deposit accounts, are there other products or services that may increase credit access?

Question 109. Are the proposed usage factors appropriate for an evaluation of responsive deposit products? Should the agencies consider the total number of active *responsive* deposit products relative to *all* active consumer deposit accounts offered by the bank?

Question 110. Should the agencies take other information into consideration when evaluating the responsiveness of a bank's deposit products, such as the location where the responsive deposit products are made available?

Question 111. Should large banks with assets of $10 billion or less have the option of a responsive deposit products evaluation, as proposed, or should this component be required, as it is for large banks with assets of over $10 billion?

E. Retail Services and Products Test Performance Conclusions and Ratings

1. Facility-Based Assessment Area Retail Services and Products Test Conclusion

The agencies propose reaching a single Retail Services and Products Test conclusion for large banks in each of their facility-based assessment areas. For all large banks, the facility-based assessment area conclusions would be based on two of the three *delivery systems* components: (i) Branch availability and services, and (ii) remote services facilities availability. The agencies believe an assessment area level evaluation would be appropriate for branches and remote service facilities because their physical presence would have an impact on the availability of retail banking services to low- and moderate-income individuals.

For large banks with assets of over $10 billion, the agencies propose evaluating at the institution level a bank's digital and other delivery systems, and then integrating this into the *delivery systems* conclusion, as explained below. The agencies also propose evaluating a bank's *credit and deposit products* at the institution level and would be considered alongside the *delivery systems* conclusion when deriving an overall institution conclusion on the Retail Services and Products Test, as described further below. Large banks with assets of $10 billion or less would be evaluated only on credit products at the institution level unless they elect to have digital and other delivery systems and deposit products considered.

The evaluation of branch and remote service facility availability as proposed would remain qualitative with community and market benchmarks (as described in Section XI.C.) used to inform the conclusions along with performance context for each facility-based assessment area. Based on an assessment of the evaluation criteria associated with branch availability, branch-based services, and remote services facility availability, the bank would receive a conclusion with assigned point values as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points) or ''Substantial Noncompliance'' (0 points).[226]

2. State and Multistate MSA Retail Services and Products Test Conclusions

State and multistate MSA level conclusions for the Retail Services and Products Test would be based exclusively on the bank's performance in its facility-based assessment areas and would involve averaging a bank's conclusions across its facility-based assessment areas in each state and multistate MSA. The point value assigned to each assessment area conclusion would be weighted by its average share of loans and share of deposits of the bank within the assessment area, out of all the bank's retail loans and deposits in facility-based assessment areas in the state or multistate MSA area, as applicable, to derive a state level score. Similar to the proposed weighting approach for assigning Retail Lending Test

[226] See Section IX.F for discussion of the proposed point scale.

conclusions, deposits would be based on collected and maintained deposits data for banks that collect this data, and on the FDIC's Summary of Deposits for banks that do not collect deposits data. The state level score is then rounded to the nearest conclusion category point value to determine the Retail Services and Products Test conclusion for the state or multistate MSA.

3. Retail Services and Products Test Institution Conclusion

The agencies propose assigning a Retail Services and Products Test conclusion for the institution based on the conclusions reached for both parts of the test: *Delivery systems* and *credit and deposit products.*

Delivery Systems Conclusion. A bank's *delivery systems* conclusion would be based on the conclusions for each of the three proposed parts of the delivery systems evaluation, as applicable: Branch availability and services, remote services facilities availability, and digital and other delivery systems. As noted earlier, the first two parts of the evaluation would apply for all large banks at the facility-based assessment area and aggregated to form a branch and remote service facilities subcomponent conclusion at the institution level. For large banks with assets of over $10 billion and large banks with assets of $10 billion or less electing to have digital and other delivery systems considered, the agencies propose evaluating digital and other delivery systems at the institution level, as the features of this component are not place-based and extend beyond facility-based assessment areas. For large banks with assets of $10 billion or less that do not elect to have their digital and other delivery systems considered, the institution-level delivery systems conclusion would be based exclusively on the evaluation of such bank's branch availability and services and remote services facility availability.

The agencies however seek feedback on whether the evaluation of digital and other delivery systems should occur at the assessment area level, rather than as proposed, and what approach the agencies should employ to determine how much weight this part of delivery systems represent given the various bank business models.

The agencies propose to derive the institution delivery systems conclusion by considering the conclusions on each of the three parts of the delivery system evaluation and allowing for examiner discretion to determine the appropriate weight that should be given to each part. This proposed approach for deriving delivery system conclusions is intended to allow for the agencies to take into account the unique business models and strategies of different institutions. For example, if a majority of the bank's new deposit accounts are opened via digital channels during the evaluation period, then the agencies may give more weight to the digital and other delivery systems conclusion. The agencies also seek feedback on more quantitative and standardized approaches to weighting the three parts of the delivery systems evaluation.

Credit and Deposit Products Conclusion. A bank's *credit and deposit products* conclusion would be based on the conclusions for the applicable parts of the credit and deposit products evaluation: (i) The responsiveness of credit products and programs, and (ii) deposit products responsive to the needs of low- and moderate-income individuals. As noted earlier, the first part of the evaluation applies for all large banks at the institution level. For large banks with assets of over $10 billion and for large banks with assets of $10 billion or less electing to have their responsive deposit products considered, the agencies propose evaluating the bank's deposit products at the institution level. For large banks with assets of $10 billion or less that do not elect to have their responsive deposit products considered, the institution-level credit and deposit products conclusion would be based exclusively on a bank's responsiveness of credit products and programs to the needs of low- and moderate-income individuals, small businesses, and small farms.

The agencies consider it appropriate to conduct an overall assessment of credit and deposit product offerings at the institution level, since products are often available across a wide range of a bank's footprint. Considering performance context, examiners would reach a conclusion at the institution level for the *credit and deposit products* evaluation of: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points) or ''Substantial Noncompliance'' (0 points).

The agencies propose to allow for examiner judgment to determine the appropriate weighting of credit products and deposit products for purposes of assigning the institution credit and deposit products conclusion. The agencies considered that a flexible approach would allow for tailoring based on local community credit needs, and on bank business model and strategy. For example, if the bank had several assessment areas with relatively high unbanked populations, and in these markets the bank offered several responsive deposit products, the agencies may apply a greater weight to the bank's deposit product conclusion. The agencies seek feedback on alternative approaches, such as assigning equal weights to both components.

Combined Conclusion. The agencies propose to derive the combined conclusion for the Retail Services and Products Test based on consideration of the bank's conclusions under the *delivery systems* evaluation and the *credit and deposit products* evaluation, as applicable. The agencies propose that examiner judgment would be used to determine the appropriate weight between these two parts of the Retail Services and Products Test, in recognition of the importance of local community credit needs and bank business model and strategy in determining the amount of emphasis to give *delivery systems* and *credit and deposit products,* respectively. Based on this consideration, the agencies would arrive at an institution-level conclusion on the Retail Services and Products Test. This conclusion would be translated into a performance score using the following mapping: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).

For example, assume at the institution level a bank receives a conclusion of ''Low-Satisfactory'' for its *delivery systems* conclusion and a conclusion of ''High Satisfactory'' for its *credit and deposit products* conclusion. If due to, for example, the bank's branch expansion during the evaluation period, the agencies weight delivery systems more heavily, then the agencies may assign an overall conclusion of ''Low Satisfactory'' on the Retail Services and Products Test, which would correspond to an institution performance score of 6.

The agencies seek feedback on whether the two parts of the Retail Services and Products Test should receive a fixed equal weighting, or should the weighting vary by community credit needs and bank business model and strategy. The agencies also seek feedback on whether to assign a conclusion for the *credit and deposit products* evaluation, or whether to consider the performance solely to upgrade the *delivery systems* conclusion.

Request for Feedback

Question 112. For all large banks, the agencies propose to evaluate the bank's delivery systems (branches and remote service facilities) at the assessment area level, and the digital and other delivery systems at the institution level. Is this appropriate, or should both subcomponents be evaluated at the same level, and if so, which level?

Question 113. The agencies propose weighting the digital and other delivery systems component relative to the physical delivery systems according to the bank's business model, as demonstrated by the share of consumer accounts opened digitally. Is this an appropriate approach, or is there an alternative that could be implemented consistently? Or, should the weighting be determined based on performance context?

Question 114. How should the agencies weight the two subcomponents of the credit *and deposit products* evaluation? Should the two subcomponents receive equal weighting, or should examiner judgment and performance context determine the relative weighting?

Question 115. Should the *credit and deposit products* evaluation receive its own conclusion that is combined with the *delivery systems* evaluation for an overall institution conclusion? Or should favorable performance on the *credit and deposit products* evaluation be used solely to upgrade the *delivery systems* conclusion? For large banks with assets of $10 billion or less that elect to be evaluated on their digital delivery systems and deposit products, how should their performance in these areas be considered when determining the bank's overall Retail Services and Products Test conclusion?

Question 116. Should each part of the Retail Services and Products Test receive equal weighting to derive the institution conclusion, or should the weighting vary by a bank's business model and other performance context?

XII. Community Development Financing Test

In § __.24, the agencies propose a new Community Development Financing Test that would apply to large banks and any intermediate bank that opts to be evaluated under this test. The agencies would evaluate wholesale and limited purpose banks under a modified version of this test, as discussed in § __.26.

The Community Development Financing Test would consist of a community development financing metric and benchmarks and an impact review. These components would be assessed at the facility-based assessment area, state, multistate MSA, and institution levels, and would inform conclusions at each of those levels. The Community Development Financing Test would not be assessed for retail lending assessment areas.

The bank community development financing metrics would measure the dollar value of a bank's community development loans [227] and community development investments [228] together, relative to the bank's capacity, as reflected by the dollar value of deposits. The agencies are proposing to use the term ''community development investment'' in place of the current term ''qualifying investment'' for clarity and consistency purposes. The proposed benchmarks would reflect local context, including the amount of community development financing activities by other banks in the assessment area, and would be used in conjunction with the metrics to assess the bank's performance. The metrics and benchmarks would be consistent across banks and agencies and would provide additional clarity about the evaluation approach.

The impact review would evaluate the impact and responsiveness of a bank's community development loan and community development investment activities through the application of a series of specific qualitative factors described in more detail in Section V. The impact review would provide appropriate recognition under the Community Development Financing Test of activities that are considered to be especially impactful and responsive to community needs, including activities that may be relatively small in dollar amounts.

A. Background

1. Current Approach To Evaluating Community Development Financing

Under current CRA regulations and examination procedures, community development financing activities are assessed differently based on the asset size and business model of a bank. For small banks, community development investment activities are reviewed only at a bank's option for consideration for an ''Outstanding'' rating for the institution overall.[229] For intermediate small banks and wholesale and limited purpose banks, community development loans, qualified investments, and community development services are considered together under one community development test.[230]

For large banks, community development loans are considered as part of the lending test together with retail loans, while qualified investments are considered separately in the investment test.[231] A large bank receives consideration for both the number and dollar amount of community development loans originated and qualified investments made during the evaluation period, as well as the remaining book value of qualified investments made during a prior evaluation period. Banks do not receive consideration for community development loans that remain on a bank's balance sheet from a prior review period. The agencies also consider qualitative factors including the innovativeness and complexity of community development loans and the innovativeness of qualified investments, how responsive the bank has been to community needs in its assessment areas, and the degree of leadership a bank exhibits through its activities. The agencies assign conclusions at the assessment area level based on both the number and dollar amount of activities and the qualitative factors.

The current approach emphasizes qualifying activities that have a purpose, mandate, or function of serving one or more of a bank's assessment areas, but also allows for flexibility in the geographic scope and focus of activities, subject to certain conditions. A qualifying activity that specifically serves an assessment area receives consideration, as does a qualifying activity that serves a broader statewide or regional area containing one or more of a bank's assessment areas.[232] For a bank with a nationwide footprint, this could include qualifying activities that are nationwide in scope.[233] In addition, if a bank has met the community development needs of an assessment area, it may also receive consideration for a qualifying activity within a broader statewide or regional area that does not benefit its assessment area.[234]

2. Stakeholder Feedback on Evaluation of Community Development Loans and Investments

Many stakeholders have suggested using standard metrics to assess community development financing activities in order to establish consistent treatment of community development loans and qualifying investments and to achieve an appropriate balance between

[227] *See* proposed § __.12.

[228] *Id.*

[229] *See* Appendix A to part __—Ratings; Q&A § __.26(d)–1.

[230] 12 CFR __.25(c) and 12 CFR __.26(c).

[231] 12 CFR __.22 and 12 CFR __.23.

[232] 12 CFR __.12(h)(2)(ii); *see also* Q&A § __.12(h)–6.

[233] Q&A § __.23(a)–2.

[234] Q&A § __.12(h)–6.

emphasizing activities that serve assessment areas while also allowing banks the option to pursue activities beyond their assessment areas.

Stakeholders have noted that the largely qualitative nature of the current approach to evaluating community development financing results in uncertainty and inconsistency in the application of performance standards and procedures. For example, the agencies do not currently provide guidance on how the volume of a bank's community development financing activity will be measured, and what benchmarks may be used to compare bank performance. In response, stakeholders have expressed support for using standard metrics to measure the amount of activities a bank has conducted, and to measure the level of impact and responsiveness of those activities.

Stakeholders have also emphasized the importance of maintaining a degree of examiner judgment in evaluating community development financing activities to appropriately consider the impact of the activities and their responsiveness to community needs. Moreover, some stakeholders shared that any new metrics to evaluate performance should be introduced gradually and informed by data and analysis.

Some stakeholders have noted concerns with inconsistent treatment of community development loans and qualified investments under the current approach. First, the consideration of community development loans and qualified investments under separate tests for large banks may affect a bank's preference of whether to seek out opportunities to lend or invest. For example, a bank seeking to improve its investment test performance may prefer to invest in a qualifying community development fund for the purpose of receiving CRA credit instead of seeking out opportunities to lend a comparable dollar amount. Stakeholders have noted that the current practice of counting community development loans originated during the evaluation period, but not those held on balance sheet from prior evaluation periods, is inconsistent with the treatment of qualifying investments, and can discourage longer-term loans that stakeholders have cited as highly responsive.

Stakeholders have also expressed concerns about the current approach to considering community development activities that are not clearly tied to one or more of a bank's assessment areas. Banks indicate that there is inconsistency and a lack of clarity regarding how these activities are considered, particularly those that do not have a purpose, mandate, or function of serving an assessment area. This uncertainty does not encourage community development lending and investment in areas with few bank assessment areas. Stakeholders have indicated that reforms to the CRA regulations should appropriately balance community development in broader geographies with a clear emphasis on activities within assessment areas.

B. Combined Consideration of Community Development Loans and Investments

The agencies propose to evaluate community development loans and investments together in the community development financing metric, in contrast to the current approach for large banks that evaluates community development loans and investments separately. The proposed approach seeks to simplify the evaluation while addressing concerns from some stakeholders that the current approach favors one form of financing over another. Combining consideration of community development loans and investments into a single test would allow banks to engage in the activity best suited to their expertise and that is most needed for the community development project that the bank is financing. The agencies recognize that some stakeholders have expressed concerns that combining loans and investments would result in less emphasis on investment activities than the current approach, which evaluates investments separately. However, investments would be included in the proposed community development financing metric, and the agencies believe that the proposed metric appropriately measures both community development loans and community development investments. The impact and responsiveness of loans and investments would also be considered as part of a bank's impact review.

C. Allocation of Community Development Financing Activities

The agencies propose an approach to consistently allocate the dollar value of community development financing activities for the purpose of calculating metrics and benchmarks. The proposed approach accounts for the geographies served by a bank's activities and provides certainty that qualifying activities benefiting geographies outside of facility-based assessment areas would receive consideration.

Under the proposed approach, the dollar value of activities would be allocated to one or more counties, states, or to the institution level, depending on the geographic scope of the activity. At the assessment area level, the dollar value of activities assigned to the counties within the assessment area would count towards the bank assessment area community development financing metric and would inform assessment area conclusions. At the state level, the dollar value of activities assigned to the state and to any counties within the state would count towards the bank state community development financing metric. At the multistate MSA level, the dollar value of activities assigned to the multistate MSA and to any counties within the multistate MSA would count towards the bank multistate MSA community development financing metric. At the institution level, the dollar value of all a bank's qualifying activities—those allocated to counties, states, and to the institution—would count towards the bank nationwide community development financing metric.

This approach allows for metrics that measure performance at the different levels and is intended to support a balance between emphasizing facility-based assessment area performance and considering activities that benefit geographies outside of those assessment areas. The approach emphasizes facility-based assessment area performance because it allows the agencies to measure the amount of qualifying activities that specifically serve the assessment area, distinguished from those that serve a broader geography or that primarily serve other areas. At the same time, all qualifying activities would be considered in the nationwide metric, providing additional certainty and flexibility relative to the current approach, and allowing banks the opportunity to conduct impactful and responsive activities in areas that may have few assessment areas.

The agencies propose two options for allocating the dollar value of an activity that serves multiple counties, but not an entire statewide area. First, a bank may provide documentation specifying the locations and amounts of funds deployed for a qualifying activity, such as an affordable housing project funded by the bank's investment in a multi-county housing fund. The dollar value of the activity would then be allocated based on the proportion of funds associated with each location. If the bank was unable to identify specific locations, and did not provide documentation about the specific locations and amounts of funds deployed, the dollar value of the activity would be allocated across the counties served, proportionate to the percentage distribution of low- and moderate-income families across those counties. The use of demographic data for allocating the dollar value of activities would provide certainty and consistency compared to the current approach and would reflect the population served by qualifying activities. The agencies seek feedback on other data points that could be used for allocating activities that may more appropriately reflect the population served by some activities, such as total population, or number of small businesses.

For an activity that serves an entire statewide area, the activity would be allocated to the state level, and not to specific counties within the state. If the activity serves one or more statewide areas or portions of a multistate MSA applicable to the bank, it would be allocated proportionate to the percentage distribution of all low- and moderate-income families in the states and portions of those states in a bank's multistate MSA, in each relevant state and multistate MSA. Alternatively, the value of the activity could be allocated to specific states or multistate MSAs based on documentation provided by the bank as described above. For an activity that is nationwide in scope, the activity would be allocated to the institution level and not to specific states or counties.

Request for Feedback

Question 117. Should activities that cannot be allocated to a specific county or state be considered at the highest level (at the state or institution level, as appropriate) instead of allocated to multiple counties or states based upon the distribution of all low- and moderate-income families across the counties or states?

Question 118. What methodology should be used to allocate the dollar value of activities to specific counties for activities that serve multiple counties? For example, should the agencies use the distribution of all low- and moderate-income families across the applicable counties? Or, should the agencies use an alternative approach, such as the distribution of the total population across the applicable counties? Should the agencies consider other measures that would reflect economic development activities that benefit small businesses and small farms or use a standardized approach to allocate activities?

D. Facility-Based Assessment Area Community Development Financing Evaluation

1. Bank Assessment Area Community Development Financing Metric

The agencies propose to measure the dollar amount of a bank's qualifying community development financing activities compared to its deposits, defined in § __.12 and discussed in Section XIX, within each facility-based assessment area. The agencies also propose using benchmarks for the community development financing metric for the purposes of informing assessments of bank performance. While the community development financing framework would continue to rely on examiner judgment to assess the volume of activities, the use of uniform metrics and benchmarks is intended to improve the consistency and clarity of evaluations relative to the current approach.

The bank assessment area community development financing metric would be the ratio of a bank's community development financing dollars (the numerator) relative to the dollar value of the deposits (the denominator) within a facility-based assessment area. For example, if a bank has maintained an average of $1 million in deposits from an assessment area and has conducted an average of $20,000 annually in qualifying community development financing activities in that assessment area, its bank assessment area community development financing metric would be 2.0 percent.

$$\frac{\textit{CD loans+CD investments}\ (\$20{,}000)}{\textit{deposits}\ (\$1{,}000{,}000)} =$$

Bank Assessment Area Community Development Financing Metric (2.0 percent)

The numerator of the bank assessment area community development financing metric would be a bank's annual average of dollars of community development financing activity loaned or invested in an assessment area. This includes the annual average of community development loans and community development investments originated or purchased over the course of the evaluation period. It also includes the annual quarterly average value of community development loans and community development investments originated or purchased in a prior year that remained on a bank's balance sheet on the last day of each quarter of the year during the evaluation period. For example, a community development loan that is originated in the first year of an evaluation period, and maintained on balance sheet through the end of the third year of the evaluation period, would count towards the annual average that is computed for the numerator three times: The origination value in year one, and the annual quarterly average value remaining on balance sheet in years two and three.

The agencies propose to count both new and prior activities remaining on the bank's balance sheet in the numerator of the metric in order to emphasize the provision of long-term capital. Under the current approach, community development loans are credited based on the origination balance value and the remaining balance sheet value of longer-term loans is not considered, unless the loans are renewed or refinanced. However, under the proposed approach, the outstanding balance of a loan or investment counts towards the bank's metric on an annual basis, which makes long-term financing beneficial to a bank's metric.

Activities that the agencies consider to be conducted purely for the purpose of artificially increasing a bank's metric, such as purchasing and then subsequently reselling a large investment in a short time frame near the end of an evaluation period, may result in quantitative adjustments to the bank's metric to discount activities. The agencies believe that the ability of examiners to discount such activities under specific circumstances supports the integrity of the metrics and examination process.

The proposed denominator of the metric would be a bank's annual average dollar amount of deposits sourced from an assessment area during the evaluation period. As proposed in § __.42, collecting and maintaining deposits data would be required for large banks with assets of over $10 billion, and would be optional for large banks with assets of $10 billion or less and for intermediate banks that opt into the Community Development Financing Test. Banks that collect and maintain deposits data under proposed § __.42 would compute the average deposits (calculated based on average daily balances as provided in statements such as monthly or quarterly statements, as applicable) for depositors located in the assessment area. An annual average would then be computed across the years of the evaluation period. For banks that do not collect and maintain deposits data under proposed § __.42, the FDIC's Summary of Deposits data would be used, in order to tailor data requirements for these banks.

The agencies believe that this denominator is an indicator of a bank's financial capacity to conduct community development financing activity since deposits are a major source of bank funding for loans and investments. The agencies consider that the greater a bank's volume of deposits, the greater that bank's capacity and CRA obligation to lend and invest becomes.[235] Therefore, the proposed approach for the bank assessment area community development financing metric would establish a proportionately greater obligation to serve an assessment area for banks with a greater presence in that market. Stakeholders have also noted that deposits reflect a bank's financial capacity and align with the intent of CRA that encourages banks to help meet the credit needs of their communities.

An alternative considered by the agencies is to base the denominator of the metric on the share of the bank's depositors residing in the assessment area. The denominator would be calculated by multiplying the bank's institution level deposits by the percentage of the bank's depositors that reside in an assessment area. For example, under this alternative, if the bank has a total of $100,000,000 in deposits, and one percent of the bank's depositors reside in a given assessment area, then the denominator for that assessment area's metric would be $100,000,000 × .01 = $1,000,000. This alternative approach would have the objective of more evenly allocating a bank's CRA obligations across markets, including those less affluent markets in which the bank's depositors hold relatively small amounts of deposits, because deposits would be allocated to assessment areas proportionate to the number of depositors. The agencies have considered that this option would require all large banks and intermediate banks that decide to opt into the Community Development Financing Test to collect and maintain the number of depositors residing in each of their assessment areas and in other geographies, because existing data, such as the FDIC's Summary of Deposits data, does not include this information for individual banks.

2. Benchmarks

The agencies propose establishing one local and one national benchmark for each facility-based assessment area. To help inform facility-based assessment area conclusions, the agencies would compare the bank assessment area community development financing metric to both (i) an assessment area community development financing benchmark (local benchmark) and, as applicable, (ii) a metropolitan or a nonmetropolitan nationwide community development financing benchmark (nationwide benchmark). These benchmarks would enable the agencies to compare an individual bank's community development financing performance to other banks in a clear and consistent manner. Both benchmarks would be based on the aggregate amount of community development financing activity and the aggregate amounts of deposits in the bank's assessment area or nationwide, among all large banks.

The aggregate amounts of deposits for these benchmarks would be based on reported deposits data for large banks with assets of over $10 billion, and on the FDIC's Summary of Deposits data for large banks with assets of $10 billion or less, using the deposits assigned to branches located in each assessment area for which the benchmark is calculated.

As with the proposed market volume benchmark used in the proposed Retail Lending Test and discussed in Section IX, the agencies seek feedback on the proposed approach to using the FDIC's Summary of Deposits data for calculating community development financing benchmarks, the tradeoffs of the proposed approach, and on potential alternatives to the proposed approach.

The use of both local and nationwide benchmarks would provide the agencies, banks, and the public with additional context about the local level of community development activity that can help to interpret and set goals for performance. For example, a bank whose metric falls short of the local benchmark in an assessment area where the local benchmark is much lower than the nationwide benchmark could be considered to have conducted a relatively low volume of activities. The nationwide benchmarks also provide a baseline for evaluating the level of a particular bank's community development activity in an assessment area with few or no other large banks from which to calculate a local benchmark.

The benchmarks would be made publicly available (*e.g.,* in dashboards) and updated annually in order to provide the most transparency and clarity to allow banks and the public to track these benchmarks.

Assessment Area Community Development Financing Benchmark. As proposed, the numerator for the assessment area community development financing benchmark would be the annual average dollar amount of all large banks' qualifying community development financing activities (including both the annual average of originations and the annual quarterly average balance sheet holdings, as described above) in the assessment area during the evaluation period. The denominator for the assessment area community development financing benchmark would be the annual average of the total dollar amount of all deposits held by large banks in the assessment area. Under the proposal, the deposits in the facility-based assessment area would be the sum of: (i) The annual average of deposits in counties in the facility-based assessment area reported by all large banks with assets of over $10 billion over the evaluation period, as reported under proposed § __.42; and (ii) the annual average of deposits assigned to branches in the facility-based assessment area by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

[235] *See* 12 U.S.C. 2901; Section I of this **SUPPLEMENTARY INFORMATION**.

$$\text{Assessment Area Community Development Financing Benchmark} = \frac{\text{Annual average of local CD loans+CD investments}}{\text{Annual average of local deposits}}$$

The assessment area community development financing benchmark would reflect local conditions that vary across assessment areas, such as the level of competition from other banks and the availability of community development opportunities, which may contribute to differences in the level of community development activity across communities and within a community across time. The agencies consider that using a standard local benchmark would improve the consistency of the current evaluation approach, which does not include consistent data points that reflect local levels of qualifying activities.

Metropolitan and Nonmetropolitan Nationwide Community Development Financing Benchmarks. The agencies propose to develop a separate nationwide community development financing benchmark for all metropolitan areas and all nonmetropolitan areas, respectively. One of these nationwide benchmarks would be applied to each assessment area, depending on whether the assessment area was located in a metropolitan area or a nonmetropolitan area. Based on the agencies' analysis, the ratio of banks' community development loans and qualifying investments to deposits is higher in metropolitan assessment areas than in nonmetropolitan assessment areas.[236] Setting the nationwide benchmark separately for metropolitan and nonmetropolitan areas is intended to help account for differences in the level of community development opportunities in these areas.

The numerator for the nationwide community development financing benchmarks would be the annual average of the total dollar amount of all large banks' qualifying community development financing activities (in either metropolitan or nonmetropolitan areas, depending on the assessment area), and the denominator would be the annual average of the dollar amount of deposits (again, either in metropolitan or nonmetropolitan areas). Under the proposal, the deposits in the metropolitan or nonmetropolitan areas would be the sum of: (i) The annual average of deposits in counties in the metropolitan or nonmetropolitan areas reported by all large banks with assets of over $10 billion over the evaluation period (as reported under proposed § __.42; and (ii) the annual average of deposits assigned to branches in the metropolitan or nonmetropolitan areas by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

$$\text{Nationwide Community Development Financing Benchmark-Metropolitan} = \frac{\text{Annual average of nationwide metropolitan CD loans+CD investments}}{\text{Annual average of national metropolitan deposits}}$$

$$\text{Nationwide Community Development Financing Benchmark-Nonmetropolitan} = \frac{\text{Annual average of nationwide nonmetropolitan CD loans+CD investments}}{\text{Annual average of national nonmetropolitan deposits}}$$

Timing of Benchmark Data. In order to provide greater clarity to banks and communities regarding the benchmarks that would be used for each evaluation period, the agencies are considering whether the benchmarks should be calculated and fixed based on community development financing and deposits data that is available at least one year in advance of the end of the evaluation period. For example, for an evaluation period ending in January of 2025, the agencies could determine the benchmarks for that evaluation period using data over a three-year timeframe spanning from 2021 to 2023. This alternative would provide additional certainty that the benchmarks that a bank would be compared to would not change in the final year of an evaluation period. However, the agencies considered that under this alternative, the benchmarks that a bank is compared to may not as fully reflect the credit needs and opportunities in the assessment area to the same degree, especially if there are significant changes in community development opportunities during the final year of the evaluation period.

3. Impact Review

To complement the community development financing metrics and benchmarks, the agencies propose to evaluate the impact and responsiveness of a bank's community development activities. The qualitative evaluation would draw on the impact criteria defined in § __.15, and on any other information that the agencies consider to determine how the bank's activities

[236] The analysis used a sample of 5,735 assessment areas from large retail bank performance evaluation records from 2005 to 2017 in the Board's CRA Analytics Data Tables, which note the dollar amount of current period community development loan originations as well as current period and prior period qualifying investments in each assessment area. The total dollar amount of activities was divided by the length in years of each examination evaluation period, to produce an annual average for each assessment area evaluation. The FDIC Summary of Deposits data was used to identify the dollar amount of deposits associated with the corresponding bank's branches in the assessment area, which is the best available approach for estimating the amount of deposits associated with each of a bank's assessment areas. The aggregate ratio of annualized dollars of community development activities to dollars of deposits was computed separately for all metropolitan assessment areas and all nonmetropolitan assessment areas in the sample, respectively. Under this analysis, the metropolitan ratio was 1.4 percent, and the nonmetropolitan ratio was 0.9 percent, based on exams from 2014 to 2017. The metropolitan ratio remained significantly larger than the nonmetropolitan ratio when limiting the sample to only full-scope examinations, across different periods of the sample, and when computing the median ratio of all examinations, rather than a mean.

responded to community development needs and opportunities. This approach would advance the CRA's purpose by ensuring a strong emphasis on impact and responsiveness in meeting community credit needs; would increase consistency in the evaluation of qualitative factors relative to the current approach by creating clear criteria; and would foster transparency for banks and the public by providing information about the type and purpose of activities considered to be particularly impactful or responsive.

The consideration of qualitative factors as a supplement to the dollar-based metrics aligns with the CRA's purpose of strengthening low- and moderate-income communities by more fully accounting for factors that may reflect the overall impact of an activity. First, a qualitative review can consider the responsiveness of activities to local context, including community development needs and opportunities that vary from one community to another. Banks and their community partners may make great effort to design an activity to reflect this context, and to address specific credit needs of the community, which can further the activity's impact. Second, the qualitative evaluation is important for emphasizing relatively small-dollar activities that nonetheless have a significant positive impact on the communities served. For example, qualifying contributions and activities that support organizations that provide assistance to small businesses tend to have small dollar balances relative to loans to larger businesses, but are critically important for addressing small business credit needs. Third, the qualitative evaluation can emphasize activities that serve low- and moderate-income populations and census tracts that have especially high community development needs, which often entail greater complexity and effort on the part of the bank. This emphasis helps to encourage community development activities that reach a broad range of low- and moderate-income communities, including those that are more challenging to serve. Finally, the qualitative review can emphasize specific categories of activities aligned with the CRA's purpose of strengthening credit access for a bank's communities, including low- and moderate-income communities, such as activities that support specified mission-driven financial institutions.

To promote greater consistency and transparency in the evaluation approach, the agencies would examine the extent to which a bank's activities meet the impact factors defined in § __.15 based on information provided by the bank, local community data, community feedback, and other performance context information.

Given the current lack of data, the agencies propose that this process would initially be primarily qualitative in nature. The agencies would consider the percentage of the bank's qualifying activities that meet each impact factor but would not use multipliers or specific thresholds to directly tie the impact review factors to specific conclusions. A more significant volume of activities that align with the impact review factors would positively impact conclusions. In the future, when additional community development data is reported and analyzed, the agencies would consider quantitative approaches to evaluate impact and responsiveness.

4. Facility-Based Assessment Area Conclusions

The agencies propose to assign a Community Development Financing Test conclusion in a facility-based assessment area by considering the bank assessment area community development financing metric relative to the local and nationwide benchmarks, in conjunction with the impact review of the bank's activities. Based on an assessment of these factors, the bank would receive a conclusion of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

The agencies also considered approaches that would automatically combine the metric, benchmarks, and impact review to assign conclusions in a standardized way. However, the CRA community development financing data that is currently available is not sufficient to determine an approach that includes specific thresholds and weights for different components. Instead, the agencies propose that the approach for combining these standardized factors would initially rely on examiners' judgment. Eventually, analysis of community development data collected under the new rule may allow for developing additional quantitative procedures for determining conclusions. For example, the agencies could use community development financing data to determine thresholds for the bank assessment area community development financing metric and impact criteria that correspond to each conclusion category.

Request for Feedback

Question 119. The agencies are seeking feedback on alternatives to determining the denominator of the bank assessment area community development financing metric. What are the benefits and drawbacks, including data challenges, of implementing an alternative approach that bases the denominator of the metric on the share of bank depositors residing in the assessment area (described above) in contrast to the proposed approach of relying on dollar amounts of deposits?

Question 120. For large banks with assets of $10 billion or less, under the proposed Community Development Financing Test, is it appropriate to use the FDIC's Summary of Deposits data instead of deposits data that is required to be collected and maintained by the bank to tailor new data requirements, or would it be preferable to require collected deposits data for all large banks?

Question 121. What is the appropriate method to using the local and nationwide benchmarks to assess performance? Should the agencies rely on examiner judgment on how to weigh the comparison of the two benchmarks, or should there be additional structure, such as calculating an average of the two benchmarks, or taking the minimum, or the maximum, of the two benchmarks?

Question 122. What other considerations should the agencies take to ensure greater clarity and consistency regarding the calculation of benchmarks? Should the benchmarks be calculated from data that is available prior to the end of the evaluation period, or is it preferable to align the benchmark data with the beginning and end of the evaluation period?

E. State Community Development Financing Evaluation

To evaluate a bank's state community development financing performance, the agencies propose to consider a weighted average of the bank's performance in facility-based assessment areas within the state area, as well as the bank's performance on a statewide basis, via a statewide score. The statewide score would account for the totality of the bank's activities in the state—combining activities that are inside and outside of facility-based assessment areas—relative to the bank's total deposits across the state. The combination of these two components would emphasize facility-based assessment area performance, while still allowing banks the option to conduct and receive consideration for activities outside of facility-based assessment areas in the state.

1. Weighted Average of Assessment Area Performance

The agencies propose averaging a bank's Community Development Financing Test conclusions across its facility-based assessment areas in each state, as one component of the bank's Community Development Financing Test conclusion at the state level. The conclusion assigned to each assessment area would be mapped to a point value, consistent with the approach explained for assigning Retail Lending Test conclusions: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).[237] This resulting score for each assessment area would be assigned a weight, calculated as the average of the percentage of retail loans, and the percentage of deposits of the bank associated with the assessment area (both measured in dollars), out of all of the bank's retail loans and deposits in facility-based assessment areas in the state. Similar to the proposed weighting approach for assigning Retail Lending Test conclusions, deposits would be based on collected and maintained deposits data for banks that collect this data, and on the FDIC's Summary of Deposits for banks that do not collect deposits data. Using these weights and scores, the weighted average of the assessment area scores would then be taken and used as one component in determining the state-level conclusion.

The proposed approach would ensure that performance in all facility-based assessment areas is incorporated into the state conclusion, proportionate to the bank's amount of business activity in each assessment area. Incorporating conclusions for all assessment areas into the state conclusion creates a clear emphasis on assessment area performance, including smaller markets.

2. Statewide Score

Examiners would also assign a statewide score for each state in which a bank delineates a facility-based assessment area. The statewide score would be assigned based on a bank state community development financing metric and benchmark, and a statewide impact review.

a. Bank State Community Development Financing Metric

The *bank* state community development financing metric would be calculated using the same formula as the bank assessment area community development financing metric and would include all of a bank's community development activities and deposits in the state area (based on either collected deposits data, or Summary of Deposits data, as applicable), without distinguishing between those inside or outside of the bank's assessment areas.

For example, if a bank has conducted an annual average of $200,000 in qualifying community development financing activities and has an annual average of $10 million in deposits associated with a state during an evaluation period, the bank state community development financing metric for that evaluation period would be 2.0 percent.

$$\text{Nationwide Community Development Financing Benchmark-Metropolitan} = \frac{\text{Annual average of nationwide metropolitan CD loans+CD investments}}{\text{Annual average of national metropolitan deposits}}$$

$$\text{Nationwide Community Development Financing Benchmark-Nonmetropolitan} = \frac{\text{Annual average of nationwide nonmetropolitan CD loans+CD investments}}{\text{Annual average of national nonmetropolitan deposits}}$$

The inclusion of all activities and deposits reflects the expectation that a bank conduct a volume of activities that is commensurate with its total capacity in a state. In addition, this metric provides the option for, but would not require, banks to conduct and receive consideration for activities outside of assessment areas, but within the states that include those facility-based assessment areas. The metric would not distinguish between activity conducted inside and outside the assessment area. If a bank conducted sufficient activity within its facility-based assessment areas in the state compared to the state benchmarks, activity outside of the bank's assessment areas would not be needed. However, if a bank is unable to conduct sufficient activity within the assessment areas due to lack of opportunity or high competition, the metric allows for the bank to conduct activity within the state but outside of the assessment area and receive consideration.

b. State Community Development Financing Benchmarks

Similar to the assessment area approach described above, the agencies propose establishing benchmarks that would allow examiners to compare a bank's performance to other banks in comparable areas. These benchmarks would include: (i) A statewide benchmark for the state area called the state community development financing benchmark; and (ii) a benchmark that is tailored to each bank's facility-based assessment areas called the state weighted assessment area community development financing benchmark. The use of two benchmarks would provide examiners with additional context and points of comparison on which to base the statewide score. For example, for a bank that collects deposits or conducts activities outside of its assessment areas in a state, the agencies may rely primarily on the state community development financing benchmark. In contrast, for a bank that collects deposits and conducts activities primarily within its assessment areas, the agencies may rely more heavily on the state weighted assessment area community development financing

[237] See Section IX.F for discussion of the proposed point scale.

benchmark, which is tailored to the bank's assessment areas to account for the level of competition and amount of opportunities in those areas.

The first benchmark, the state community development financing benchmark, would be defined similarly to the local benchmark used for the assessment area evaluation and it would include all activities and deposits across the entire state area. The numerator would include the dollars of community development loans and investments by all large banks across the state, and the denominator would include the dollars of deposits held by all large banks across the state Under the proposal, the deposits in the state would be the sum of: (i) The annual average of deposits in counties in the state reported by all large banks with assets of over $10 billion over the evaluation period (as reported under proposed § __.42); and (ii) the annual average of deposits assigned to branches in the state by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

The state weighted assessment area community development financing benchmark would be defined as the weighted average of assessment area community development financing benchmarks across all of the bank's facility-based assessment areas in the state. Each local benchmark would be weighted based on the assessment area's percentage of retail loans and percentage of deposits (both measured in dollars) within the facility-based assessment areas of the state, the same weighting approach as described for the weighted average of the bank's facility-based assessment area conclusions.

c. Impact Review

The agencies propose to evaluate the impact and responsiveness of a bank's community development activities for each state at a statewide level, using the same impact review approach as described previously for facility-based assessment areas. This impact review would encompass all activities in the state, including those inside and outside of assessment areas. Examiners would consider the extent to which the bank's activities met the criteria, based on information provided by the bank, local community data, community feedback, and other performance context information.

d. Statewide Score Assignment

The agencies would assign a statewide score corresponding to the conclusion categories described above: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). The statewide score would reflect a comparison of the bank state community development financing metric to the state community development financing benchmark and the state weighted average community development financing benchmark, as well as the impact review of the bank's activities.

3. State Community Development Financing Test Conclusion

The bank's weighted average assessment area performance score would be averaged with its statewide score to achieve a state performance score for the state, with weights on both components tailored to reflect the bank's business model. The amount of weight applied to the facility-based assessment area performance and to the statewide performance would depend on the bank's percentage of deposits (based on collected deposits data and on Summary of Deposits data, as applicable) and retail loans in the state that are within its facility-based assessment areas.

The agencies propose to tailor the weighting of the average assessment area performance and the statewide score to the individual bank's business model, while still preserving the option for every bank to be meaningfully credited for activities outside of its facility-based assessment areas. For a bank that does most of its retail lending and deposit collection within its facility-based assessment areas, for example, the agencies view those facility-based assessment areas as the primary community a bank serves. The agencies therefore believe that the average assessment area performance deserves a higher weight in the combined state performance score.

To ensure that any activities that a bank undertakes outside of its facility-based assessment areas also are meaningfully credited as well, the agencies propose to give equal weight to the average assessment area performance and statewide score for banks whose business model is strongly branch based. Because activities that serve facility-based assessment areas would contribute both to the statewide score as well as in the weighted average of facility-based assessment area conclusions, weighting these two components equally effectively gives a higher weight to assessment area performance.

On the other extreme, for banks whose retail lending and deposit collection occurs almost entirely outside of their facility-based assessment areas (such as primarily online lenders), those assessment areas largely do not represent the overall community the bank serves. The agencies therefore propose to weight the statewide score more heavily than the weighted average assessment area performance score for such a bank. Banks with business models in between these two extremes would use weights that are correspondingly in between.

Specifically, to determine the relative weighting as described in Table 19 below, the agencies propose to use the simple average of:

- The percentage of a bank's retail loans in a state, by dollar volume, that the bank made in its facility-based assessment areas in that state, and
- The percentage of a bank's deposits from a state, by dollar volume, that the bank sourced from its facility-based assessment areas in that state

TABLE 19 TO SECTION __.24—PROPOSED WEIGHTS FOR COMBINED COMMUNITY DEVELOPMENT FINANCING TEST STATE PERFORMANCE SCORE

Average of percentage of retail loans and deposits from facility-based assessment areas	Weight on average assessment area performance score (%)	Weight on statewide score (%)
80% or greater	50	50
Less than 80%, greater than or equal to 60%	40	60
Less than 60%, greater than or equal to 40%	30	70
Less than 40%, greater than or equal to 20%	20	80

TABLE 19 TO SECTION __.24—PROPOSED WEIGHTS FOR COMBINED COMMUNITY DEVELOPMENT FINANCING TEST STATE PERFORMANCE SCORE—Continued

Average of percentage of retail loans and deposits from facility-based assessment areas	Weight on average assessment area performance score (%)	Weight on statewide score (%)
Less than 20%	10	90

Banks that have a low percentage of deposits and retail loans within their facility-based assessment areas would have a stronger emphasis on their statewide score than on their weighted average of facility-based assessment area conclusions. Conversely, banks that have a high percentage of deposits and retail loans within their facility-based assessment areas would have approximately equal weight on their statewide score and their weighted average of facility-based assessment area conclusions. The state performance score is then rounded to the nearest point value corresponding to a conclusion category: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points) to derive the State Community Development Financing Test Conclusion.

Taking into account both the bank's assessment area performance and its statewide performance would build off of the current approach to considering activities in broader statewide and regional areas and aims to achieve a balance of objectives. First, considering assessment area performance encourages banks to serve the communities where they have a physical presence, and where their knowledge of local community development needs and opportunities is often strongest. Second, considering statewide performance allows banks the option to also pursue impactful community development opportunities that may be located partially or entirely outside of their facility-based assessment areas, without requiring them to do so. Third, because assessment area activities are considered in the *statewide score* as well, the approach gives greater emphasis to activities within facility-based assessment areas than to activities outside of assessment areas, but the amount of weight is tailored to each bank's business model in the state. As a result, banks that are primarily branch-based would be encouraged to focus on serving their facility-based assessment areas, while banks that have few loans and deposits in facility-based assessment areas, such as banks that operate primarily through online delivery channels, are evaluated mostly on a statewide basis.

As discussed in Section X, the percentage of deposits assigned to facility-based assessment areas for banks that do not collect and maintain deposits data would always be 100 percent, because Summary of Deposits data attributes all deposits to bank branches. The average of the percentage of retail loans and deposits in facility-based assessment areas for such a bank would therefore not account for the bank's depositors that are located outside of its facility-based assessment areas. This would generally result in a higher weight on the bank's assessment area performance score, and may provide less of an incentive for certain banks to conduct community development financing activities outside of their facility-based assessment areas.

F. Multistate MSA Community Development Financing Test Conclusions

The agencies propose to assign Community Development Financing Test conclusions for multistate MSAs in which a bank has branches in two or more states of the multistate MSA.[238] If the bank has delineated an entire multistate MSA as a single facility-based assessment area, the conclusion for the assessment area and for the multistate MSA would be the same.

If the bank delineates only part of a multistate MSA as a facility-based assessment area, or delineates multiple facility-based assessment areas within a multistate MSA, then the agencies would employ the same approach as for assigning conclusions for state areas, with the same components as the state evaluation, applied to the geography of the multistate MSA. The multistate MSA conclusion would reflect a weighted average of facility-based assessment area conclusions within the multistate MSA, and would also reflect: (i) A bank multistate MSA community development financing metric; (ii) a multistate MSA community development financing benchmark; (iii) a multistate MSA weighted assessment area community development financing benchmark; and (iv) an impact review.

[238] *See* proposed §§ __.12, __.28(c)(2).

2. Institution Community Development Financing Test Evaluation

The agencies propose to assign Community Development Financing Test conclusions for the institution level using a similar approach to that for assigning conclusions for state areas. The approach would use a combination of a weighted average of facility-based assessment area conclusions nationwide, and a nationwide score that reflects: (i) A bank nationwide community development financing metric; (ii) a nationwide community development financing benchmark; (iii) a nationwide weighted assessment area community development financing benchmark; and (iv) an impact review.

1. Weighted Average of Assessment Area Performance

The agencies propose averaging a bank's Community Development Financing Test conclusions across all of its facility-based assessment areas as one component of the bank's Community Development Financing Test conclusion at the institution level. As with the state evaluation approach, this is intended to emphasize facility-based assessment area performance by directly linking assessment area conclusions to the institution conclusion. The conclusion assigned to each assessment area would be mapped to a point value as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). This resulting score for each assessment area would be assigned a weight, calculated as the average of the percentage of retail loans, and the percentage of deposits of the bank within the assessment area (both measured in dollars), out of all of the bank's retail loans and deposits in facility-based assessment areas (based on collected deposits data and on Summary of Deposits data, as applicable). Using these weights and scores, the weighted average of the assessment area scores would then be taken and used in determining the institution-level conclusion. The weighted average approach ensures that performance in each facility-based assessment area is incorporated into the institution conclusion, with greater emphasis given to areas where the bank is most active.

2. Nationwide Score

Examiners would assign a *nationwide score* for the institution, based on a bank nationwide community development financing metric and benchmarks, and a nationwide impact review.

a. Bank Nationwide Community Development Financing Metric

The bank nationwide community development financing metric would be calculated using the same formula for the state metrics, including all of a bank's community development activities and deposits in the numerator and denominator, respectively.

b. Nationwide Community Development Financing Benchmarks

The agencies propose establishing benchmarks that would allow examiners to compare a bank's performance to other banks in comparable areas. These benchmarks would include a single nationwide benchmark applied to all banks called the nationwide community development financing benchmark, and one benchmark that is tailored to each bank's facility-based assessment areas called the nationwide weighted assessment area community development financing benchmark. The use of two benchmarks is intended to provide additional context and points of comparison in order to develop the nationwide score. For example, for a bank that primarily collects deposits or conducts activities outside of its facility-based assessment areas, the agencies may rely heavily on a comparison of the bank nationwide community development financing metric to the nationwide community development financing benchmark. In contrast, for a bank that collects deposits and conducts activities primarily within its assessment areas, the agencies may rely more heavily on a comparison of the bank nationwide community development financing metric to the nationwide weighted assessment area community development financing benchmark, which is tailored to the bank's assessment areas.

The nationwide benchmarks would be defined analogously to the statewide benchmarks. The nationwide community development financing benchmark takes all community development financing activities reported by large banks in the numerator, and all deposits of those banks in the denominator. Under the proposal, the deposits in the nationwide area would be the sum of: (i) The annual average of deposits in counties in the nationwide area reported by all large banks with assets of over $10 billion over the evaluation period (as reported under proposed § __.42); and (ii) the annual average of deposits assigned to branches in the nationwide area by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

The nationwide weighted assessment area community development financing benchmark would be defined as the weighted average of the assessment area community development financing benchmarks across all of the bank's facility-based assessment areas and would be weighted based on the assessment area's percentage of retail loans and percentage of deposits (both measured in dollars) within the facility-based assessment areas of the state using the same weighting approach as described for the weighted average of the bank's facility-based assessment area conclusions.

c. Impact Review

Similar to the proposed statewide approach, the agencies propose to evaluate the impact and responsiveness of a bank's community development activities at an institution level, using the same impact review approach as described above for facility-based assessment areas and states. The agencies propose to conduct a bank level impact review in order to assess the impact and responsiveness of *all* of an institution's qualifying activities, including those inside and outside of facility-based assessment areas. The agencies consider this to be especially important for the evaluation of a bank that elects to conduct activities that serve areas outside of its facility-based assessment areas, so that the impact and responsiveness of those activities is considered. As described above, the agencies would consider the impact and responsiveness of the bank's activities to community needs, and would consider the impact review factors, among other information.

d. Nationwide Score Assignment

The agencies would assign a *nationwide score* that reflects the bank's overall volume of qualifying activities and overall impact and responsiveness of activities, corresponding to the conclusion categories as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). The nationwide score would reflect a comparison of the bank nationwide community development financing metric to the nationwide and weighted assessment area benchmarks, as well as the impact review of the bank's activities.

3. Institution Community Development Financing Test Conclusion

The bank's weighted average assessment area performance score would be averaged with its nationwide score to produce an institution performance score, with weights on both components tailored to reflect the bank's business model. As in the calculation of the state performance score, the amount of weight applied to the facility-based assessment area performance and to the nationwide performance would depend on the bank's percentage of deposits and retail loans that are within its facility-based assessment areas. Equivalent weights to those proposed for calculating the combined state performance score would be used, to tailor the weighting to the bank's business model while still allowing all banks to receive meaningful credit for activities outside their facility-based assessment areas. The proposed weights are described in Table 20 below:

TABLE 20 TO SECTION __.24—PROPOSED WEIGHTS FOR COMBINED COMMUNITY DEVELOPMENT FINANCING TEST BANK PERFORMANCE SCORE

Average of percentage of retail loans and deposits from facility-based assessment areas	Weight on average assessment area performance score (%)	Weight on nationwide score (%)
80% or greater	50	50
Less than 80%, greater than or equal to 60%	40	60
Less than 60%, greater than or equal to 40%	30	70
Less than 40%, greater than or equal to 20%	20	80
Less than 20%	10	90

The weighting approach is intended to achieve the same balance as the state weighting approach by emphasizing facility-based assessment area performance, allowing flexibility to receive consideration for activities outside of facility-based assessment areas, and tailoring the amount of weight on facility-based assessment area performance to bank business model. Banks that have a low percentage of deposits and retail loans within their facility-based assessment areas would have a stronger emphasis on their nationwide score than on their weighted average of facility-based assessment area conclusions. Conversely, banks that have a high percentage of deposits and retail loans within their facility-based assessment areas would have approximately equal weight on their nationwide score and on their weighted average of facility-based assessment area conclusions. The institution performance score is then rounded to the nearest point value corresponding to a conclusion category: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points) to derive the Institution Community Development Financing Test conclusion.

As discussed above, the agencies have considered that the FDIC's Summary of Deposits data may not reflect a bank's distribution of depositors inside and outside of its facility-based assessment areas, and that the use of this data may result in a greater weight on the bank's assessment area performance score. As a result, this approach may place less emphasis on community development financing activities outside of a bank's facility-based assessment areas. The agencies seek feedback on the tradeoffs of the proposed approach. On the one hand, the proposed approach seeks to limit new data requirements for large banks with assets of $10 billion or less. On the other hand, the use of the FDIC's Summary of Deposits data impacts the proposed weighting methodology and other aspects of the proposed approach. The agencies seek feedback on an alternative approach of requiring large banks with assets of $10 billion or less to collect and maintain deposits data.

Request for Feedback

Question 123. When calculating the weighted average of facility-based assessment area conclusions and assessment area community development financing benchmarks, is it appropriate to weight assessment area metrics and benchmarks by the average share of loans and deposits, as proposed?

Question 124. Is the proposed use of the FDIC's Summary of Deposits data for banks that do not collect and maintain deposits data appropriate, or should all large banks be required to collect and maintain deposits data, which would enable the metrics and benchmarks to be based on collected deposits data for all large banks?

Question 125. Considering current data limitations, what approaches would further enhance the clarity and consistency of the proposed approach for assigning community development financing conclusions, such as assigning separate conclusions for the metric and benchmarks component and the impact review component? To calculate an average of the conclusions on the two components, what would be the appropriate weighting for the metric and benchmarks component, and for the impact review component? For instance, should both components be weighted equally, or should the metric and benchmarks be weighted more than impact review component?

Question 126. How can the agencies encourage greater consistency and clarity for the impact review of bank activities? Should the agencies consider publishing standard metrics in performance evaluations, such as the percentage of a bank's activities that meet one or more impact criteria?

XIII. Community Development Services Test

The agencies propose a Community Development Services Test that would apply to large banks. Separately assessing a bank's community development services and assigning a Community Development Services Test conclusion would underscore the importance of these activities for fostering partnerships among different stakeholders, building capacity, and creating the conditions for effective community development, including in rural areas.

A. Background

1. Current Approach for Evaluating Community Development Services

Community development services generally include activities such as service on boards of directors for community development organizations or on loan committees for CDFIs, financial literacy activities targeting low- or moderate-income individuals, and technical assistance for small businesses. Current guidance advises that community development services should be tied to either financial services or to a bank employee's professional expertise (*e.g.,* human resources, legal). Under the current regulation, community development services are evaluated for large banks as part of the service test, along with retail services. For intermediate small banks and wholesale and limited purpose banks, community development services are considered along with community development loans and qualified investments under one community development test. Community development services are generally not considered for small banks.

Examiners consider the extent to which a bank provides community development services, as well as the innovativeness and responsiveness of the activities. Examiners may consider a variety of measures, such as: (i) The number of low- and moderate-income participants; (ii) the number of organizations served; (iii) the number of sessions sponsored; and (iv) the bank staff hours dedicated. Additionally, the Interagency Questions and Answers provide some guidance on the qualitative evaluation of community development services, including whether the service activity required special expertise and effort on the part of the bank, the impact of a particular activity on community needs, and the benefits received by a community.[239]

2. Stakeholder Feedback

Currently, community development services are qualitatively reviewed, with limited use of metrics. Both industry and community stakeholders have acknowledged the value of community development services in establishing the partnerships needed to build capacity and foster the growth of the community development ecosystem. Stakeholders generally agree that developing quantitative metrics coupled with a strong qualitative analysis would enhance the community development evaluation process but have recognized certain tradeoffs. Some stakeholders note that the use of a consistent metric, such as service hours per employee would be beneficial. However, other stakeholders have noted that quantitative metrics alone cannot adequately capture the impact and importance of community development services, and the impact of these services on a community is often more than the value of the employee's time.

B. Defining Community Development Service Activities

In § __.25, the agencies propose to retain the current definition of community development services to include activities that have a primary purpose of community development and are related to the provision of financial services. In addition, activities that reflect other areas of expertise of a bank's employees, such as human resources, information technology, and legal services would also be considered to be related to the provision of financial services. Generally, community development services activities would be considered when performed by members of a bank's board or employees of the bank.

The agencies also propose that in nonmetropolitan areas, banks may receive community development services consideration for volunteer activities that meet an identified community development need, even if unrelated to the provision of financial services. The agencies recognize that banks operating in nonmetropolitan areas may have fewer opportunities to provide community development services related to the provision of financial services than in metropolitan areas but may have ample opportunities to volunteer for activities that meet a community development need not tied to the provision of financial services. The agencies propose that examples of qualifying activities in nonmetropolitan areas include, but are not limited to, (i) assisting an affordable housing organization to construct homes; (ii) volunteering to serve food at a soup kitchen, at a homeless shelter, or at a shelter for victims of domestic violence; or (iii) organizing and volunteering at a clothing drive or a food drive for a community service organization.

C. Community Development Services Test Evaluation

The agencies propose that the evaluation of community development services would assess a bank's record of helping to meet the community development services needs in the bank's facility-based assessment areas, states, multistate MSAs, and nationwide areas. The evaluation would include a review of the extent to which the bank provides community development services, as well as the impact and responsiveness of these activities to community needs. For large banks with average assets of over $10 billion, the evaluation would also use a standard metric based on a bank's community development service hours relative to its full-time equivalent employees in each facility-based assessment area.

1. Qualitative Review for the Community Development Services Test

For all large banks, the agencies are proposing a qualitative review of (i) the extent to which a bank provides community development services and (ii) the impact and responsiveness of these activities. The review would include consideration of any relevant information provided by the bank, including any information required to be collected under proposed § __.42, as applicable. Under the proposal, this review may include consideration of one or more of the following types of information: (i) The total number of community development service hours; (ii) the number and type of community development service activities; (iii) for nonmetropolitan areas, the number of activities related to the provision of financial services; (iv) the number and proportion of community development service hours completed by, respectively, executive and other employees of the bank; (v) the number of low- or moderate-income participants, organizations served, sessions sponsored; or (vi) other evidence that the bank's community development services benefit low- or moderate-income individuals or are otherwise responsive to a community development need. In addition, the evaluation would include a review of the impact and responsiveness of the bank's community development service activities, drawing on the applicable impact review criteria defined in proposed § __.15, and other information provided by the bank to help demonstrate the responsiveness of these activities.

The agencies' proposed approach of a qualitative assessment that incorporates different types of information provided by a large bank is responsive to feedback from stakeholders that it can be difficult to measure the impact of community development service activities with a quantitative analysis. However, integrating the types of information currently used to evaluate community development services into the regulation would help to standardize the criteria that inform the qualitative review of community development services, which would provide more consistency and transparency in the evaluation compared to the current approach.

2. Bank Assessment Area Community Development Service Hours Metric

For large banks with average assets of over $10 billion, the agencies propose to include a standard quantitative measure to inform the evaluation of a bank's community development services. The proposed metric would be used in conjunction with the qualitative evaluation framework the agencies propose to use for all large banks. Under the proposal, the bank assessment area community development service hours metric, would measure a bank's total hours of community development services activity in a facility-based assessment area during the evaluation period, divided by the total full-time equivalent employees in the facility-based assessment area. As a result, this metric would calculate the average number of community development service hours per full-time equivalent employee. Large banks with average assets of over $10 billion would collect community development services data, including the hours of community development service activities and full-time equivalent employees for each facility-based assessment area. This metric would provide a more transparent measure to consistently

[239] *See* Q&A § __.24(e)–2.

evaluate the extent to which these banks provide community development services activities.

The agencies considered whether the bank assessment area community development service hours metric should be used for all large banks, instead of only those with average assets of over $10 billion. However, the agencies believe that the approach of using the metric only for banks with average assets of over $10 billion appropriately tailors the proposal. These banks are more likely to engage in a higher volume of community development services activities across more facility-based assessment areas, and the use of a metric will help provide greater consistency for these evaluations. Additionally, the proposed tailoring would not establish community development services data requirements for large banks with average assets of $10 billion or less. The agencies believe community development services activities for these banks can be evaluated effectively with a qualitative review of the relevant information provided by a bank, in a format of the bank's choosing, as takes place under the *status quo.*

The agencies seek feedback on whether the bank assessment area community development service hours metric should, instead, be incorporated into the evaluation of community development services for all large banks, and whether the benefit of consistency provided by the use of the metric outweighs the additional data collection requirements for large banks with average assets of $10 billion or less.

3. Facility-Based Assessment Area Community Development Services Test Conclusion

The agencies propose that the evaluation of community development services in facility-based assessment areas for all large banks would remain qualitative, as described above. For large banks with assets of over $10 billion, the bank assessment area community development service hours metric would also be used to inform the conclusions for each facility-based assessment area. Based on an assessment of all applicable factors, the bank would receive a conclusion of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

While the bank assessment area community development service hours metric would be included for large banks with average assets of over $10 billion in each facility-based assessment area, the agencies are not proposing the use of additional benchmarks to standardize the quantitative review for these banks. In the future, analysis of community development service hours data collected under the new rule may allow for developing additional quantitative procedures for determining conclusions. For example, the agencies could use community development services data to develop appropriate benchmarks and thresholds for the bank assessment area community development service hours metric that correspond to each conclusion category.

4. State Community Development Services Test Conclusion

State level conclusions for the Community Development Services Test would be based on two components: A bank's performance in its facility-based assessment areas, and an evaluation of its community development services outside its facility-based assessment areas, but within the state. As described in proposed appendix C, the first component would be calculated by averaging a bank's Community Development Services Test conclusions across its facility-based assessment areas in each state. The conclusion assigned to each assessment area would be assigned a point value as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).[240] To derive a state level score, the point value assigned for each assessment area conclusion would be weighted by a bank's average share of loans and share of deposits within the assessment area, out of all of the bank's loans and deposits in facility-based assessment areas in the state (based on collected deposits data and on Summary of Deposits data, as applicable).

The second component of the state Community Development Services Test conclusion would be the evaluation of all community development service activities outside the bank's facility-based assessment areas and within the state. This component of the evaluation would include an analysis of information including, but not limited to, the number and hours of community development service activities, as well as the impact and responsiveness of these activities as previously described. To assign a final state conclusion, examiners would determine if the score derived from the weighted average of the facility-based assessment area performance should be adjusted upward based on an evaluation of the significance and impact of outside assessment area activities. The inclusion of both the facility-based assessment area component and the outside facility-based assessment area component is intended to emphasize bank performance within facility-based assessment areas, while also providing certainty that qualifying activities in other areas would also be considered to inform the conclusions.

5. Multistate MSA Community Development Services Test Conclusion

The agencies propose to assign Community Development Services Test conclusions for multistate MSAs in which a bank has a facility-based assessment area and branches in at least two states. The agencies would employ the same approach as for assigning conclusions for a state, using a combination of a weighted average of facility-based assessment area conclusions, and a qualitative review of the bank's community development service activities that occurred outside the facility-based assessment area, but within the multistate MSA.

6. Institution Community Development Services Test Conclusion

The agencies propose to assign a Community Development Services Test conclusion for the institution using the same approach as for assigning conclusions for a state. The approach would use a combination of a weighted average of facility-based assessment area conclusions nationwide and a qualitative review of all community development services that occurred outside the bank's facility-based assessment areas and within the nationwide area, to determine if the weighted average of the facility-based assessment area performance should be adjusted upward based on an evaluation of the significance and impact of outside assessment area activities. The inclusion of these two components is intended to achieve a balance of emphasis on facility-based assessment area performance and certainty that activities in other areas would also be considered.

Request for Feedback

Question 127. Should volunteer activities unrelated to the provision of financial services be considered in all areas or just in nonmetropolitan areas?

Question 128. For large banks with average assets of over $10 billion, does the benefit of using a metric of community development service hours per full time employee outweigh the burden of collecting and reporting additional data points? Should the

[240] See Section IX.F for discussion of the proposed point scale.

agencies consider other quantitative measures? Should the agencies consider using this metric for all large banks, including those with average assets of $10 billion or less, which would require that all large banks collect and report these data?

Question 129. How should the agencies define a full-time equivalent employee? Should this include bank executives and staff? For banks with average assets of over $10 billion, should the agencies consider an additional metric of community development service hours per executive to provide greater clarity in the evaluation of community development services?

Question 130. Once community development services data is available, should benchmarks and thresholds for the bank assessment area community development services hours metric be developed? Under such an approach, how should the metric and qualitative components be combined to derive Community Development Services Test conclusions?

XIV. Wholesale and Limited Purpose Banks

The agencies propose that wholesale and limited purpose banks would be evaluated under a modified Community Development Financing Test, which would include an institution level metric that measures a bank's volume of activities relative to its capacity. The agencies also propose giving wholesale and limited purpose banks the option to have community development service activities that would qualify under the Community Development Services Test (as described in Section XIII) considered qualitatively for a possible adjustment of an overall institution rating from ''Satisfactory'' to ''Outstanding.''

The proposed Community Development Financing Test for Wholesale or Limited Purpose Banks is intended to account for banks with unique business models. Consistent with the current CRA regulations, a bank would have to apply and be approved by its banking regulator to be designated as a wholesale or limited purpose bank. Under proposed § __.12 a wholesale bank would be defined as a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers. A limited purpose bank would be defined under proposed § __.12 as a bank that offers only a narrow retail product line (such as credit cards, other revolving consumer credit plans, other consumer loans, or other non-reported commercial and farm loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § __.26.

A. Background

1. Current Evaluation Framework for Wholesale and Limited Purpose Banks

For wholesale and limited purpose banks, community development loans, qualified investments, and community development services are currently considered under one community development test. Consideration is given to the number and dollar amount of community development loans, qualified investments, and community development services, both inside and outside assessment areas if the needs of the assessment areas are adequately addressed. Examiners also consider qualitative factors, including the innovativeness or complexity of these activities, how responsive the bank has been to community development needs in its assessment areas, and the extent to which investments are not routinely provided by private investors. The evaluation of qualitative factors is currently based on information that a bank provides on the impact of its activities, along with an examiner review of performance context, which includes community needs and opportunities.

2. Stakeholder Feedback

Stakeholders have expressed support for keeping the wholesale and limited purpose bank designations. Stakeholders have also supported applying a modified Community Development Financing Test for these types of banks given their unique business models. These stakeholders have indicated that as an alternative to deposits, total assets or Tier 1 Capital could be a more appropriate measure of the capacity of a wholesale or limited purpose bank to engage in community development financing because banks designated as wholesale or limited purpose may have a smaller deposit base than banks without such a designation.

B. Community Development Financing Test for Wholesale or Limited Purpose Banks

The agencies propose to evaluate wholesale and limited purpose banks under a Community Development Financing Test, with modifications from the Community Development Financing Test that would apply to other large banks, as described in Section XII. The Community Development Financing Test for Wholesale or Limited Purpose Banks would employ qualitative and quantitative factors similar to current examination procedures at the assessment area, state, and multistate MSA levels. At the institution level, the evaluation would also employ a wholesale and limited purpose bank community development financing metric as a standard measurement of a bank's volume of activities relative to its capacity.

To compute the wholesale or limited purpose bank community development financing metric, the agencies would divide the annual average of the bank's nationwide community development financing activity by the quarterly average of the bank's total assets for the same years in which the annual average of the bank's activity is calculated. The annual average of community development financing activity would be calculated identically to the proposed metric for large banks, including both new activities and balance sheet holdings originated in a previous year. Because bank assets are used in the denominator and cannot be easily apportioned to assessment areas, multistate MSAs, or states, the proposed wholesale or limited purpose bank community development financing metric would be calculated only at the institution level.

By using assets as the denominator of the metric, the proposed metric for wholesale and limited purpose banks differs from the proposed community development financing metrics for large banks, which uses deposits as the denominator. This difference is intended to account for the unique business models of wholesale and limited purpose banks, which may not collect retail deposits. This approach was also informed by stakeholder feedback that assets are a better measure of the capacity of wholesale and limited purpose banks to make community development loans and investments.

C. Conclusions for Wholesale and Limited Purpose Bank Evaluations

1. Facility-Based Assessment Area Conclusions

The agencies propose that community development financing performance of a wholesale or limited purpose bank in a facility-based assessment area be based on consideration of the dollar value of a bank's community development loans and investments that serve the facility-based assessment area and a review of the impact of the bank's activities in the facility-based assessment area under § __.15. Examiners would review both to establish conclusions. The agencies are proposing to evaluate the volume, impact, and responsiveness of community development financing activities, without a corresponding benchmark, given the business model of these banks and the proposed composition of the wholesale or limited purpose bank community development financing metric using assets as the denominator.

The agencies acknowledge that the proposed approach for evaluating community development financing activities at the assessment area level for wholesale and limited purpose banks may not provide the consistent standards achieved with the metrics-based approach for large banks. The agencies seek feedback on whether there are other ways to measure performance in facility-based assessment areas in order to bring greater consistency to the assessment area level evaluation, including whether a bank assessment area community development financing metric and corresponding benchmarks would be an appropriate.

2. State Conclusions

The agencies propose a similar approach for evaluating the community development financing performance of a wholesale or limited purpose bank at the state level. Conclusions would be based on consideration of the dollar value of a bank's community development loans and investments that serve the entire state and a review of the impact of the bank's activities in the state under § __.15, and consideration of performance in any facility-based assessment areas in the state. Examiners would review all components to establish conclusions. Similar to the discussion above, the agencies seek feedback on alternative approaches to provide more consistency to the state level performance evaluation.

3. Multistate MSA Conclusions

The agencies propose that conclusions would also be assigned for the Community Development Financing Test in each multistate MSA, as applicable. The agencies would employ the same approach used for assigning conclusions at the state level, using a combination of the dollar value of the bank's community development financing activities that serve the multistate MSA, an impact review of these activities, and performance in any facility-based assessment areas in the multistate MSA.

4. Institution Conclusions

The agencies propose that conclusions for a wholesale or limited purpose bank's Community Development Financing Test would be based on consideration of the wholesale or limited purpose bank community development financing metric, a review of the impact of the bank's nationwide activities, and the bank's performance in its facility-based assessment areas.

This approach is intended to achieve a number of objectives. First, the use of the metric for the institution evaluation would help to ensure that wholesale and limited purpose banks are conducting a volume of activity that is commensurate with their overall capacity. Second, the institution level impact review would ensure a bank's activities are responsive to community needs. Finally, performance in all of a bank's facility-based assessment areas would be considered, in order to ensure that the bank has met local community needs within these areas.

In addition, as indicated in the discussion of § __.21 (Section VII), the agencies propose that wholesale and limited purpose banks would have the option to request consideration for community development service activities that would qualify under the Community Development Services Test (as described in Section XIII). These activities would be considered qualitatively for possible adjustment of an overall institution rating from ''Satisfactory'' to ''Outstanding.''

The agencies seek feedback on whether a benchmark should be established for comparing community development financing performance of wholesale and limited purpose banks to other banks at the institution level. Specifically, the agencies are considering two options for a benchmark. First, the agencies could use the nationwide community development financing benchmark used to evaluate performance of large banks. This option would promote consistency in performance expectations across all bank types. Alternatively, the agencies could develop a nationwide community development financing benchmark tailored specifically to wholesale and limited purpose banks based on the aggregate community development financing activity and aggregate assets of all wholesale and limited purpose banks.

Request for Feedback

Question 131. How could the agencies provide more certainty in the evaluation of community development financing at the facility-based assessment area level? Should a bank assessment area community development financing metric be used to measure the amount of community development financing activities relative to a bank's capacity? If so, what is the appropriate denominator?

Question 132. Should a benchmark be established to evaluate community development financing performance for wholesale and limited purpose banks at the institution level? If so, should the nationwide community development financing benchmark for all large banks be used, or should the benchmark be tailored specifically to wholesale and limited purpose banks?

Question 133. For wholesale and limited purpose banks that wish to receive consideration for community development services, should these banks be required to opt into the proposed Community Development Services Test, or should they have the option to submit services to be reviewed on a qualitative basis at the institution level, without having to opt into the Community Development Services Test?

XV. Strategic Plans

The agencies propose to retain the strategic plan option as an alternative method for evaluation under the CRA. Banks that elect to be evaluated under a CRA strategic plan would continue to be required to request approval for the plan from the appropriate Federal banking agency. A bank's election for the strategic plan option would not affect the bank' obligation, if any, to report data as required by § __.42. The agencies also propose to introduce more specific criteria to ensure that all banks are meeting their CRA obligation to serve low- and moderate-income individuals and communities. This approach is intended to ensure that banks have a strong justification for why a strategic plan is necessary for their business model and strategy, and that banks evaluated under a strategic plan incorporate how the bank's retail lending and other activities help to meet the credit needs of low- and moderate-income individuals and communities whenever possible.

Under the proposal, a bank that elects evaluation under a CRA strategic plan would be required to include relevant activities of its bank subsidiaries and may continue to include relevant activities of other affiliates. A bank would continue to seek input from members of the public in its facility-based assessment areas covered by the plan and submit the plan for publication on its respective regulatory agency's website as well as publish the draft plan on their own website if the bank has a website. In addition, the agencies would require banks that elect strategic plan evaluation to provide a justification for why the applicable performance tests and standards are not appropriate for the bank.

A. Current Approach to Strategic Plans

Currently, the strategic plan option is available to all types of banks, although it has been used mainly by non-traditional banks [241] and banks that make a substantial portion of their loans beyond their branch-based assessment areas. The strategic plan option is intended to provide banks flexibility in meeting their CRA obligations in a manner that is responsive to community needs and opportunities and appropriate considering their capacities, business strategies, and expertise.

Banks that elect to be examined under strategic plans have a great deal of latitude in designing their strategic plans but are subject to several key requirements. Banks must seek approval from their regulatory agency and solicit community feedback prior to submitting a strategic plan for regulatory approval.[242] In addition, they are required to delineate assessment areas in the same manner as non-strategic plan banks, and large banks that elect to be evaluated under an approved strategic plan continue to be obligated to report relevant lending data.[243]

Banks must include measurable goals for helping to meet the credit needs in each assessment area, particularly the needs of low- and moderate-income census tracts and low- and moderate-income individuals, but they have flexibility in setting these goals. The current CRA regulations state that a bank's plan shall address all three performance categories (lending, investment, and services), but the regulation also provides flexibility for a bank to choose a different emphasis as long as the plan is responsive to the characteristics and credit needs of its assessment areas and takes into consideration public comment and the bank's capacity and constraints, product offerings, and business strategy.[244]

When reviewing a strategic plan, the agencies consider the public's involvement in formulating the plan, any written public comments on the plan, and the bank's response to any public comments.[245] A bank's engagement with its community is vital to the strategic plan process to develop the requisite information about community needs.

B. Stakeholder Feedback on Strategic Plans

Stakeholders have expressed that the strategic plan option should not be used to lower performance expectations for any type of bank and that there should be parity between strategic plan banks and traditional banks. Some stakeholders believe the key goal should be consistency and that the strategic plan option should be reserved for those few banks that are not able to successfully be evaluated under the otherwise applicable performance standards because of their business model. Other stakeholders have expressed that the CRA regulation should not force banks to change their business model and that the strategic plan option should be available for banks with business models that would not perform well under the otherwise applicable performance standards. For example, these stakeholders have indicated that banks that are not able to meet the credit needs of low- and moderate-income individuals or very small businesses through retail lending should have the option to meet those needs through other means, such as by supporting organizations or programs that serve those constituents through community development financing or community development services.

Stakeholders have indicated that the current assessment area requirements for strategic plans are too confining. As stated previously, many banks that elect the strategic plan option choose this option because they operate in larger geographic areas than their branch-based assessment areas. For example, some banks operate in several states, or even nationwide, but have much smaller assessment areas that surround their single headquarters or their limited number of branches. In these situations, there has been a disconnect with plans that cover geographic areas that are much smaller than the broader areas in which the bank operates. Stakeholders were generally supportive of banks sharing their draft strategic plans through digital platforms to increase public participation. Some commented that the role of the public input process should be better defined, specifically the extent to which a bank is required to respond to public comments from outside of its community.

Overall stakeholders were supportive of the agencies providing guidelines regarding what constitutes a material change that would require an amendment to a bank's CRA strategic plan. There were differences among stakeholders as to what the impact of a material change would be and wanted to distinguish the impact of a minor change versus a major change. For example, these stakeholders suggest minor changes should only require agency approval while a major change would require public comment in addition to agency approval. Stakeholders generally agreed that a non-exhaustive list of examples of what constitutes a material change would be helpful.

C. Strategic Plan Improvements

In § __.27, the agencies propose a number of provisions to provide more clarity about establishing strategic plans, the measurable goals established, and where performance is evaluated. The agencies also propose provisions to address concerns about parity expressed by some stakeholders as well as how to make it easier for the public to engage in the development of CRA strategic plans.

Establishing goals. The agencies propose that banks would incorporate performance standards and metrics appropriate for their size in setting their goals, to the extent that such performance standards are appropriate given the bank's capacity and constraints, product offerings, and business strategy. Banks would be given flexibility to set different metrics from those that would otherwise be applicable if a bank is substantially engaged in activities outside of the scope of the standard performance tests. For example, banks that do not extend home mortgage, small business, small farm, or automobile loans would not be expected to incorporate performance standards and metrics relevant to the Retail Lending Test in their plans. If a bank presents metrics or goals that are different from the otherwise applicable standards and metrics, the agencies would consider whether those metrics or goals are responsive to the characteristics and credit needs of its assessment areas and consider public comment and the bank's capacity and constraints. In addition, if a bank specifies goals that are different from the otherwise applicable performance tests and standards, the bank would be required to explain why those goals are appropriate.

Assessment Areas. The agencies propose that banks electing to be evaluated under a strategic plan should be required to delineate assessment areas in the same manner as non-strategic plan banks. The agencies believe the proposed approach to assessment areas for large banks is flexible enough such that no additional tailoring is necessary for establishing the assessment areas for large banks that

[241] For this purpose, non-traditional banks are those that do not extend retail loans (small business, small farm, home mortgage loans, and consumer loans) as major product lines or deliver banking services principally from branches.

[242] 12 CFR __.27(d) and (e).

[243] 12 CFR __.27(b).

[244] 12 CFR __.27(f)(1).

[245] 12 CFR __.27(g)(2).

are evaluated under an approved strategic plan. In addition to facility-based assessment areas, large banks electing to be evaluated under a strategic plan would be required to delineate retail lending assessment areas, consistent with the proposed approach specified in § __.17. The proposed CRA regulation would also allow for the consideration of retail lending and community development financing activities outside of assessment areas, which would allow banks electing to be evaluated under a strategic plan to establish goals for such activities. The agencies believe the proposal would provide parity among banks and address the disconnect between plan goals covering geographic areas that are much smaller than a bank's actual business footprint.

Plan Goals. The proposed rules would require strategic plans to include goals for each retail lending major product line, including those of a bank's subsidiaries. Banks currently have great latitude in designating plan goals, but it is not always clear what type of loans should be included in a strategic plan, or whether the activities of a bank's subsidiaries must be included in its strategic plan. The proposal would require evaluation of each major product line, including those of a bank's subsidiaries under the proposed Retail Lending Test that would be applied to non-strategic plan banks. To provide greater clarity and to ensure strategic plan banks are held to the same level of standards as non-strategic plan banks, the agencies' proposed rule would require plans to include relevant activity of a bank's subsidiaries as well as include goals for each major product line.

Encourage Public Participation. To encourage increased public participation, the agencies propose making CRA strategic plans as widely available and as easy to locate as possible by requiring banks to post draft CRA strategic plans on the appropriate Federal banking agency's website and the bank's website. If the bank does not maintain a website, the bank would be required to publish notice of the draft plan in at least one print newspaper or digital publication of general circulation in each facility-based assessment area covered by the plan (or for military banks in at least one print newspaper or digital publication of general circulation targeted to the members of the military) for a period of at least 30 days. The agencies also propose that a draft plan should include an electronic means by which, and a postal address where, members of the public can submit comments on the bank's plan. The proposal would require that, during the period of formal public comment, a bank would have to make copies of the draft plan available for review at no cost at all offices of the bank in any facility-based assessment area covered by the plan and provide copies of the draft plan upon request for a reasonable fee to cover copying and mailing, if applicable. In evaluating CRA strategic plans for the appropriateness of a bank's goals, the agencies rely heavily on the public input process to ensure plan goals align with and are responsive to community credit needs, particularly those for low- and moderate-income individuals and low- and moderate-income communities. Although banks are currently required to seek public input by publishing their draft plans in local newspapers, the plans rarely garner public comments through this method. The proposal aims to allow for greater public input.

The agencies propose to clarify how banks can demonstrate they have meaningfully engaged with their community in drafting their CRA strategic plans by clarifying expectations for the information submitted with the plan. Specific information would include what organizations or members of the public the bank engaged with in drafting their plan and a description of the process used to publicize its draft CRA strategic plan. In addition, the bank would provide information regarding the various methods employed to engage community stakeholders, including, but not limited to, establishing an advisory board comprised of local stakeholders, convening public meetings, or conducting community outreach sessions to gather public comments and recommendations about the local credit needs. The information would also include a comprehensive list of the comments and recommendations it received and the institution's response to this information.

Strategic Plan Amendments. The agencies propose to clarify what constitutes a material change in circumstance so a bank would know when it must amend its strategic plan under § __.27. The current CRA regulations specify that a bank may request an amendment to its plan if the plan goals are no longer appropriate due to a material change in circumstance. The agencies note that in certain circumstances, a plan's goals may no longer be appropriate because a bank's capacity has diminished, rendering the bank unable to meet the plan's goals. Conversely, a bank's capacity could increase and, therefore, would be underperforming compared to peer banks if it were to remain operating under the original strategic plan. The current regulation allows reliance on performance context to determine whether a bank has substantially met its plan goals.

The agencies propose to revise the CRA regulation to be more transparent about when plan amendments would be required. The agencies propose that during the term of a plan, a bank must amend its plan goals if a material change in circumstances impedes its ability to substantially meet approved plan goals, such as financial constraints caused by significant events that impact the local or national economy; or significantly increases its financial capacity and ability, such as through a merger or consolidation, to engage in retail lending, retail services, community development financing, or community development services activities referenced in an approved plan. A bank that requests an amendment to a plan in the absence of a material change in circumstances must provide an explanation regarding why it is necessary and appropriate to amend its plan goals.

Request for Feedback

Question 134. Should the strategic plan option continue to be available to all banks, or do changes in the proposed regulation's assessment area provisions and the metrics approach reduce the need for the strategic plan option for banks with specialized business strategies?

Question 135. Large banks electing to be evaluated under a strategic plan would have activities outside of facility-based assessment areas considered through retail lending assessment areas and then outside retail lending assessment areas. Should small and intermediate banks electing to be evaluated under a strategic plan be allowed to delineate the same types of assessment areas? What criteria should there be for choosing additional assessment areas? Could such banks have the ability to incorporate goals for facility-based assessment areas and goals for outside of assessment areas?

Question 136. In assessing performance under a strategic plan, the agencies determine whether a bank has "substantially met" its plan goals. Should the agencies continue to maintain the substantially met criteria? If so, should it be defined and how? For example, as a percentage (*e.g.,* 95 percent) of each measurable goal included in the plan, the percentage of goals met, or a combination of how many goals were not met and by how much?

Question 137. The agencies are considering announcing pending strategic plans using the same means used to announce upcoming examination schedules or completed CRA examinations and CRA ratings. What are the potential advantages or disadvantages to making the draft plans available on the regulators' websites?

Question 138. In addition to posting draft plans on a bank's website and the appropriate Federal banking agency's website, should approved strategic plans also be posted on a bank's website and the appropriate Federal banking agency's website?

XVI. Assigned Conclusions and Ratings

The agencies propose updating how conclusions and ratings, as described below, are assigned at the state, multistate MSA, and institution levels using a consistent, quantifiable approach. This proposed approach is intended to increase transparency and provide clarity on the assessment of a bank's overall CRA performance.

As an initial matter, the proposal would distinguish between *conclusions*—which generally refers to the bank's performance on a particular test at the assessment area, state, multistate MSA, or institution level [246]—and *ratings*—which refers to a bank's overall CRA performance across tests at the state, multistate MSA, and institution levels. With respect to conclusions, the agencies propose maintaining five categories of performance test conclusions, as described in § __.28, that splits the category of ''Satisfactory'' into ''High Satisfactory'' and ''Low Satisfactory'' to better differentiate between very good performance and performance on the lower end of the satisfactory range for each test-specific conclusion. With respect to ratings, the agencies would continue to use the four categories—''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' and ''Substantial Noncompliance''—as prescribed in the statute.[247]

The proposed ratings approach would combine a bank's *conclusions,* as described in proposed appendix C, for each applicable test according to a specified set of weights tailored to large banks, intermediate banks, and wholesale and limited purpose banks. The proposal would apply this weighting approach for ratings at the state, multistate MSA, and institution level as described in proposed appendix D. In addition, the agencies propose additional provisions intended to emphasize a bank's retail lending performance and the importance of assessing how a bank meets the credit needs of all the communities it serves without overlooking smaller or less populated assessment areas as specified in proposed appendix D.

For small banks evaluated under the small bank performance standards, the agencies would assign lending evaluation conclusions of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' based on the bank's lending performance in each facility-based assessment area to arrive at the bank's overall rating assigned by the agencies as explained in Section XVII and in § __.29.

The agencies also propose updating the criteria on discriminatory and certain other illegal practices that could adversely affect a bank's CRA rating, as well as what rating level (state, multistate MSA, and institution) would be affected in § __.28(d)(1). Further, the agencies propose adding additional laws and regulations to the illustrative list of examples of practices that could impact a bank's CRA rating in § __.28(d)(2).

A. Background

1. Current Method for Assigning Conclusions and Ratings

Consistent with the CRA statute, the current CRA regulations provide that a bank is assigned an institution rating of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' and ''Substantial Noncompliance'' in connection with a CRA examination.[248] Ratings are also assigned for a bank's performance within each state in which the bank maintains one or more branches, and for each multistate MSA for those banks that have branches in two or more states within a multistate MSA.[249] In addition to assigning an overall institution rating, examiners also assign state and multistate MSA ratings for each applicable performance test (lending, investment, and service tests) primarily based on the institution's performance in each assessment area within the state or multistate MSA examined using full-scope procedures.[250] Performance conclusions in assessment areas not examined using the full-scope procedures are expressed as exceeds, is consistent with, or is below performance (overall or in the state).

With one exception, the rating scale used for performance test ratings mirrors that of the aforementioned four statutory institution-level ratings. For large banks, however, the ''Satisfactory'' rating for each of the three performance tests is split into ''High Satisfactory'' and ''Low Satisfactory.'' [251] Under existing procedures for large banks, examiners use a rating scale in the Interagency Questions and Answers to convert ratings assigned for each test into point values; examiners then add those point values together to determine the overall institution rating.[252] The conclusions assigned by the examiner are presented in the bank's CRA performance evaluation. However, the points assigned to each test and the bank's overall points that correspond to the institution's overall rating are not included in the performance evaluation. With the exception of the rating scale, the process of combining performance test ratings to determine the state, multistate MSA, or institution ratings relies primarily on examiner judgment, guided by quantitative and qualitative factors outlined in the current regulation. The current rating system allows flexibility. For example, exceptionally strong performance in some aspects of a particular rating profile may compensate for weak performance in others.[253]

Current examination procedures also allow for assessment areas to be reviewed either for full-scope or limited-scope review. Full-scope reviews employ both quantitative and qualitative factors, while limited-scope reviews are assessed only quantitatively and, as noted previously, generally carry less weight in determining the overall state, multistate MSA, or institution rating.

Under current examination procedures, the agencies use a fact-specific review to determine whether an overall institution CRA rating should be downgraded due to discriminatory or other illegal credit practices.[254]

[246] In addition, as stated in proposed appendix D and discussed in Section XVI.C, the agencies would establish, for large banks only, an overall retail lending assessment area conclusion reflecting performance on the Retail Lending Test and an overall facility-based assessment area conclusion reflecting performance on all four performance tests applicable to large banks.

[247] 12 U.S.C. 2906(b)(2).

[248] 12 U.S.C. 2906(b), implemented by 12 CFR __.28(a). The narrative descriptions of the ratings for performance under each evaluation method are in appendix A to the CRA regulations. *See* Q&A appendix A to 12 __—Ratings.

[249] 12 U.S.C. 2906(d).

[250] Ratings are not required at the assessment area level. Therefore, examiners provide conclusions about a bank's performance at the assessment area level. If a bank operates in just one assessment area, however, the bank's institution-level rating is equivalent to the performance conclusion within that assessment area.

[251] *See* Q&A § __.28(a)–3.

[252] *Id.*

[253] *See* Q&A appendix A to 12 __—Ratings.

[254] 12 CFR __.28(c)(2).

Currently, the agencies consider the nature, extent, and strength of the evidence of any discriminatory or other illegal credit practices, as well as any policies and procedures in place, or lack thereof, to prevent these kinds of practices, and any corrective action that the bank has taken or has committed to take.[255]

1. Stakeholder Feedback on Conclusions and Ratings

Stakeholders generally agree that CRA ratings should reflect a bank's performance in the local communities they serve. Some stakeholders have expressed that the current process is overly subjective and relies too much on examiner judgment. Stakeholders have generally expressed support for more transparency about the levels of performance associated with different ratings and supported retaining the ''High Satisfactory'' and ''Low Satisfactory'' component ratings for large banks. Some stakeholders have expressed that the ratings process should be reformed to add more rigor and stricter standards.

B. Combining Test Performance Scores To Determine Overall Ratings

As reflected in § __.28, the agencies propose updating the rating system to reflect a bank's performance on each applicable performance test. For example, ratings for a large bank would reflect its performance on the Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test.

Appendix C of the proposal describes how performance conclusions for each applicable test would be developed, which reflects the specific proposals for each performance test as discussed in earlier sections of this **SUPPLEMENTARY INFORMATION**. Although there are test-specific nuances and variations, in general, the agencies would assign both a conclusion (*e.g.,* ''Low Satisfactory'') and performance score (*e.g.,* 5.7) based on the bank's performance under a particular test. As a result, the bank would have both a conclusion and a performance score for each test, as applicable, at the assessment area, state, multistate MSA, and institution level.

Appendix D of the proposal describes how overall performance ratings would be assigned. In general, to determine a bank's CRA rating at the state, multistate MSA, and institution levels, the agencies would aggregate a bank's performance scores for each applicable test, with specific weights assigned to the performance score of each test. The proposal would follow the same weighting approach to derive ratings at the state, multistate MSA, and institution level.

For large banks, the agencies propose to determine a bank's state, multistate MSA, and institution rating by combining the bank's performance scores across all four performance tests for the state, multistate MSA, or institution overall. In combining these raw performance scores, the Retail Lending Test would be given a weight of 45 percent, the Community Development Financing Test a weight of 30 percent, the Retail Service and Products Test a weight of 15 percent and the Community Development Services Test a weight of 10 percent as described in proposed appendix D.

The agencies propose to assign the largest weight to the Retail Lending Test, similar to the current approach, which assigns the lending test a weight of 50 percent. The agencies believe that it would be appropriate to somewhat reduce this weight, because the current Lending Test includes both retail lending and community development lending, while the proposed Retail Lending Test would include only retail lending. Further, the agencies believe that a weight of less than 45 percent for the Retail Lending Test would not be appropriate, in keeping with the CRA's longstanding emphasis on retail lending to low- and moderate-income individuals and communities.

The agencies propose giving the Community Development Financing Test a weight of 30 percent to recognize the importance of both community development loans and community development investments in helping to meet community development needs. This is comparatively higher than the current weight given to the investment test at 25 percent under the current regulation, which excludes community development loans. The agencies propose a weight of 15 percent for the Retail Services and Products Test and a weight of 10 percent for the Community Development Services Test. These weights are comparable to the existing service test weight of 25 percent, which includes both retail services and community development services. The agencies propose the four tests rather than three tests to more easily tailor examinations by bank size as explained in Section VII.

For intermediate banks, the agencies propose to weight the Retail Lending Test at 50 percent and the intermediate bank community development evaluation (or if the bank opts in, for the Community Development Financing Test) at 50 percent as described in proposed appendix D. Any optional information regarding eligible retail services or community development services activities, as applicable, that an intermediate bank elects to provide would be reviewed qualitatively and not impact the weighting of the Retail Lending Test or the intermediate bank community development evaluation. The agencies' proposed weighting reflects the CRA's traditional emphasis on retail lending as well as the importance of community development activities in meeting community credit needs as mentioned previously. This weighting is also consistent with the current practice for intermediate small banks which gives equal weight to retail lending and community development activities for intermediate banks.

Request for Feedback

Question 139. The agencies request feedback on whether it would be more appropriate to weight retail lending activity 60 percent and community development activity 40 percent in deriving the overall rating at the state, multistate MSA or institution level for an intermediate bank in order to maintain the CRA's focus on meeting community credit needs through small business loans, small farm loans, and home mortgage loans.

C. Limitations on Overall Ratings

In addition to the above weighting approach, the agencies also propose to retain the requirement that, as applicable, for each state and multistate MSA and at the institution level, an intermediate bank's or a large bank's Retail Lending Test conclusion needs to be at least ''Low Satisfactory'' in order for the bank's overall rating to be ''Satisfactory'' or higher as described in proposed appendix D. The objective of this requirement is to prevent a bank from receiving a ''Satisfactory'' or higher rating at the state, multistate MSA, or institution level if it failed to meet its community's credit needs for retail loans at that level. Consistent with current practice, the agencies propose this requirement to emphasize the importance of retail loans to low- and moderate-income communities.

However, the agencies propose not applying the current requirement that an intermediate bank must receive a ''Satisfactory'' rating in both the Retail Lending Test and intermediate bank community development evaluation (or if the bank opts in, for the Community Development Financing Test). The agencies believe eliminating this requirement for intermediate banks would allow intermediate banks to meet

[255] *Id.*

community credit needs consistent with their more limited capacity. An intermediate bank would, however, still need to receive at least a ''Low Satisfactory'' on the Retail Lending Test in order to receive an overall ''Satisfactory'' at the institution level as noted above.

The agencies also propose imposing additional restrictions on state, multistate MSA and institution-level ratings for large banks with ten or more assessment areas in a state, a multistate MSA, or overall, respectively. A large bank with ten or more assessment areas (facility-based assessment areas and retail lending assessment areas combined) at the relevant level would not be eligible to receive a ''Satisfactory'' or higher rating at that level unless it achieved an overall performance of ''Low Satisfactory'' or better in at least 60 percent of its assessment areas there, as described in proposed appendix D.

Overall performance in a facility-based assessment area would be based on the conclusions the large bank received on each test in that assessment area. For purposes of this restriction only, the agencies propose developing a combined assessment area conclusion and performance score as described in proposed appendix D. A weighted average of these scores would be calculated across tests, using the same test-specific weights as the agencies are proposing to use to calculate ratings scores: The Retail Lending Test would be given a weight of 45 percent, the Community Development Financing Test a weight of 30 percent, the Retail Service and Products Test a weight of 15 percent and the Community Development Services Test a weight of 10 percent. If this weighted average was 4.5 or greater, the large bank would be considered to have an overall performance of at least ''Low Satisfactory'' in that facility-based assessment area. In retail lending assessment areas, the bank's overall performance would be equivalent to its Retail Lending Test conclusion there.

The agencies propose this modification to the ratings approach to ensure that large banks receiving a ''Satisfactory'' rating are meeting the credit needs of their entire community, and not just densely populated markets with high levels of lending and deposits that would factor heavily into the weighted-average conclusion rollups. In this way, overall ratings would accurately reflect performance in all markets the large bank serves.

Intermediate Bank Ratings Adjustments. The agencies propose that an intermediate bank that opts to be evaluated under the proposed Community Development Financing Test may request additional consideration for activities that qualify for consideration under the Retail Services and Products Test or Community Development Services Test in proposed appendix D. In these cases, the agencies may consider, based on the additional activities, whether to increase the bank's rating from a ''Satisfactory'' to an ''Outstanding'' at the institution level. An adjustment would not occur if an intermediate bank's respective rating, without consideration of the additional activities, is ''Needs to Improve'' or ''Substantial Noncompliance.'' The agencies believe that it is appropriate to emphasize retail lending performance, and that electing to conduct retail or community development services does not compensate for poor retail lending performance.

Small Bank Ratings Adjustments. The agencies propose that a small bank may request additional consideration for activities that qualify for consideration under the Retail Services and Products Test, Community Development Financing Test, or Community Development Services Test in proposed appendix D. In these cases, the agencies may consider, based on the additional activities, whether to increase the bank's rating from a ''Satisfactory'' to an ''Outstanding'' at the institution level. An adjustment would not occur if a small bank's respective rating, without consideration of the additional activities, is ''Needs to Improve'' or ''Substantial Noncompliance.'' The agencies believe that it is appropriate to emphasize retail lending performance, and that electing to conduct other activities does not compensate for poor retail lending performance.

Request for Feedback

Question 140. What are the advantages and disadvantages of the proposal to limit the state, multistate MSA, and institution-level ratings to at most a ''Needs to Improve'' for large banks with ten or more assessment areas unless 60 percent or more of the bank's assessment areas at that level have an overall performance of at least ''Low Satisfactory''? Should this limitation apply to all assessment areas, or only facility-based assessment areas? Is ten assessment areas the right threshold number to prompt this limitation, and is 60 percent the right threshold number to pass it? If not, what should that number be? Importantly, what impact would this proposal have on branch closures?

D. Discriminatory and Other Illegal Practices

The agencies propose continuing to consider discrimination and certain other illegal practices as inconsistent with a bank's affirmative obligation to meet the credit needs of its entire community and counter to the CRA's core purpose of encouraging banks to help meet the needs of low- and moderate-income communities and addressing inequities in credit access.

1. Clarifying the Scope of Products and Entities Considered for Rating Downgrades Related to Discriminatory or Other Illegal Practices

The agencies propose to revise the language in the existing CRA regulations regarding the circumstances under which evidence of discriminatory or other illegal practices could adversely affect the evaluation of a bank's CRA performance. Under the current CRA regulations, evidence of discrimination or other illegal credit practices in any geography by the bank, or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance, could result in a downgrade to the bank's CRA rating.[256]

Under the proposal, the practices that could adversely affect a bank's CRA performance would no longer be limited to discriminatory or other illegal credit practices but would include any discriminatory or illegal practice. Such practices could be credit practices but could also be practices related to deposit products or other products and services offered by the bank. The agencies note that the CRA statute indicates that banks are required by law to meet the convenience and needs of their communities, which includes the need for credit services as well as deposit services. Consistent with this statutory focus, the proposed revisions would broaden these provisions of the current CRA regulations to include discriminatory or other illegal practices beyond merely credit practices in proposed § __.28(d)(1).

In addition, the agencies propose revising the current CRA regulations to clarify in § __.28(d)(1)(i) that discriminatory or other illegal practices by a bank subsidiary could also result in a downgrade to the bank's CRA rating. The proposal would further state in § __.28(d)(1)(ii) that discriminatory or other illegal practices in any facility-based assessment area, retail lending assessment area, or outside retail lending area by any affiliate whose retail

[256] § __.28(c)(1).

loans are considered as part of the bank's lending performance could adversely affect a bank's CRA performance.

2. Additional Examples of Discriminatory or Other Illegal Practices

For added clarity, the agencies propose amending the CRA regulation in § __.28(d)(2)(vii), (viii) and (iv), respectively to include violations of the Military Lending Act,[257] the Servicemembers Civil Relief Act,[258] as well as the prohibition against unfair, deceptive, or abusive acts or practices (UDAAP) [259] as additional examples of acts and practices that are inconsistent to meeting community credit needs. Because the included list of applicable laws, rules, and regulations is illustrative, and not exhaustive, it is important to note that this is not a substantive change as compared to current examination procedures. Nonetheless, the agencies believe adding these laws to the list would provide greater clarity.

3. Effect of Evidence of Discriminatory or Other Illegal Practices

Currently, in determining the effect of discriminatory or other illegal credit practices on a bank's assigned rating, the banking agencies consider: the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.[260]

The agencies propose updating the CRA regulation in § __.28(d)(3) to determine the effect of evidence of discrimination and other illegal practices on a bank's assigned CRA rating based on revised criteria used to evaluate a bank's level of compliance with consumer protection laws and regulations. The existing criteria were put in place when the rating system for consumer compliance examinations placed greater emphasis on transaction testing rather than the adequacy of an institution's consumer compliance management system in preventing consumer harm. In 2016, the Federal Financial Institutions Examination Council (FFIEC) revised the Consumer Compliance Rating System [261] to focus more broadly on an institution's commitment to consumer protection. The agencies propose using the following updated criteria to determine whether there should be a rating downgrade: root cause of any violations of law, the severity of any consumer harm resulting from violations, the duration of time over which the violations occurred, and the pervasiveness of the violations. This change would align the criteria to determine whether a CRA downgrade is warranted with the Uniform Interagency Consumer Compliance Ratings System. In addition to the root cause, severity, duration, and pervasiveness of violations, examiners would also consider the degree to which the bank, a bank subsidiary, or an affiliate, as applicable, establishes an effective compliance management system across the institution to self-identify risks and to take the necessary actions to reduce the risk of non-compliance and consumer harm. All consumer compliance violations would be considered during a CRA examination, although some might not lead to a CRA rating downgrade.

The agencies also propose updating the CRA regulation in § __.28(d) to enable a rating downgrade at the state and multistate MSA level in addition to the current ability to downgrade the institution level rating to provide greater clarity and transparency to the bank and public about the geographic level at which the violations occurred.

XVII. Performance Standards for Small Banks and Intermediate Banks

In recognition of their capacity constraints, the agencies propose to maintain the current evaluation method for small banks. The agencies are proposing to continue evaluating small banks under the small bank performance standards in the current CRA framework in § __.29(a)(1); however, these banks may opt into the Retail Lending Test and may continue to request additional consideration for other qualifying CRA activities in § __.29(a)(2).

The agencies propose evaluating intermediate banks under the proposed Retail Lending Test in § __.22 with certain provisions tailored to intermediate banks. In addition to the proposed Retail Lending Test, the agencies propose to evaluate an intermediate bank's community development activity pursuant to the criteria in § __.29(b)(2), which is the same criteria as the current intermediate small bank community development test. In lieu of evaluation under § __.29(b)(2), intermediate banks could opt into being evaluated under the proposed Community Development Financing Test.

All intermediate banks—evaluated under either the intermediate bank community development evaluation or that choose to be evaluated under the Community Development Financing Test—would have the option to designate retail loans (*e.g.,* small business, small farm, and home mortgage loans) for consideration as community development loans if they have a primary purpose of community development and if the loans are not required to be reported.

A. Small Bank Performance Standards

1. Background

Current Approach for Small Bank Performance Standards. The current category of small banks includes those banks with assets of less than $346 million as of December 31 of the prior two calendar years. Under the current CRA regulations, a small bank is evaluated under the small bank performance standards. Specifically, a small bank is evaluated under a lending test that considers the following criteria: (i) The bank's loan-to-deposit ratio; (ii) the percentage of loans located in the bank's assessment areas; (iii) the bank's record of lending to borrowers of different income levels and businesses and farms of different sizes; (iv) the geographic distribution of the bank's loans; and (v) the bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment areas.[262]

Stakeholder Feedback. Most stakeholders have expressed a preference for maintaining the current framework for small banks while permitting these banks to choose to opt into the new approach. These stakeholders noted that while a metrics-based approach may provide additional transparency regarding performance standards, it would be appropriate to continue to evaluate small banks under the current framework given their more limited capacity and resources. Some community-based stakeholders, however, have stated that all banks, including small banks, should be evaluated under a metrics-based approach.

[257] 10 U.S.C. 987 *et seq.*

[258] 50 U.S.C. 3901 *et seq.*

[259] 12 U.S.C. 5531.

[260] 12 CFR __.28(c)(2).

[261] *See* FFIEC, Press Release, ''FFIEC Issues Uniform Consumer Compliance Rating System'' (Nov. 7, 2016), *https://www.ffiec.gov/press/pr110716.htm.*

[262] 12 CFR __.26(b).

2. Proposed Approach for Small Bank Performance Standards

The agencies propose raising the asset threshold for small banks from $346 million to $600 million as described in § __.12. The agencies are not proposing changes to the manner in which small banks are evaluated or to the small bank performance standards. The agencies believe that it would be appropriate to continue to evaluate small banks under the current framework, consistent with the objective to tailor the evaluation approach according to a bank's size and business model. Instead, under the proposal, a small bank may opt into being evaluated under the Retail Lending Test.

In addition, a small bank may request additional consideration for community development activities and for providing branches and other services and delivery systems that enhance credit availability in the bank's facility-based assessment areas. The bank could submit these activities for consideration in determining the bank's overall institution rating, without a requirement to opt into any additional performance test beyond the current small bank retail lending approach. As described above, the agencies would consider these activities to potentially elevate a bank's rating from ''Satisfactory'' to ''Outstanding,'' and would not consider these activities to elevate a ''Needs to Improve'' rating to ''Satisfactory'' or ''Outstanding.'' This limitation is intended to maintain a strong emphasis on retail lending performance. Under the proposed rule, and as in the current practice, a small bank could continue to achieve any rating, including ''Outstanding,'' based on its retail lending performance alone, and would not be required to be evaluated on other activities.

Request for Feedback

Question 141. The agencies propose to continue to evaluate small banks under the current framework in order to tailor the evaluation approach according to a bank's size and business model. What are other ways of tailoring the performance evaluation for small banks?

Question 142. Should additional consideration be provided to small banks that conduct activities that would be considered under the Retail Services and Products Test, Community Development Financing Test, or Community Development Services Test when determining the bank's overall institution rating?

B. Intermediate Bank Performance Standards

1. Background

Current Approach for Intermediate Small Banks. The current CRA regulations include an evaluation framework based on three bank size categories: Large, intermediate small, and small. The current category of intermediate small banks includes those banks with assets of at least $346 million as of December 31 of both of the prior two calendar years and less than $1.384 billion as of December 31 of either of the prior two calendar years. Intermediate small banks are evaluated under a lending test [263] and a community development test,[264] which assesses community development loans, qualified investments, and community development services together. An intermediate small bank has the flexibility to allocate its resources among community development loans, qualified investments, and community development services in amounts that it reasonably determines are most responsive to community development needs and opportunities.[265] Appropriate levels of each of these activities would depend on the capacity and business strategy of the institution, community needs, and number and types of opportunities available for community development within the bank's assessment areas.[266] A bank may not simply ignore one or more of these categories of community development, nor do the regulations prescribe a required threshold for community development loans, qualified investments, and community development services.[267]

Stakeholder Feedback. A number of stakeholders have supported maintaining three categories of banks with performance tests tailored to a bank's capacity and business model. Some stakeholders, and including those from the trade associations, indicated support for an intermediate bank category, though at least one state banking association preferred the proposed two-category approach.

2. Proposal for Intermediate Bank Performance Standards

The agencies propose creating a new intermediate bank category that would include banks with assets of at least $600 million and not more than $2.0 billion as described in § __.12. The agencies propose that an intermediate bank would be evaluated under the proposed Retail Lending Test in § __.22 and the intermediate bank community development performance standards as described in proposed § __.29(b)(2), which includes the same criteria as the community development test that currently applies to intermediate small banks. The agencies also propose that intermediate banks be given the option to be evaluated under the proposed Community Development Financing Test in § __.24 in lieu of the intermediate bank community development performance standards. The agencies believe this option provides intermediate banks the flexibility to determine how their community development activities are evaluated, recognizing the capacity and constraints of these size banks.

a. Retail Lending Test

The agencies propose that under the Retail Lending Test, an intermediate bank's major product lines would be evaluated by applying the proposed metrics approach as specified under § __.22. This method would provide intermediate banks with increased clarity and consistency and transparency of supervisory expectations and standards for evaluating their retail lending products. The agencies do not propose any data reporting requirements for intermediate banks under the Retail Lending Test in § __.42. For example, the agencies would not require intermediate banks to collect deposits data by depositor location and would instead rely on the FDIC's Summary of Deposits data for use in the Retail Lending Test metrics as described in § __.22.

b. Community Development Evaluation

Intermediate Bank Community Development Evaluation. The agencies propose evaluating community development activity of intermediate banks using the same criteria that is included in the current intermediate small bank community development test in 12 CFR __.26(c) under the proposed intermediate bank community development performance standards in § __.29(b)(2), retaining the flexibility provided to intermediate small banks under the current CRA guidance. The agencies propose retaining this additional flexibility for intermediate banks in recognition of their more limited capacity for engaging in community development activities compared to large banks. All intermediate banks, including those evaluated under the current intermediate small bank community

[263] 12 CFR __.26(b).

[264] 12 CFR __.26(c).

[265] *See* Q&A § __.26(c)–1.

[266] *Id.*

[267] *Id.*

development test, would utilize the proposed community development definitions in § __.13.

Flexibility for the Types of Community Development Activities. The agencies propose to retain the current flexibility in the array of community development activities by which an intermediate bank is evaluated. Intermediate banks generally conduct a combination of community development loans, qualified investments, and community development services. Under the current regulation, a bank may not ignore one or more of these categories of community development activities, and the current regulations do not prescribe a required threshold for community development loans, qualified investments, or community development services. The agencies propose that, consistent with current guidance, the appropriate levels of each activity would depend on the bank's capacity and business strategy, along with community development needs and opportunities that are identified by the bank.[268]

Flexibility for Community Development Loans. The agencies propose that intermediate banks continue to have the flexibility to have retail loans such as small business, small farm, and home mortgage loans be considered as community development loans. This option would be available to an intermediate bank if those loans have a primary purpose of community development and are not required to be reported by the bank. For example, an intermediate bank that is not required to report small business and small farm loans, may choose to report those loans for consideration as community development loans as provided in § __.22(a)(5)(iii). Conversely, if an intermediate bank is required to report home mortgage loans, those loans would be required to be evaluated as retail loans under the Retail Lending Test and the bank would not have the option of having them considered as community development loans as provided in § __.22(a)(5)(i).

The agencies seek feedback on whether intermediate banks should retain this flexibility for small business and small farm loans regardless of the reporting status of these loans. Intermediate banks are currently not required to report small business and small farm loans as CRA data. However, once the proposed CFPB Section 1071 Rulemaking is finalized, there is a possibility that an intermediate bank may be required to report small business and small farm loans and would lose the flexibility to receive community development consideration for those retail loans because of their reporting status.

Flexibility for Community Development Services. The agencies propose retaining the current flexibility of providing community development consideration for retail banking services if they provide benefit to low- or moderate-income individuals. Under the current regulation, in addition to the types of community development services associated with large banks,[269] an intermediate bank would also receive CRA credit for retail banking services as community development services if they provide benefit to low- or moderate-income individuals, including low-cost deposit accounts and branches located in low- or moderate-income geographies, designated disaster, or distressed or underserved nonmetropolitan middle-income areas.[270]

Option for Evaluation Under the Proposed Community Development Financing Test. In lieu of evaluation under proposed § __.29(b)(2) for evaluating community development activities of an intermediate bank, the agencies propose giving intermediate banks the option to be evaluated under the proposed Community Development Financing Test as specified in § __.24. Under this option, an intermediate bank also has the option to request additional consideration for activities that qualify under the Retail Services and Products Test in § __.23 and the Community Development Services Test in § __.25 for possible adjustment of an overall rating of ''Satisfactory'' to ''Outstanding.'' As described above, the agencies would consider these activities to potentially elevate a bank's rating from a ''Satisfactory'' to an ''Outstanding.'' These activities would not be considered to elevate a ''Needs to Improve'' rating to a ''Satisfactory'' or ''Outstanding'' rating. Similar to requirements for small banks, this limitation is intended to maintain a strong emphasis on retail lending performance. Under the proposed rule, an intermediate bank could continue to achieve any rating, including an ''Outstanding'' rating, based on its retail lending and community development performance alone, and would not be required to be evaluated on other activities.

The additional consideration for retail services and products, and community development services would not be appropriate for an intermediate bank that is evaluated for community development activities under § __.29(b)(2) because that section already incorporates those activities.

As previously noted, all intermediate banks, including those that opt for evaluation under the proposed Community Development Financing Test, would continue to have the option to designate retail loans (small business, small farm, and home mortgage loans) for consideration as community development loans if they have a primary purpose of community development and are not required to be reported.

Request for Feedback

Question 143. The agencies' proposal to require intermediate banks to be evaluated under the proposed Retail Lending Test is intended to provide intermediate banks with increased clarity and transparency of supervisory expectations and standards for evaluating their retail lending products. The agencies propose tailoring the application of this test by limiting data reporting requirements for intermediate banks. Are there other ways of tailoring the Retail Lending Test for intermediate banks that should be considered?

Question 144. The agencies propose to provide continued flexibility for the consideration of community development activities conducted by intermediate banks both under the status-quo community development test and the proposed Community Development Financing Test. Specifically, intermediate banks' retail loans such as small business, small farm, and home mortgage loans may be considered as community development loans, provided those loans have a primary purpose of community development and the bank is not required to report those loans. Should the agencies provide consideration for those loans under the Community Development Financing Test?

Question 145. Should intermediate banks be able to choose whether a small business or small farm loan is considered under the Retail Lending Test or, if it has a primary purpose of community development, under the applicable community development evaluation, regardless of the reporting status of these loans? Should the same approach be applied for the intermediate bank community development performance standards in § __.29(b) and for intermediate banks that decide to opt into the Community Development Financing Test in § __.24?

[268] *See* Q&A § __.26(c)–1.

[269] 12 CFR __.24; *see also* CRA Q&A § __.12(i)–3.

[270] 12 CFR __.26(c)(3); *see also* CRA Q&A § __.26(c)(3)–1.

XVIII. Effect of CRA Performance on Applications

The agencies are proposing to maintain the current regulation's regulatory procedures for considering CRA performance on applications including, mergers, deposit insurance, branch openings and relocations, conversions and acquisitions, and other applications, as applicable to each agency. Consideration of CRA performance in bank applications is rooted in the CRA statute. The statute instructs the agencies to assess a bank's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such bank, and to take such record into account in its evaluation of an application for a deposit facility by such bank.[271]

A. Current Approach for CRA Consideration in Applications

Under the current CRA regulations, the agencies take into account a bank's CRA performance when considering certain applications, including those for: A branch opening; merger, consolidation, or acquisition; main office or branch relocation; deposit insurance request; and transactions subject to the Bank Merger Act and Bank Holding Company Act.[272]

Basis for Approval or Denial of an Application. A bank's record of performance may be the basis for denying or conditioning approval of an application. Generally, an institution with a CRA rating below ''Satisfactory'' may be restricted from certain activities until its next CRA examination.

Interested Parties. The current regulation requires that the agencies consider public comment when determining whether to approve an application. In considering CRA performance for an application, the agencies take into account any views and comments expressed by interested parties.

B. Proposed Approach for CRA Consideration in Applications

The agencies are not proposing changes to this section of their regulations outlining consideration of CRA performance for applications, since it is prescribed in the CRA statute. However, by making the assessment of CRA performance more transparent, consistent, and predictable, the proposed CRA methodology would provide greater certainty to a bank regarding the level and distribution of activity that would achieve a ''Satisfactory'' rating when the bank contemplates making an application. It would also provide clear metrics regarding the bank's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.

Request for Feedback

Question 146. Are the agencies' current policies for considering CRA performance on applications sufficient? If not, what changes would make the process more effective?

XIX. Data Collection, Reporting, and Disclosure

The agencies propose data collection and reporting requirements to increase the clarity, consistency, and transparency of the evaluation process through the use of standard metrics and benchmarks. The agencies also recognize the importance of using existing data sources where possible, and of tailoring data requirements where appropriate.

Under the proposal, all large banks would have the same requirements for certain categories of data, including community development financing data, branch location data, and remote service facility location data. As noted in earlier sections, the proposal also retains the existing large bank data requirements for small business and small farm lending, although the agencies propose replacing this with section 1071 data once it is available. The proposal also provides updated standards for all large banks to report the delineation of their assessment areas.

The agencies propose that some new data requirements would only apply to large banks with assets of over $10 billion. Specifically, the agencies propose that large banks with assets of over $10 billion would have data requirements for deposits data, retail services data on digital delivery systems, retail services data on responsive deposit products, and community development services data. In addition, all banks with assets of over $10 billion would have data requirements for automobile lending.

Banks operating under an approved wholesale or limited purpose bank designation would not be required to collect or report deposits data or report retail services or community development services information.

Intermediate banks, as defined in proposed § __.12, would not be required to collect or report any additional data compared to current requirements. As under current guidance, intermediate banks should continue to be prepared to demonstrate community development activities' qualifications.[273] Intermediate banks would have no deposits data requirements, even when deciding to opt into the proposed Community Development Financing Test.

Small banks, as defined in proposed § __.12, would not be required to collect or report any additional data compared to current requirements.

Under the proposal, the data reporting deadline would be moved from March 1 to April 1 of each year.

A. Background

1. Current Data Collection and Reporting Requirements

Current Data Used for Deposits. The current CRA regulations do not require banks to collect or report deposits data. Instead, for small banks, total deposits and total loans data from the Call Report are used to calculate the loan-to-deposit ratio for the entire bank. Total deposits allocated to each branch from the FDIC's Summary of Deposits are used for performance context for banks of any size. Deposits data by depositor location are not currently collected or reported.

Current Small Bank and Intermediate Small Bank Data Standards for Retail Lending. The current CRA regulations do not require small banks and intermediate small banks to collect, maintain, or report loan data, unless they opt to be evaluated under the lending, investment, and service tests that apply to large banks.[274] Examiners generally use information for a bank's major loan products gathered from individual loan files or maintained on the bank's internal operating systems, including data reported pursuant to HMDA, if applicable.

Current Large Bank Data Standards for Retail Lending and Community Development Financing. Under the current CRA regulations, large banks collect and report certain lending data for home mortgages, small business loans, small farm loans, and community development loans, pursuant to either HMDA or the CRA regulation.[275] CRA data reporting requirements are based on bank size, not type of exam.[276] If a bank, such as a wholesale or limited purpose bank, does not engage in lending of a particular type, current regulations do not require reporting such data. Examiners use this lending

[271] 12 U.S.C. 2903(a)(2).

[272] 12 CFR __.29. For applications under the Bank Merger Act or Bank Holding Company Act, a convenience and needs analysis is conducted. *See* 12 U.S.C. 1828(c) and 12 U.S.C. 1842.

[273] *See* Q&A § __.12(h)–8.

[274] 12 CFR __.42(f).

[275] 12 CFR __.42.

[276] *See* Q&A § __.42–1.

data and other supplemental data to evaluate CRA performance. A bank may use the software provided by the FFIEC for data collection and reporting or develop its own programs. Retail lending data collection and reporting requirements differ based on the product line.

For large banks that do not report HMDA data, examiners use home mortgage information maintained on the bank's internal operating systems or from individual loan files. The data elements for home mortgage loans used for CRA evaluations include loan amount at origination, location, and borrower income. For small business loans and small farm loans, the CRA regulations require large banks to collect and maintain the loan amount at origination, loan location, and an indicator of whether a loan was to a business or farm with gross annual revenues of $1 million or less.[277] Large banks report aggregate small business and small farm data at the census tract level.[278]

Large banks are not required to collect or report data on consumer loans. However, if a large bank opts to have consumer loans considered as part of its CRA evaluation, it must collect and maintain this information based on the category of consumer loan and include it in its public file.[279]

The current CRA regulations also require large banks to report the aggregate number and dollar amount of their community development loans originated or purchased during the evaluation period, but not information for individual community development loans.[280] A bank must, however, provide examiners with sufficient information to demonstrate its community development performance.[281] The CRA regulations do not currently require the reporting or collection of community development loans that remain on the bank's books or the collection and reporting of any information about qualified community development investments. As a result, the total amount (originated and on-balance sheet) of community development loans and investments nationally, or within specific geographies, is not available through reported data. Consequently, examiners supplement reported community development loan data with additional information provided by a bank at the time of an examination, including the amount of investments, the location or areas benefited by these activities and information describing the community development purpose.

Data Currently Used for CRA Retail Services and Community Development Services Analyses. There are no specific data collection or reporting requirements in the CRA regulations for retail services or community development services. A bank must, however, provide examiners with sufficient information to demonstrate its performance in these areas, as applicable. A bank's CRA public file is required to include a list of bank branches, with addresses and census tracts;[282] a list of branches opened or closed;[283] and a list of services, including hours of operation, available loan and deposit products, transaction fees, and descriptions of material differences in the availability or cost of services at particular branches, if any.[284]

Banks have the option of including information regarding the availability of alternative systems for delivering services.[285] Banks may also provide information on community development services, such as the number of activities, bank staff hours dedicated, or the number of financial education sessions offered.

2. Stakeholder Feedback

Industry group stakeholders have asked the agencies to remain mindful about minimizing any data collection, recordkeeping, and reporting burdens potentially associated with revising CRA regulations. Industry stakeholders have expressed concern that any new deposit, lending, investments, and other data collection, reporting, and recordkeeping requirements could potentially be costly and burdensome, as well as stating that efforts to develop data systems and the need for new compliance staff could come at the expense of engaging in community reinvestment activities. Additionally, industry stakeholders have stated that new data collection or reporting requirements should be assessed relative to the corresponding improvements to CRA examinations.

In contrast, community groups have generally indicated that the certainty and transparency gained from accurate community development financing measures would be worth any potential reporting burden. These stakeholders have supported data collection related to community development purpose, duration of financing provided, and partnerships with MDIs and other entities. Regarding community development services, these stakeholders also favored the development of a standardized template with defined data fields and endorsed collection of data relating to bank inputs (*e.g.,* community development hours per employee in each assessment area) and impacts (*e.g.,* number of low- and moderate-income attendees at financial literacy or homebuyer counseling sessions, improvement to attendees' credit scores). Community group stakeholders have expressed support for bank collection, maintenance, and reporting of community development data to improve evaluation procedures and to increase public transparency.

Regarding deposits, community group stakeholders have generally agreed that for small banks and intermediate-small banks, the FDIC's Summary of Deposits data could be an appropriate source to rely upon for computing metrics, given that these banks generally have fewer assessment areas and have most of their customer base residing within their assessment areas. Industry sentiment has been that while new depositor-related data collection and maintenance may be necessary for establishing a metrics-based approach to evaluating retail lending and community development financing, it may entail substantial costs on impacted banks. Overall, stakeholders generally agree that small banks should be exempted from new deposits data-related requirements.

B. Deposits Data

1. Deposits Data Collection and Maintenance Requirements

The agencies propose that deposits data would be used for several evaluation metrics, benchmarks, and weights under the applicable performance tests. The agencies propose an approach for deposits data collection, maintenance, and reporting that is tailored to different bank sizes. Large banks with assets of over $10 billion would be required to collect, maintain, and report deposits data that is based on depositor location, as provided in § .__ 42. Large banks with assets of $10 billion or less, intermediate banks, and small banks would not be required to collect, maintain or report any deposits data. If these banks choose to voluntarily collect and maintain this data, the agencies would use it for any applicable metrics and weights.

[277] 12 CFR __.42(a).

[278] 12 CFR __.42(b)(1).

[279] 12 CFR __.42(c)(1).

[280] 12 CFR __.42(b)(2).

[281] *See* Q&A § __.12(h)–8, which states, in relevant part, ''Financial institutions that want examiners to consider certain activities should be prepared to demonstrate the activities' qualifications.''

[282] 12 CFR __.43(a)(3).

[283] 12 CFR __.43(a)(4).

[284] 12 CFR __.43(a)(5).

[285] *Id.*

Otherwise, the agencies propose using the FDIC's Summary of Deposits data for any applicable metrics for a bank that does not collect and maintain deposits data. As discussed further in this **SUPPLEMENTARY INFORMATION**, the agencies intend for the proposed approach to tailor new deposits data requirements only to large banks with assets of over $10 billion.

a. Large Banks With Assets of Over $10 Billion

The agencies propose to require large banks with assets of over $10 billion to collect and maintain county-level deposits data based on the county in which the depositor's address is located, rather than on the location of the bank branch to which the deposits are assigned, as is the case with the FDIC's Summary of Deposits data. This approach would allow for more precise measurement of a bank's local deposits by county. Furthermore, the agencies considered that banks generally collect and maintain depositor location data to comply with Customer Identification Program requirements and as part of their ordinary course of business. Banks would not report depositor addresses, but only deposits data that is aggregated at a county-, state, multistate MSA, and institution level.

The agencies believe that the current approach of associating deposits with the location of the branch to which they are assigned would raise challenges under the proposed evaluation framework for large banks with assets of over $10 billion. The FDIC's Summary of Deposits data is not always an accurate measure of a bank's deposit base within an assessment area. Specifically, deposits assigned to a branch in the Summary of Deposits may be held by a depositor located outside of the assessment area where the branch is located, such as in a different assessment area of the bank, or outside of any of the bank's assessment areas.[286]

Instead, the agencies propose that large banks with assets of over $10 billion collect and maintain annually, until the completion of the bank's next CRA examination, the dollar amount of the bank's deposits at the county level, based upon the addresses associated with accounts, and calculated based on the average daily balances as provided in statements, such as monthly or quarterly statements. This deposits data would not be assigned to branches, but would, instead, reflect the county level dollar amount of the bank's deposit base.

The proposed collection and maintenance of deposits data at the county level for large banks with assets of over $10 billion would support proposals to more accurately: (i) Construct the bank volume metric and community development financing metric for each bank at the facility-based assessment area, state, multistate MSA, and institution levels, as applicable; (ii) construct the market benchmarks used for the retail lending volume screen and the community development financing metric at the facility-based assessment area, state, multistate MSA, and institution levels, as applicable; and (iii) implement a standardized approach for deriving multistate MSA, state, and institution conclusions and ratings by weighting assessment area conclusions (including retail lending assessment areas) and outside retail lending area conclusions through a combination of deposits and lending volumes.

For each of these purposes, the agencies consider it beneficial to use deposits data that accurately reflect depositor location for all large banks with assets of over $10 billion. The agencies do not believe the above proposals could be implemented using the FDIC's Summary of Deposits data for all large banks. Specifically, the FDIC's Summary of Deposits data does not contain information distinguishing those deposits made by depositors located outside of a bank's facility-based assessment areas from those within facility-based assessment areas. This limitation could introduce imprecision when using the Summary of Deposits data to weight performance conclusions in retail lending assessment areas, outside retail lending areas, and community development activity areas. For large banks with assets of over $10 billion, the agencies believe that the benefits of precision outweigh the burden of requiring the collection and reporting of deposits data.

For banks that collect and maintain deposits data, the agencies propose a definition of deposits, as stated in § __ .12, that is based on two subcategories of the Call Report category of Deposits in Domestic Offices: (i) Deposits of individuals, partnerships, and corporations; and (ii) commercial banks and other depository institutions in the United States. These two subcategories of deposits constitute the majority of deposit dollars captured overall in the Call Report categories of Deposits in Domestic Offices and these subcategories are proposed because they increase a bank's capacity to lend and invest.

The agencies propose that domestically held deposits of foreign banks, and of foreign governments and institutions would not be included because these deposits are not derived from a bank's domestic customer base. The proposal would exclude U.S., state, and local government deposits because these deposits are sometimes subject to restrictions and may be periodically rotated among different banks causing fluctuations in the level of deposits over time.

Further, the agencies seek feedback regarding whether to include deposits for which the depositor is a commercial bank or other depository institution in the definition of deposits, as proposed, or if these deposits should be excluded from the definition. While these deposits may augment a bank's capacity to lend and invest, they are primarily held in banker's banks and credit banks, many of which are exempt from CRA, or operate under the Community Development Financing Test tailored for limited purpose banks, which does not use deposits data.

For deposit account types for which accountholder location information is not generally available, the agencies propose that the aggregate dollar amount of deposits for these accounts would be included at the overall institution level, and not at other geographic levels. For example, the agencies would expect the aggregate dollar amount of deposits for accounts associated with pre-paid debit cards or Health Savings Accounts to be included at the institution level. The agencies seek feedback on additional clarifications regarding what deposit account types may not be appropriate to include at a county level.

The agencies also seek feedback on the appropriate treatment of non-brokered reciprocal deposits in order to appropriately measure an institution's amount of deposits, avoid double

[286] *See FDIC Summary of Deposits Reporting Instructions* (June 30, 2021) (''Institutions should assign deposits to each office in a manner consistent with their existing internal record-keeping practices. The following are examples of procedures for assigning deposits to offices:
• Deposits assigned to the office in closest proximity to the accountholder's address.
• Deposits assigned to the office where the account is most active. • Deposits assigned to the office where the account was opened. • Deposits assigned to offices for branch manager compensation or similar purposes. Other methods that logically reflect the deposit gathering activity of the financial institution's branch offices may also be used. It is recognized that certain classes of deposits and deposits of certain types of customers may be assigned to a single office for reasons of convenience or efficiency. However, deposit allocations that diverge from the financial institution's internal record-keeping systems and grossly misstate or distort the deposit gathering activity of an office should not be utilized.''), *https://www.fdic.gov/regulations/resources/call/sod/sod-instructions.pdf.*

counting of deposits, and to ensure that accountholder location information for deposit accounts is available to the bank that is collecting and maintaining the data. The agencies are considering that a non-brokered reciprocal deposit as defined in 12 U.S.C. 1831f(i)(2)(E) for the institution sending the non-brokered reciprocal deposit would qualify under the deposits definition in § __.12. In addition, the agencies are considering that a non-brokered reciprocal deposit as defined in 12 U.S.C. 1831f(i)(2)(E) for the institution receiving the non-brokered reciprocal deposit would not qualify under the deposits definition in § __.12.

In order to reduce burden associated with the collection, maintenance, and reporting of deposits data, the agencies intend to explore the feasibility, including costs, of developing a certified geocoding and aggregation platform that banks could use to geocode and aggregate their data in the future.

b. Small Banks, Intermediate Banks, and Large Banks With Assets of $10 Billion or Less

The proposal would not require small banks, intermediate banks, and large banks with assets of $10 billion or less to collect deposits data. This approach is intended to minimize the data collection burden on banks with assets of less than $10 billion, in recognition that large banks with assets of over $10 billion have more capacity to collect and report new deposits data.

Instead of using new deposits data, the agencies propose that the FDIC's Summary of Deposits data would be used for calculating the *retail lending volume screen,* as applicable, for these banks, if they do not elect to collect and maintain deposits data. The Summary of Deposits data would also be used for calculating the community development financing metric for large banks with assets of $10 billion or less and for intermediate banks that opt into the Community Development Financing Test. The Summary of Deposits data would also be used for the weights assigned to each facility-based assessment area when calculating performance scores at the state, multistate MSA, and institution levels, as applicable.

The agencies propose that small banks, intermediate banks, and large banks with assets of $10 billion or less could choose to collect and maintain deposits data on a voluntary basis. Large banks with assets of $10 billion or less that elect to collect deposits data would be required to do so in a machine readable form provided by the agencies, while small banks and intermediate banks would have the option to collect deposits data in the bank's own format. The agencies would use collected data instead of the FDIC's Summary of Deposits data to calculate the bank's metrics and weights for all applicable tests and evaluation areas. The agencies considered that a bank with a significant percentage of deposits drawn from outside of assessment areas in particular may prefer to collect and maintain deposits data to reflect performance more accurately under the retail lending volume screen and the community development financing metrics, and to have weights given to the bank's assessment areas in a way that more accurately reflects the bank's deposits base when assigning ratings.

The agencies seek feedback on the proposed approach and the tradeoffs of requiring only large banks with assets of over $10 billion to collect and maintain deposits data. On the one hand, the proposed approach would limit this requirement to banks with greater resources to comply with this proposed data requirement. On the other hand, the agencies have also considered that this approach may result in metrics and weights that do not reflect the geographic location of a bank's deposit base as accurately as would an approach that required the collection and maintenance of deposits data for all large banks. For example, a large bank with assets of $10 billion or less could have an internet-based business model not focused on branches. If such a bank did not elect to collect and maintain deposits data, the proposed approach would count all of the bank's deposits as being located within the bank's facility-based assessment areas, because the FDIC's Summary of Deposits data necessarily assigns all deposits to branch locations. The agencies have also considered that certain banks, particularly those for which the FDIC's Summary of Deposits data does not approximate well their actual depositors' locations, may wish to voluntarily collect and maintain deposits data for the sake of ensuring metrics and weights that accurately reflect the distribution of their deposits base.

Relatedly, the agencies seek feedback on an alternative approach in which large banks with assets of $10 billion or less are required to collect and maintain deposits data, with the standards and requirements for this data as proposed for large banks with assets of over $10 billion. The agencies have considered that this alternative may improve the precision and consistency of the metrics, benchmarks, and weights applicable to large banks with assets of $10 billion or less. In addition, this alternative may allow for more consistent evaluation standards, rather than using a different source of deposits data for different categories of large banks. However, the agencies have also considered that banks with assets of over $10 billion have greater capacity to collect and maintain deposits data. The agencies also seek feedback on whether a longer transition period to begin collecting and reporting deposits data for large banks with assets of $10 billion or less to begin to collect and maintain deposits data would make this alternative more feasible.

Wholesale Banks and Limited Purpose Banks. Wholesale banks and limited purpose banks would not be required to collect or maintain deposits data under the proposal.

2. Reporting of Deposits Data

a. Large Banks With Assets of Over $10 Billion

The agencies propose that large banks with assets of over $10 billion would be required to report the aggregate dollar amount of deposits drawn from each county, state, and multistate MSA, and at the institution level based on average annual deposits (calculated based on average daily balances as provided in statements such as monthly or quarterly statements, as applicable) from the respective geography. The agencies intend for this approach to appropriately account for deposits that vary significantly over short time periods or seasonally. As discussed above, the reported deposits data would inform bank metrics, benchmarks, and weighting procedures for the Retail Lending Test and Community Development Financing Test.

In addition, the agencies seek feedback on requiring large banks to report the number of depositors at the county level. This data would be used to support agency analysis of deposits data and could be used to support an alternative approach of using the proportion of a bank's depositors in each county to calculate the bank's deposit dollars for purposes of the community development financing metrics and benchmarks, as discussed in Section XII.

The agencies are mindful of limiting the use of deposits data that is collected and reported under the proposed rule as appropriate. For this reason, the agencies propose not to make deposits data reported under § __.42 publicly available in the form of a data set for all reporting lenders. The agencies seek feedback on this approach, and whether the agencies should instead publish county-level deposits data in the form of a data set.

b. Large Banks With Assets of $10 Billion or Less, Intermediate Banks, Small Banks, and Wholesale and Limited Purpose Banks

Large banks with assets of $10 billion or less, intermediate banks, small banks, and wholesale and limited purpose banks would not be required to report deposits data under the proposal.

As discussed in Section IX and Section XII, respectively, Summary of Deposits data would be used for measuring the deposits of large banks with assets of $10 billion or less for purposes of calculating the proposed market volume benchmark and community development financing benchmarks, even if a bank elected to collect and maintain deposits data to be used for purposes of calculating its metrics and weights. The agencies believe that not requiring these banks to report this data may reduce new data burden for these banks.

The agencies seek feedback on the tradeoffs of the proposed approach of not requiring deposits data reporting for those banks that elect to voluntarily collect and maintain deposits data under § __.42. While this approach would limit new reporting requirements, it would also not support the calculation of more precise market benchmarks, which requires reported deposits data. If a large bank with assets of $10 billion or less *elects* to collect and maintain deposits data, the agencies seek feedback on the alternative of requiring such a bank to also *report* that deposits data, which would help support more precise benchmarks.

The agencies also seek feedback on an alternative approach of requiring *all* large banks with assets of $10 billion or less to collect, maintain, and report deposits data to further ensure accurate benchmarks and consistent standards for all large banks. In considering this alternative, the agencies seek feedback on whether a longer transition period (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) would help make this alternative more feasible.

Request for Feedback

Question 147. What are the potential benefits and downsides of the proposed approach to require deposits data collection, maintenance, and reporting only for large banks with assets of over $10 billion? Does the proposed approach create an appropriate balance between tailoring data requirements and ensuring accuracy of the proposed metrics? Should the agencies consider an alternative approach of requiring, rather than allowing the option for, large banks with assets of $10 billion or less to collect and maintain deposits data? If so, would a longer transition period for large banks with assets of $10 billion or less to begin to collect and maintain deposits data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible?

Question 148. Should large banks with assets of $10 billion or less that elect to collect and maintain deposits data also be required to report deposits data? Under an alternative approach in which all large banks with assets of $10 billion or less are required to collect and maintain deposits data, should these banks also be required to report the data, or would it be appropriate to limit new data burden for these banks by not requiring them to report the data?

Question 149. What are alternative approaches to deposits data collection and maintenance that would achieve a balance between supporting the proposed metrics and minimizing additional data burden? Would it be preferable to require deposits data collected as a year- or quarterly-end total, rather than an average annual deposit balance calculated based on average daily balances from monthly or quarterly statements?

Question 150. Should deposits sourced from commercial banks or other depository institutions be excluded from the deposits data that is reported or optionally maintained by banks? Should other categories of deposits be included in this deposits data?

Question 151. For what types of deposit accounts, such as pre-paid debit card accounts, and Health Savings Accounts, might depositor location be unavailable to the bank? For these account types, is it appropriate to require the data to be reported at the institution level? Should brokered deposits be reported at the institution level as well?

Question 152. What is the appropriate treatment of non-brokered reciprocal deposits? Should a non-brokered reciprocal deposit be considered as a deposit for the bank sending the non-brokered reciprocal deposit, but not be considered as a deposit for the bank receiving the reciprocal deposit?

Question 153. Do bank operational systems permit the collection of deposit information at the county-level, based on a depositor's address, or would systems need to be modified to capture this information? If systems need to be modified or upgraded, what would the associated costs be?

Question 154. In order to reduce burden associated with the reporting of deposits data, what other steps can the agencies take or what guidance or reporting tools can the agencies develop to reduce burden while still ensuring adequate data to inform the metrics approach?

Question 155. Should the agencies consider an alternative approach of publishing a data set containing county-level deposits data in order to provide greater insight into bank performance?

C. Retail Lending Data

1. Overview

The agencies propose requiring large banks to collect, maintain, and report certain retail lending data, as applicable, for small business, small farm, automobile, and home mortgage loans (including closed-end home mortgages, open-end home mortgages, and multifamily loans). As discussed above, much of the retail lending data needed to examine a bank under the proposed Retail Lending Test is already currently collected and reported by large banks under the CRA regulations. The agencies propose to reduce burden associated with small business and small farm loan data by using the current requirements and data collection and reporting process that banks are familiar with in the short term, as discussed below. In the longer term, the CRA's data collection and reporting requirements for small business loans and small farm loans would be eliminated and replaced by the CFPB's section 1071 data collection and reporting requirements.

The agencies also propose to tailor the data collection and reporting of automobile loans by only requiring large banks with assets of over $10 billion to collect, maintain and report this data. The data necessary to analyze CRA performance for automobile loans are loan amount at origination, loan location (state, county, census tract), and borrower income. Further, the proposal seeks feedback on whether to require large banks to collect and report one additional field for small business and small farm loans before the CFPB's section 1071 data is available. An indicator of whether a loan is to a business or farm with gross annual revenues of more than $250,000 but less than or equal to $1 million (using the revenues that the bank considered in making its credit decision) would allow the agencies to distinguish loans made to the smallest businesses and farms before the CFPB's section 1071 data is available.

In addition, the agencies propose different standards based on bank size because a bank's capacity to collect, maintain, and report data increases as a bank increases in size and resources, regardless of business strategy. The agencies propose data collection and reporting requirements for large banks using prescribed formats. The prescribed format requirements would not apply to small banks that elect to be examined under the metrics-based Retail Lending Test or to intermediate banks. Instead, examiners would use data that small and intermediate banks maintained in their own format or reported under other regulations, *e.g.,* HMDA.

2. Small Business and Small Farm Loans

Data Collected and Maintained. As required under the existing CRA regulation, the agencies propose to require the collection and maintenance of the following data related to small business loan and small farm loan originations and purchases by the bank: (i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file; (ii) an indicator for the loan type as reported on the bank's Call Report; (iii) the date of the loan origination or purchase; (iv) loan amount at origination or purchase; (v) the loan location (state, county, census tract); (vi) an indicator for whether the loan was originated or purchased; and (vii) an indicator for whether the loan was to a business or farm with gross annual revenues of $1 million or less.

In addition, the agencies seek feedback on an additional requirement for banks to collect and maintain an indicator of whether the loan was to a business or farm with gross annual revenues of $250,000 or less. This additional indicator would allow the agencies to implement the borrower distribution analysis for small businesses and small farms with gross annual revenues of $250,000 or less before the availability of CFPB's section 1071 data. The agencies seek feedback on the costs and benefits of requiring this potential additional indicator.

Reported Data. The agencies propose to require all large banks to report on an annual basis the aggregate number and amount of small business loans and small farm loans for the prior calendar year for each census tract in which the bank originated or purchased a small business or small farm loan by loan amounts in the categories of $100,000 or less, more than $100,000 but less than or equal to $250,000, and more than $250,000. A large bank would also report the aggregate number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less (using the revenues that the bank considered in making its credit decision). This data enables the agencies to conduct a borrower distribution analysis that shows the level of lending to small businesses of different revenue sizes. The agencies are also considering requiring the reporting of the number and amount of small business loans and small farm loans for each census tract for which the borrower had business revenue of $250,000 or less. The agencies seek feedback on whether to include this additional reporting data point.

The agencies would publish a bank's small business and small farm data aggregated at the county-level. The agencies propose to use the existing small business loan and small farm loan data collection and reporting requirements. However, the agencies propose to use the CFPB's section 1071 data once it is available.[287]

3. Home Mortgage Lending

Under the proposal, banks would be required to collect, maintain, and report home mortgage data similar to current regulatory requirements. If a bank is a HMDA reporter, the bank (other than an intermediate bank or a small bank) would be required to report the location of each home mortgage loan outside of the MSAs in which the bank has home or branch office.

Some banks that are not mandatory HMDA reporters may do enough mortgage lending that the agencies would consider one of the mortgage loan categories a major product line. This could occur, for example, if a bank with a largely online lending business model operated its headquarters in a micropolitan area and had no branches in MSAs. The evaluation of such a bank's retail lending performance would be less accurate if the bank did not collect, maintain, or report its mortgage loan data.

The agencies therefore seek feedback on whether certain banks that are not mandatory reporters under HMDA should be required to collect and maintain, or report, mortgage loan data. One option would be to require any large bank that is not a mandatory HMDA reporter due to the locations of its branches, but that otherwise meets the HMDA size and lending activity requirements, to collect, maintain, and report the mortgage loan data necessary to calculate the retail lending volume screen and distribution metrics. This requirement would narrowly tailor additional data collection requirements to affect only banks that do a substantial volume of mortgage lending. A bank that, for example, specialized in small business lending and made only a few incidental mortgage loans would not be required to collect mortgage data under this alternative, as mortgage lending would not be a significant contributor to the agencies' evaluation of its retail lending performance regardless. Furthermore, this alternative approach would only be applied to large banks, to avoid unduly burdening intermediate and small banks in recognition of their more limited capacities.

Under this alternative approach, the agencies would consider requiring banks as described above to collect and maintain the dollar amount of loans at origination or purchase, an indicator for whether the loan is a closed-end home mortgage loan, an open-end home mortgage loan, or a multifamily loan, the location of each of the bank's home mortgage loan origination or purchase, the annual income relied upon when making the loan, and an indicator of whether the loan was an origination or a purchase. These data fields would allow the calculation of all the bank's retail lending metrics for mortgage lending, clarifying expectations for banks and facilitating a more complete and accurate analysis by including this information in the bank metrics.

Under this alternative proposal, banks would collect, maintain, and report home mortgage data on open- and closed-end one-to-four-unit home mortgages and on multifamily loans. Open-end mortgages and multifamily loans would be treated as separate product lines for determining major product lines and for evaluation under the metrics tests. A modification of this alternative proposal would be to require these same banks to report the data, as well as collect and maintain it. A reporting requirement would allow for more accurate benchmarks in the markets these banks serve; however, it could also be more burdensome for those banks.

The agencies seek comment on the appropriateness of this alternative approach for new data collection, maintenance, and reporting requirements for home mortgage loans by non-HMDA reporters.

[287] As noted above, the CFPB's Section 1071 Rulemaking will effect changes directed by section 1071 of the Dodd-Frank Act requiring financial institutions to compile, maintain, and submit to the CFPB certain data on applications for credit for women-owned, minority-owned, and small businesses. *See* 86 FR 56356 (Oct. 8, 2021), as corrected by 86 FR 70771 (Dec. 13, 2021).

4. Automobile Lending

The agencies propose that automobile loans would be the only consumer loan category with data collection and reporting requirements, and that these new requirements would apply only to banks with assets of over $10 billion. The metrics-based proposal would require banks with assets of over $10 billion to collect and maintain, until the completion of the bank's next CRA examination, the following data for automobile loans originated or purchased by the bank during the evaluation period: (i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file; (ii) the date of loan origination or purchase; (iii) the loan amount at origination or purchase; (iv) the loan location (state, county, census tract); (v) an indicator for whether the loan was originated or purchased by the bank; and (vi) the borrower's annual income the bank relied on when making its credit decision. In addition, a bank with assets of over $10 billion would also be required to report the aggregate number and amount of automobile loans for each census tract in which the bank originated or purchased an automobile loan and the number and amount of those loans made to low- and moderate-income borrowers. As discussed in Section VIII, it is important to collect data for automobile loans because other market sources lack the comprehensiveness required to construct the necessary metrics and because automobile loans are an important credit need in some markets.

The agencies propose to not publish automobile lending data for individual banks in the form of a data set for all reporting banks. Given that automobile lending data is not required under the current CRA regulations, the agencies are mindful of limiting the use of collected and reported automobile lending data as appropriate. The agencies seek feedback on whether, alternatively, it would be useful to publicly disclose county-level automobile lending data in the form of a data set. In order to reduce burden associated with reporting automobile loans for banks with assets of over $10 billion, the agencies are also exploring the feasibility, including costs, of developing a certified geocoding and aggregation platform in the future that banks could use to geocode and aggregate their data.

A bank that qualifies for evaluation under the small bank performance standards but elects evaluation under the metrics-based Retail Lending Test would not be required to collect, maintain, and report the data required for large banks in a prescribed interagency format. Instead, as proposed for intermediate banks, examiners would use data the bank maintained in its own format or reported under other regulations. Data for these banks would be measured against the benchmarks created using data from banks with assets over $10 billion.

Request for Feedback

Question 156. Should banks collect and report an indicator for whether the loan was made to a business or farm with gross annual revenues of $250,000 or less or another gross annual revenue threshold that better represents lending to the smallest businesses or farms during the interim period before the CFPB Section 1071 Rulemaking is in effect?

Question 157. Would the benefits of requiring home mortgage data collection by non-HMDA reporter large banks that engage in a minimum volume of mortgage lending outweigh the burden associated with such data collection? Does the further benefit of requiring this data to be reported outweigh the additional burden of reporting?

Question 158. Should large banks with assets of $10 billion or less be required to collect, maintain, and report automobile lending data? If so, would a longer transition period for large banks with assets of $10 billion or less to begin to collect, maintain, and report automobile lending data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value from being able to use these data in the construction of metrics and benchmarks outweigh the burden involved in requiring data collection and reporting by these banks?

Question 159. Should the agencies streamline any of the proposed data fields for collecting and reporting automobile data? If so, would it still allow for constructing comprehensive automobile lending metrics?

Question 160. Should the agencies consider publishing county-level automobile lending data in the form of a data set?

D. Community Development Financing Activity Data

The agencies propose to require large banks, intermediate banks that opt into the Community Development Financing Test, and wholesale and limited purpose banks to collect and maintain community development financing data. Under the proposal, large banks and wholesale and limited purpose banks would be required to collect and maintain the information in a format prescribed by the agencies, while intermediate banks that opt into the Community Development Financing Test would have the choice to either collect and maintain community development financing data in the prescribed format or a format of the bank's choosing. Large banks and wholesale and limited purpose banks would be required to report community development financing data. Small banks would not be subject to regulatory data collection and maintenance requirements for community development financing activities, even if they request consideration for community development financing activities.

The proposed community development financing data would be necessary to construct community development financing metrics and benchmarks for large banks, which would be used to consistently evaluate the dollar amount of a bank's community development lending and investments as discussed in Section XII.

1. Data Required To Be Collected and Maintained

Under the proposal, large banks and wholesale and limited purpose banks would be required to collect and maintain the information listed in § __.42(a)(5)(ii). The data fields include specific requirements under the categories of general information, such as the name of organization or entity, activity type, community development purpose; activity detail, which may include, for example, whether the activity was a low-income housing tax credit investment or a multifamily mortgage loan; indicators of the impact of the activity; location information; other details, such as indicators of whether the bank has retained certain types of documentation, such as rent rolls, to assist with verifying the eligibility of the activity; and the allocation of the dollar value of the activity to specific geographies, if available. Collecting and maintaining individual activity-level data would allow examiners to verify that activities qualify. Additionally, this information would allow examiners to review the impact and responsiveness of community development activities. The agencies intend to develop a template that would help banks to gather information in a consistent manner. Information provided on the template would help the agencies understand the impact and responsiveness of activities during the Impact Review of community development financing activities.

Intermediate banks that opt to be evaluated under the Community Development Financing Test would need to collect and maintain the information listed in § __.42(a)(5)(ii), but would have the choice to either collect and maintain this community development financing data in a format of the bank's choosing, or in the prescribed format, and would not be required to report the data. For intermediate banks evaluated under the status quo intermediate bank community development evaluation, banks would not be required to collect and maintain data. Consistent with the current approach, these banks would continue to need to demonstrate that community development activities qualify.[288] This approach is intended to appropriately tailor data collection and reporting requirements to account for differences in bank capacity.

2. Data Reporting

The agencies propose to require large banks and wholesale and limited purpose banks to report the community development financing data discussed above, with the exception of the name of organization or entity supported, which the agencies believe is sufficient to be collected and maintained, and does not need to be reported. This data would be used to construct metrics and benchmarks for evaluating bank community development financing performance. The benchmarks would provide consistent data points to banks, the agencies, and the public about the level of community development activities in an area and would provide context for interpreting a bank's community development financing metric, as discussed in Section XII. An intermediate bank could opt to report community development financing data but would not be required to do so.

The agencies propose that community development financing data be reported to the agencies at the individual activity level. The agencies believe this information is necessary to construct the proposed community development financing metrics and benchmarks and to inform both the quantitative and qualitative analyses. Individual activity-level data would also allow for the agencies to allocate activities that benefit multiple counties or states through a standard methodology, as discussed in Section XII, if a specific allocation is not provided by the bank. The agencies considered that reported data at the individual activity level would not require banks to aggregate community development data at the county level, which may be more burdensome. The agencies seek feedback on whether, rather than reporting data at the individual activity level, it would be more appropriate and sufficient to report data at the county-level for each institution. The agencies also seek feedback on whether to require banks to report the location of each activity in one of two ways, at the bank's option: (i) In the form of a specific address or addresses; or (ii) in the form of a census tract or tracts in which the activity was located. This would allow banks either to avoid disclosing the specific address of an activity in reported data if they wish to do so, or to avoid having to geocode their activities at the census tract level if they do not wish to do so.

Request for Feedback

Question 161. How might the format and level of data required to be reported affect the burden on those banks required to report community development financing activity data, as well as the usefulness of the data? For example, would it be appropriate to require reporting community development financing data aggregated at the county-level as opposed to the individual activity-level?

Question 162. What other steps can the agencies take, or what procedures can the agencies develop, to reduce the burden of the collection of additional community development financing data fields while still ensuring adequate data to inform the evaluation of performance? How could a data template be designed to promote consistency and reduce burden?

E. Retail Services and Products Data

The agencies propose to require large banks to collect and maintain information to support the analysis of a bank's delivery systems and credit and deposit products, as described in Section XI, as applicable. Certain data collection and maintenance requirements would be tailored to only apply to large banks with assets of over $10 billion. Intermediate and small banks, at their option, would provide examiners with information on retail services and products activities in the format used in the bank's normal course of business, if the bank seeks additional consideration for these activities. As previously discussed, retail services performance data is not currently collected and reported to the agencies; instead, banks provide certain retail services information in the bank's public file.

Required Data Collection. Under the proposal, large banks would be required to collect and maintain information listed in § __.42(a)(4)(ii) to support the proposal's branch analysis, including: (i) Number and location of branches; (ii) whether branches are full-service facilities (by offering both credit and deposit services) or limited-service facilities; (iii) locations and dates of branch openings and closings; (iv) hours of operation by location; and (v) services offered at each branch that are responsive low- and moderate-income individuals and census tracts. This information is consistent with the information currently provided in a bank's public file.

To support the analysis of remote service facilities availability, the agencies propose requiring information similar to what is being requested for branches, including: (i) Number and location of remote service facilities; (ii) whether remote service facilities are deposit-taking, cash-advancing, or both; (iii) locations and dates of remote service facility openings and closings; and (iv) hours of operation of each remote service facility. The requirement to collect remote service facilities data would be a change from the current practice, under which banks have the option to provide ATM location data in a bank's public file. The agencies believe proposing to require data collection for branches and remote service facilities is appropriate in light of the proposed changes (as described in Section XI) which make greater use of benchmarks in the evaluation of a bank's delivery systems. The agencies seek feedback on whether to require the collection and maintenance of branch and remote service availability data as proposed or, alternatively, whether to continue with the current practice of reviewing the data from the bank's public file (*i.e.,* where branch data is required and remote service facility availability is optional).

In addition, the proposal's data collection and maintenance requirements would facilitate a review of whether digital and other delivery systems are responsive to the needs of low- and moderate-income individuals. Specifically, the proposal would require large banks with assets of over $10 billion to collect and maintain information on: (i) The range of services and products offered through digital and other delivery systems and (ii) digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, respectively, such as the number of savings and checking accounts opened through digital and other delivery systems and accountholder usage of digital and other delivery systems. The agencies

[288] *See* Q&A § __.12(h)–8.

acknowledge that banks may have varying methods and means for assessing the responsiveness of their digital delivery systems to low- and moderate-income individuals. Therefore, the agencies seek feedback on whether to require that these specific data points be used to evaluate a bank's digital and other delivery systems, or whether to allow banks the flexibility to determine which data points to collect, maintain, and provide for evaluation.

For the proposed review of responsive deposit products, the agencies would require large banks with assets of over $10 billion to collect and maintain: (i) The number of responsive deposit accounts that were opened and closed for each calendar year in low-, moderate-, middle-, and upper income census tracts, respectively; and (ii) the percentage of responsive deposit accounts compared to total deposit accounts for each year of the evaluation period. These data would also be required for large banks with assets of $10 billion or less that elect to have their responsive deposit products evaluated. The agencies seek feedback on these requirements, and whether any other specific data points would support the evaluation of responsive deposit products.

Format for Information Collection. The agencies are considering whether to use a standardized template to facilitate the collection and maintenance of data for the Retail Services and Products Test. A template would potentially offer flexibility for providing quantitative and qualitative information, which may change over time. This flexibility may be particularly relevant for aspects of retail services that banks have not consistently provided to the agencies previously, such as for digital and other delivery systems and deposit products.

Request for Feedback

Question 163. Should the agencies require the collection and maintenance of branch and remote service availability data as proposed, or alternatively, should the agencies continue with the current practice of reviewing this data from the bank's public file?

Question 164. Should the agencies determine which data points a bank should collect and maintain to demonstrate responsiveness to low- and moderate-income individuals via the bank's digital and other delivery systems such as usage? Alternatively, should the agencies grant banks the flexibility to determine which data points to collect and maintain for evaluation?

Question 165. Are the proposed data collection elements for responsive deposit products appropriate, or are there alternatives to the proposed approach that more efficiently facilitate the evaluation of responsive deposit products? Should the agencies require collection and maintenance of specific data elements for the evaluation of responsive deposit products? Alternatively, should the agencies grant banks the flexibility to determine which data points to collect and maintain for evaluation?

Question 166. Does the proposed retail services data exist in a format that is feasibly transferrable to data collection, or would a required template provided by the agencies be sufficient in the collection of retail services and products information?

Question 167. What steps can the agencies take to reduce burden of the proposed information collection requirements while still ensuring adequate information to inform the evaluation of services?

Question 168. Should large banks with assets of $10 billion or less be required to collect and maintain data on deposit product responsiveness and/or digital and other delivery systems? If so, would a longer transition period to begin to collect and report such data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value from being able to use this data outweigh the burden involved in requiring data collection by these banks?

F. Community Development Services Data

The agencies propose to require that large banks with assets of over $10 billion collect and maintain the community development services information listed in § __.42(a)(6), in machine readable form, as prescribed by the agencies. The data required to be collected and maintained would include the number of full-time equivalent employees at the facility-based assessment area, state, multistate MSA, and institution levels; total number of community development services hours performed by the bank in each facility-based assessment area, state, multistate MSA, and in total; date of activity; name of organization or entity; community development purpose; capacity served; whether the activity is related to the provision of financial services; and the location of the activity. To improve consistency in evaluations, the agencies intend to develop a standardized template for community development services data. Large banks with assets of $10 billion or less would have the option, but would not be required, to collect and maintain the community development services data in § __.42(a)(6); if they do so, they would have the option to collect and maintain data in their own format, or to use the prescribed template. This information would facilitate the proposed evaluation of a bank's community development service activities.

In addition, the agencies propose that large banks with assets of over $10 billion would report the number of full-time equivalent employees at the facility-based assessment area, state, multistate MSA, and institution levels; and the total number of community development services hours performed by the bank in each facility-based assessment area, state, multistate MSA, and in total. This information is necessary to compute the proposed community development services metric, and the agencies do not believe it is necessary to require banks to report additional community development services information. The reported data would be used to develop a standard quantitative measure to evaluate community development services for banks with assets of over $10 billion.

The agencies seek feedback on whether large banks with assets of $10 billion or less should also be required to collect and maintain community development service data in a machine readable form, as prescribed by the agencies, equivalent to the data required to be collected and maintained by large banks with assets of over $10 billion. The agencies consider that this alternative may support more consistency and clarity in evaluations of community development services for all large banks.

Request for Feedback

Question 169. Should large banks with assets of $10 billion or less be required to collect community development services data in a machine readable form, as prescribed by the agencies, equivalent to the data required to be collected and maintained by large banks with assets of over $10 billion? Under this alternative, should large banks with assets of $10 billion or less have the option of using a standardized template or collecting and maintaining the data in their own format? If large banks with assets of $10 billion or less are required to collect and maintain community development services data, would a longer transition period for these banks to begin to collect and maintain deposits data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value from being able to use this data in the construction of a metric outweigh the burden involved in requiring data collection by these banks?

Question 170. Should large banks with assets of over $10 billion be required to collect, maintain, and report data on the number of full-time equivalent employees at the assessment area, state, multistate MSA and institution level in order to develop a standardized metric to evaluate community development service performance for these banks?

G. Data Collection and Reporting Requirements for Operations Subsidiaries, Operating Subsidiaries, and Affiliates

The proposal recognizes that a significant amount of bank activity may be conducted through a bank's operations subsidiaries, operating subsidiaries, and affiliates, necessitating appropriate data collection and reporting requirements. These data collection, maintenance, and reporting requirements are consistent with the requirements of the bank being evaluated.

1. Operations Subsidiaries and Operating Subsidiaries

The agencies propose to require bank operations subsidiaries and operating subsidiaries, as applicable, that engaged in retail lending, retail services and products, community development financing and community development services activities to collect, maintain, and report such activities for purposes of evaluating the bank's performance tests, consistent with the requirements for the bank being evaluated. This would enable the agencies to capture all of the activities of operations subsidiaries and operating subsidiaries in CRA evaluations appropriately, in recognition that banks exercise a high level of ownership, control, and management of their operations subsidiaries or operating subsidiaries, as applicable.

2. Other Affiliates

The agencies propose to require a bank that elects to have its affiliate activity considered, to also collect, maintain, and report the data for these activities that the bank would have collected, maintained, and reported if it engaged in these activities directly. Under the proposal, a bank that elects to have the agencies consider loans by an affiliate, for purposes of the Retail Lending Test, and loans or investments for purposes of the Community Development Financing Test, Community Development Financing Test for Wholesale or Limited Purpose Banks, or under an approved strategic plan, would be required to collect, maintain, and report those loans and investments data. For home mortgage loans, the bank would also be prepared to identify the home mortgage loans reported by the affiliate under Regulation C, if applicable, or as required under proposed § __.42(a)(3) had the loans been originated or purchased by the bank.

H. Data for Delineating Assessment Areas

Under the proposal, large banks would have data collection and reporting requirements for assessment area delineations. All other banks (small and intermediate banks) would be required to collect and maintain data as required for inclusion in their CRA public files, as is currently required. These banks would not have to report assessment area data. Small and intermediate banks could opt to use the large bank data collection and reporting format for providing data to examiners during their evaluation. For all size banks, the agencies would include assessment area delineations in performance evaluations.

1. Facility-Based Assessment Areas

The proposal's requirements for large bank reporting of facility-based assessment areas would include a list for each assessment area showing the states, MSAs, metropolitan divisions, and nonmetropolitan counties within each facility-based assessment area. Under the proposal, large banks would be required to delineate at least full counties for facility-based assessment areas.

2. Retail Lending Assessment Areas

Under the proposal, large banks would be required to collect and report annually to the agencies a list showing the MSAs and counties within each retail lending assessment area. The agencies could verify retail lending assessment area designations using HMDA and CRA small business/small farm data, and the agencies could explore calculating retail lending assessment areas for banks.

3. Intermediate and Small Bank Requirements

As mentioned earlier, small and intermediate banks would not have to report assessment area data under the proposal. Instead these banks would continue to maintain a CRA public file with required information, including: (i) A list of the bank's branches, their street addresses and census tract numbers; (ii) a list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses and census tract numbers; and (iii) a map of each assessment area showing the boundaries of the area and identifying each state, county, and census tract contained within the area, either on the map or in a separate list.

Request for Feedback

Question 171. Should small banks that opt to be evaluated under the metrics-based Retail Lending Test be required to collect, maintain, and report related data or is it appropriate to use data that a small bank maintains in its own format or by sampling the bank's loan files?

Question 172. Would a tool to identify retail lending assessment areas based on reported data be useful?

I. Disclosure of HMDA Data by Race and Ethnicity

Currently, CRA performance evaluations include significant data on mortgage lending to low- and moderate-income borrowers and low- and moderate-income census tracts, including the number and percentage of loans made by the bank being evaluated. These data also compare the bank's lending to the aggregate lending in the assessment area, distributed by borrower income and geography, as well as the demographic make-up of the assessment area being evaluated. This is done on the basis of income only (low, moderate, middle, and upper). CRA performance evaluations do not currently report data on lending by race or ethnicity. However, for mortgage lending, race and ethnicity data are already collected and reported by most banks subject to the large bank CRA lending test through HMDA. These data are not included in any organized, easy-to-read format in the CRA performance evaluation.

The agencies propose to disclose in the CRA performance evaluation of a large bank the distribution of race and ethnicity of the bank's home mortgage loan originations and applications in each of the bank's facility-based assessment areas, and as applicable, in its retail lending assessment areas. Under the proposal, disclosure would be made for each year of the evaluation period using data currently reported under HMDA. The agencies would disclose the number and percentage of the bank's home mortgage loan originations and applications by race and ethnicity and compare that data against the demographic data of the assessment area and the aggregate mortgage lending of all lenders in such area. The disclosure of race and ethnicity of the bank's home mortgage loan originations and applications on the bank's CRA performance evaluation would have no direct impact on the conclusions or ratings of the bank and would not constitute a lending analysis for the purpose of evaluating redlining risk factors as part of a fair lending examination. However, separate from this proposed disclosure, to the extent that analysis of HMDA reportable mortgage lending, along with additional data or information evaluated during a fair lending examination, leads the relevant agency to conclude that discrimination occurred, a bank's CRA rating may be affected (*see* proposed § __.28(d)).

The agencies believe that public disclosure of these data in each assessment area would increase the transparency of a bank's mortgage lending operations.

Request for Feedback

Question 173. Should the agencies disclose HMDA data by race and ethnicity in large bank CRA performance evaluations?

XX. Content and Availability of Public File, Public Notice by Banks, Publication of Planned Examination Schedule, and Public Engagement

The agencies recognize that transparency and public engagement are fundamental aspects of the CRA evaluation process and aim to reinforce these objectives in this rulemaking. In order to ensure that a bank's CRA performance evaluation and related information are more readily accessible to the public, the agencies propose allowing any bank with a public website to post its CRA public file there. The proposal also clarifies the agencies' treatment of public comments in connection with CRA examinations. The agencies are also proposing to create a process whereby the public can provide input on community credit needs and opportunities in specific geographic areas.

A. Public File

1. Current Content Required in Public File

Under the current CRA standards, a bank is required to maintain a public file that includes specific information on the bank's current business model, services, and most recent performance evaluation. The public file must include all written comments received from the public for the current year and each of the two prior calendar years that specifically relate to the bank's performance in helping to meet community credit needs, along with any responses by the bank.[289] The public file is also required to contain: A list of the bank's current branches, their street addresses, and geographies,[290] noting branches that have opened or closed during the evaluation period; [291] a list of retail products and services, and if a bank chooses, information regarding alternative delivery systems; [292] and a map of each of the bank's assessment areas.[293]

A bank, except a small bank or a bank that was a small bank in the prior calendar year, must include, when applicable, for each of the prior two calendar years: (i) The number and amount of consumer loans to low-, moderate-, middle- and upper-income individuals, located in low-, moderate-, middle- and upper-income census tracts; and located inside the bank's assessment areas and outside of the bank's assessment areas.[294] The bank must also include a copy of the CRA Disclosure Statement.[295] HMDA reporting institutions must include a statement in the public file that their HMDA data may be obtained on the CFPB's website.[296]

A small bank or a bank that was a small bank during the prior calendar year must include in its public file, (i) the bank's loan-to-deposit ratio for each quarter; and (ii) if it elects to be evaluated under other performance tests, any additional required information.[297]

A bank that received less than a ''Satisfactory'' rating during its most recent examination must include a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community, in its public file.[298] This description must be updated quarterly.

A bank may opt to add any other information to the public file.[299]

[289] 12 CFR __.43(a)(1).
[290] 12 CFR __.43(a)(3).
[291] 12 CFR __.43(a)(4).
[292] 12 CFR __.43(a)(5).
[293] 12 CFR __.43(a)(6).
[294] 12 CFR __.43(b)(1)(i).
[295] 12 CFR __.43(b)(1)(ii).
[296] 12 CFR __.43(b)(2).
[297] 12 CFR __.43(b)(3).
[298] 12 CFR __.43(b)(5).
[299] 12 CFR __.43(a)(7).

2. Proposed Clarification to Specific Requirements for Information in Public File

In general, the agencies propose to maintain the current requirements regarding information that banks are required to include in their public file, with additional clarification regarding specific requirements. The agencies propose using the term ''census tracts'' instead of the more general term ''geographies'' to specify the level of geography for information on current branches and branches that have been opened or closed during the current year and each of the prior two calendar years. The agencies also propose changes to the information that large banks would need to include in their public file.

Large banks would be required to include assessment area maps that include both their facility-based assessment areas and, when applicable, retail lending assessment areas that identify the census tracts contained within those areas. In addition, large banks that are subject to data reporting requirements described in § __.42 would be required to include in their public file a written notice that the bank's CRA Disclosure Statement pertaining to the bank, its operations subsidiaries, or operating subsidiaries, as applicable, and its other affiliates, if applicable, may be obtained on the FFIEC's website. The bank would be required to include the written notice in the public file within three business days of its receipt from the FFIEC.

A bank of any size that received less than a ''Satisfactory'' rating during its most recent examination would continue to be required to include a description of its current efforts to improve its performance in its public file. The agencies propose additional clarification specifying that the description would be required to be updated quarterly by March 31, June 30, September 30, and December 31, respectively.

3. Current Requirements for Location of Public Information

Under the current CRA regulations, a bank's entire public file must be available at its main office. If a bank operates in more than one state, it must keep a file at one branch office in each of these states. Members of the public may ask to inspect this file at any time during the bank's branch operating hours. Upon request, a bank branch must also provide for inspection, within five days, all of the information in the public file relating to the branch's assessment area. When requested, a bank must also provide a paper copy of its public CRA file, and it is allowed to charge a reasonable fee to cover copying and mailing costs.

4. Proposed Approach for Location of Public Information

The agencies propose to make a bank's CRA public file more accessible by allowing any bank with a public website to include its CRA public file on the bank's public website. Banks would be allowed to retain their public file in digital form only and make paper copies available to the public upon request. Consequently, members of the public interested in the bank's performance in other communities served by the bank would be able to view the entire public file. If a bank does not maintain a public website, the proposal provides that the public file information would be required to be maintained at the main office and, if an interstate bank, at one branch office in each state. Furthermore, banks that do not maintain a public website would have to maintain, at each branch, a copy of the public section of the bank's most recent performance evaluation and a list of services provided by the branch.

This proposal would increase the ease of accessibility of a bank's public file for interested members of the public. A bank would still be required to provide, upon request, copies of its public file to members of the public, either in paper or in digital form, and may continue to charge a reasonable fee for copying and mailing costs. A bank would also continue to be required to ensure that its public file includes information from each of the three previous years, as is the case currently.

B. Public Notice by Banks

1. Current Approach for Public Notices

Currently, a bank must provide the appropriate public notice in the public lobby of its main office and each of its branches, as set forth in appendix B, that includes information about the availability of a bank's public file, the appropriate Federal banking agency's CRA examination schedule, and how a member of the public may provide public comment. A branch of a bank having more than one assessment area shall include certain content in the notice for branch offices. Only a bank that is an affiliate of a holding company, that is not prevented by statute from acquiring additional banks, shall include in the notice how the public can request information about applications covered by the CRA filed by the bank's holding company.

2. Proposed Approach for Public Notices

The agencies propose to continue to require a bank to provide in the public area of its main office and each of its branches the public notice that would be set forth in proposed appendix F. Only a branch of a bank having more than one facility-based assessment area would be required to include certain content in the notice for branch offices. Notices are not required for retail lending assessment areas. A bank that is an affiliate of a holding company, that is not prevented from acquiring additional banks, must include the last sentence of the notices.

C. Publication of Planned Examination Schedule

1. Current Approach for Publication of Planned Examination Schedule

Under the current regulations, the agencies publish at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations in that quarter.

2. Proposed Approach for Publication of Planned Examination Schedule

The agencies propose to codify the current practice of publishing at least 60 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations during the next two quarters. This additional notice to the public provides stakeholders more time to comment on a bank's CRA performance in advance of the examination.

Further, the agencies propose to codify the practice of forwarding all public comments received regarding a bank's CRA performance to the bank and may also publish the public comments on the appropriate Federal banking agency's public website. These public comments would be taken into account in connection with the bank's next scheduled CRA examination.

D. Public Engagement

1. Current Approach for Public Engagement

Currently, members of the public may submit comments to the agencies regarding a bank's CRA performance over the relevant evaluation period. Members of the public may also submit comments in connection with banking applications, including in connection with bank mergers and acquisitions.

2. Proposed Approach for Public Engagement

The agencies encourage communication between members of the public and banks, including through the submission of public comments regarding community credit needs and opportunities as well as a bank's record of helping to meet community credit needs. To advance this public engagement, the agencies intend to establish a way for the public to provide feedback on community credit needs and opportunities in specific geographies, as a complement to, but distinct from, feedback on individual bank performance. In addition, such an approach would be a complement to, not a substitute for, examiners seeking feedback on bank performance from members of a bank's community as part of the CRA evaluation.

Further, the agencies are considering whether it would be feasible, given the timing of data availability and data verification practices, for the agencies to publish certain retail lending and community development financing metrics and branch distribution information in advance of completing an examination to provide additional information to the public.

Request for Feedback

Question 174. Are there other ways the agencies could encourage public comments related to CRA examinations, including any suggested changes to proposed § __.46?

Question 175. Is there additional data the agencies should provide the public and what would that be?

Question 176. Should the agencies publish bank-related data, such as retail lending and community development financing metrics, in advance of an examination to provide additional information to the public?

Question 177. Should the agencies ask for public comment about community credit needs and opportunities in specific geographies?

XXI. Transition

The proposal would establish an effective date for the final rule the first day of the first calendar quarter that begins at least 60 days after publication in the **Federal Register**. The agencies also propose applicability dates for various provisions of the regulations which are applicable on, or over a period of time after, the effective date of the final rule.

The agencies believe varying applicability dates would provide banks with time to transition from the current regulations to the proposed regulations for: Collecting, maintaining, and reporting data; transitioning systems; and establishing policies and procedures necessary for the orderly implementation of the proposed regulatory framework.

The agencies intend that, during the period between the final rule's effective date and the applicability dates in the final rule for certain provisions (transition period), the agencies' current CRA regulations will remain in effect for these provisions. The agencies would retain the authority to ensure an orderly transition between the two CRA frameworks and expect to issue guidance regarding the applicability of the relevant CRA framework during this time. The agencies also intend to include their current CRA regulations in agency-specific appendices of a final rule and to sunset these appendices as of the final applicability date, at which point all banks would need to be in compliance with all provisions of the final rule.

A. Applicability Dates for Certain Amendments

The agencies propose that the following provisions become applicable on the effective date of the rule: (i) Authority, purposes, and scope; (ii) facility-based assessment area delineation provisions; (iii) small bank performance standards; (iv) intermediate bank community development performance standards; (v) effect of CRA performance on applications; (vi) content and availability of public file; (vii) public notice by banks; (viii) publication of planned examination schedule; and (ix) public engagement. The agencies believe that setting an applicability date for these provisions on the rule's effective date is appropriate and would not present significant implementation burden to banks because only minor amendments are proposed to these sections of the agencies' current CRA regulations.

B. Applicability Dates for New Requirements

For other provisions, the agencies propose an applicability date of approximately 12 months after publication of a final rule for bank activities conducted on that date and forward.[300] These provisions include: (i) Definitions (except for the revised definitions related to small business loans and small farms loans);[301] (ii) community development definitions; (iii) qualifying activities confirmation and illustrative list of activities; (iv) retail lending assessment areas;[302] (v) areas for eligible community development activity; (vi) performance tests, standards, and ratings, in general (Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, Community Development Services Test, Community Development Financing Test for Wholesale and Limited Purpose Banks, and Strategic Plans); (vii) data collection and certain data reporting requirements; and (viii) Impact Review of Community Development Activities.

Under this approach, banks would have a one-year transition period to prepare for the above provisions to go into effect. The agencies are cognizant that banks would need to adjust systems and train personnel to prepare for the implementation of a final CRA rule. Therefore, the agencies would set an applicability date that is appropriate based on the time of year a final rule is issued, including consideration of whether the beginning of a quarter or of a calendar year is appropriate.

For example, assume that a final rule that includes a 12-month transition period is published at the beginning of Year 1. Bank activity in Year 2 would fall under the new definitions and performance tests included in this proposal. In this example, a large bank's activities in Year 2 would be evaluated under the proposed Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test at the bank's next CRA examination (beginning in or after Year 3, as explained below). Also beginning in Year 2, large banks would be required to establish retail lending assessment areas, and bank activity in these areas would be evaluated at the bank's next CRA examination (beginning in or after Year 3, as explained below). In addition, banks would be expected to begin data collection and maintenance requirements for activities, as applicable, in Year 2.

C. Transition Date for the Definition of Small Business Loans and Small Farm Loans

The agencies propose transitioning from the current small business loan and small farm loan definitions based on the Call Report and instead leveraging the CFPB's proposed data collection on loans to businesses, including farms, with gross annual revenues of $5 million or less. In the short term, the small business loan definition, small farm loan definition, and the current data collection and reporting requirements and processes that banks are familiar with would remain the same.

The agencies propose an effective date for the proposed small business and small farm definitions to be on or after the CFPB would make effective its final rule implementing section 1071. Alternatively, the agencies are also considering a 12-month period to transition their small business and small farm definitions to the new CFPB definitions, once that rulemaking is finalized.

D. Transition Dates for Data Collection, Reporting, and Disclosure Requirements

Banks that would be required to collect new data under the proposal starting 12 months after publication of a final rule, would be required to report such data to the agencies by April 1 of the year following the first year of data collection. Thereafter, banks would be required to report collected data on an annual basis by April 1 of the year following the calendar year for which the data was collected. The agencies intend to eliminate the small business loan and small farm loan data collection and reporting requirements under the CRA regulations after the CFPB's section 1071 data collection and reporting requirements are in place. Likewise, the agencies' data disclosure requirements would become applicable the year following the first year of data collection.

The agencies believe that the applicability dates for these provisions would give banks sufficient time from the date the final rule would be published in the **Federal Register** to revise their systems for data collection and develop new procedures for implementation of the proposed regulatory framework.

E. Start Date for CRA Examinations Under the New Tests

The agencies propose starting CRA examinations pursuant to the proposed evaluation framework and new tests, in §§ __.22 through 28, beginning two years after publication of a final rule.

[300] Loans, investments, or services that were undertaken prior to the applicability date that were eligible for CRA consideration at the time would be considered at the subsequent CRA evaluation.

[301] As explained elsewhere in this proposal, the agencies would continue to maintain the current definitions related to small business loans and small farm loans until such time as the CFPB finalizes and implements its Section 1071 Rulemaking, and section 1071 data becomes available.

[302] As set forth in § __.17 of the proposed CRA regulation, a large bank would designate retail lending assessment areas in any single MSA or in all nonmetropolitan counties within a single state if it originated over 100 home mortgage loans or over 250 small business loans in each of the two preceding years in those geographic areas.

This approach would encompass banks evaluated under one or more of the following proposed tests: Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, Community Development Services Test, and Community Development Financing Test for Wholesale and Limited Purpose Banks. CRA examinations conducted after this start date would evaluate the bank's activities conducted during the prior year (for which the proposal's requirements related to bank activities would already be effective, as described above). CRA examinations conducted immediately after this start date would be conducted using modified procedures until peer data and applicable benchmarks become available.

Likewise, the agencies' inclusion of HMDA demographic information in large banks' CRA performance evaluations would begin two years after publication of a final rule.

As described above in Section IX, until the data collected under CFPB's Section 1071 Rulemaking becomes available, the agencies propose that where small business lending or small farm lending qualifies as a major product line, the bank would be evaluated on its distribution of loans to businesses or farms with gross annual revenues of $1 million or less, rather than separately to those with gross annual revenues of $250,000 or less and more than $250,000 but less than or equal to $1 million. For these product lines, the agencies would calculate a single bank metric, market benchmark, and community benchmark corresponding to the percentage of the bank's loans to, the percentage of all reporter banks' loans to, and the percentage of local businesses or farms with gross annual revenues of less than $1 million.

Because small banks would, under the proposal, continue to be evaluated in the same manner as under the current CRA regulations, no start date is proposed in connection with the small bank performance standards. The agencies believe that this approach would be appropriate because no adjustments would be needed to the bank's systems, policies, or procedures, and no additional burden would be imposed, in order to comply with the proposed rule. Similarly, because intermediate banks would, under the proposal, continue to be evaluated under the current community development test for intermediate banks, no transition period is proposed in connection with this test. Small banks opting into the Retail Lending Test and intermediate banks opting into the Community Development Financing Test would have the same start date for CRA examinations as established for other banks evaluated under these tests.

F. Strategic Plans

The agencies propose that the strategic plan provisions in proposed § __.27 would be applicable 12 months after publication of a final rule. As a result, a bank seeking approval to be evaluated under a strategic plan after this date would submit its plan to its appropriate Federal banking agency for approval consistent with the new requirements for strategic plans under the agencies' proposed CRA regulations. The agencies also propose that the strategic plan provisions of the CRA regulations in effect one day before publication of a final rule (*i.e.,* the agencies' current CRA regulations) would apply to any new strategic plan, including any plan that replaces an expired strategic plan, submitted for approval during the transition period between the date of publication of a final rule and before the applicability date of the proposed strategic plan provisions. A plan submitted during this transition period would remain in effect until the expiration date of the approved plan. Banks that submit for approval a new strategic plan or one that replaces an existing plan between the date on which a final rule is published and the date 12 months after that publication date may submit their plans consistent with the requirements for strategic plans under the agencies' current CRA regulations. Such a plan would remain in effect until the expiration date of the plan.

Further, the Board and the FDIC propose that a strategic plan in effect as of the publication date of a final rule would remain in effect until the expiration date of that plan. The OCC proposes that a strategic plan in effect as of the publication date of a final rule remains in effect until the expiration date of the plan, except for provisions that were not permissible under its CRA regulations as of January 1, 2022. The OCC's CRA regulations require this additional provision because the OCC may have approved some existing strategic plans under the OCC 2020 CRA final rule, which allowed strategic plan provisions that differ from the current CRA regulations. This additional provision is identical to the language included in the OCC's final rule rescinding the OCC 2020 CRA final rule.

Request for Feedback

Question 178. The agencies ask for comment on the proposed effective date and the applicability dates for the various provisions of the proposed rule, including on the proposed start date for CRA examinations under the new tests.

Question 179. Would it be better to tie the timing of a change to the proposed small business and small farm definitions to when the CFPB finalizes its Section 1071 Rulemaking or to provide an additional 12 months after the CFPB finalizes its proposed rule? What are the advantages and disadvantages of each option?

Question 180. When should the agencies sunset the agencies' small business loan and small farm loan definitions?

XXII. Regulatory Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency to consider the impact of its proposed rules on small entities. In connection with a proposed rule, the RFA generally requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and publishes such certification along with a statement providing the factual basis for such certification in the **Federal Register**. An IRFA must contain: (i) A description of the reasons why action by the agency is being considered; (ii) a succinct statement of the objectives of, and legal basis for, the proposed rule; (iii) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (iv) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (v) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap with, or conflict with the proposed rule; and (vi) a description of any significant alternatives to the proposed rule that accomplish its stated objectives.

1. OCC

The OCC currently supervises 1,103 institutions (commercial banks, trust companies, Federal savings associations, and branches or agencies of foreign banks),[303] of which

[303] Based on data accessed using FINDRS on February 21, 2022.

approximately 655 are small entities under the RFA.[304] The OCC estimates that the proposed rule would impact approximately 636 of these small entities. Among these 636 small entities, four are limited purpose banks, two are wholesale banks, and three are evaluated based on an OCC-approved strategic plan.

The OCC reviews the costs associated with the activities necessary to comply with requirements in a proposed rule to estimate expenditures by entities subject to the rule.[305] In doing so, the OCC estimates the total time required to implement the proposed rule and the hourly wage of bank employees who may be responsible for the tasks associated with achieving compliance with the proposed rule. For OCC cost estimates, the OCC uses a compensation rate of $114 per hour.[306]

Because the proposal maintains the current small bank evaluation process and the small bank performance standards, the proposal would not impose any new requirements on OCC-supervised small entities with less than $600 million in assets. However, the OCC believes that these small entities would need to review the proposed rule and ensure their policies and procedures are compliant. The OCC estimates the annual cost for small entities to conduct this review would be approximately $4,560 dollars per bank (40 hours × $114 per hour). For supervised small entities that are defined as intermediate banks under the proposal, *i.e.,* banks with assets between $600 million and $750 million, the proposal would add some additional compliance burden because these banks would be subject to the new Retail Lending Test, but these banks would not be subject to regulatory data collection and maintenance requirements for retail loans. Therefore, the OCC estimates the annual cost for these banks for this additional compliance burden (plus the cost of reviewing the proposed rule and ensuring that policies and procedures are compliant) would be approximately $9,120 (80 hours × $114 per hour).

In general, the OCC classifies the economic impact on a small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Based on these thresholds, the OCC estimates the proposed rule would have a significant economic impact on approximately zero entities, which is not a substantial number. Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

2. Board

The Board is providing an IRFA with respect to the proposed rule. For the reasons described below, the Board believes that the proposal would not have a significant economic impact on a substantial number of small entities. The Board invites public comment on all aspects of its IRFA.

a. Reasons Action Is Being Considered

The agencies are proposing changes to update and clarify their CRA regulations, which establish the framework and criteria by which the agencies assess a bank's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations. Additional discussion of the rationale for the proposal is provided in the introductory paragraphs to, as well as throughout, the **SUPPLEMENTARY INFORMATION.**

b. Objectives of the Proposed Rule

The CRA vests the agencies with broad authority to promulgate regulations to carry out the purposes of the CRA with respect to the institutions that each agency supervises.[307] The proposed changes to the agencies' CRA regulations are guided by the specific objectives laid out in the introductory paragraphs of the **SUPPLEMENTARY INFORMATION.**

c. Description and Estimate of the Number of Small Entities

Board-supervised institutions that would be subject to the proposed rule are state member banks (as defined in section 3(d)(2) of the Federal Deposit Insurance Act of 1991), and uninsured state branches of a foreign bank (other than limited branches) resulting from certain acquisitions under the International Banking Act, unless such bank does not perform commercial or retail banking services by granting credit to the public in the ordinary course of business.

The SBA has adopted size standards providing that depository institutions with average assets of less than $750 million over the preceding year (based on the institution's four quarterly Call Reports) are considered small entities.[308] The Board estimates that approximately 450 Board-supervised small entities would be subject to the proposed rule.[309] Of these, approximately 420 would be considered small banks under the proposal, and approximately 30 would be considered intermediate banks under the proposal. The proposal would define ''small bank'' to mean a bank that had average assets of less than $600 million in either of the prior two calendar years, and would define ''intermediate bank'' to mean a bank that had average assets of at least $600 million in both of the prior two calendar years and average assets of less than $2 billion in either of the prior two calendar years, in each case based on the assets reported on its four quarterly Call Reports for each of those calendar years.[310]

d. Estimating Compliance Requirements

The proposal includes a new evaluation framework for evaluating the CRA performance of banks that is tailored by bank size and business model. For example, the agencies propose an evaluation framework that

[304] The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $750 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if the OCC should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2021, 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. SBA's Table of Size Standards.

[305] The OCC uses broad categories to capture expenditures. The OCC does not attempt to separately identify the costs associated with each requirement.

[306] To estimate wages the OCC reviewed May 2020 data for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for credit intermediation and related activities (NAICS 5220A1). To estimate compensation costs associated with the rule the OCC uses $114.17 per hour, which is based on the average of the 90th percentile for six occupations adjusted for inflation (2 percent as of Q1 2021), plus an additional 33.4 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2020 for NAICS 522: Credit intermediation and related activities).

[307] 12 U.S.C. 2905.

[308] 87 FR 18627, 18630 (Mar. 31, 2022) (NAICS codes 522110–522190). Consistent with the General Principles of Affiliation in 13 CFR 121.103, the assets of all domestic and foreign affiliates are counted toward the $750 million threshold when determining whether to classify a depository institution as a small entity.

[309] The Board's estimate is based on total assets reported on Forms FR Y–9 (Consolidated Financial Statements for Holding Companies) and FFIEC 041 (Consolidated Reports of Condition and Income) for 2021.

[310] By comparison, the agencies' current regulations define ''small bank'' to mean a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $346 million and define ''intermediate small bank'' to mean a bank with assets of at least $346 million as of December 31 of both of the prior two calendar years and less than $1.384 billion as of December 31 of either of the prior two calendar years.

would establish the following four tests for large retail banks: Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test. In addition to the new CRA evaluation framework, the proposal includes data collection, maintenance, and reporting requirements necessary to facilitate the application of various tests. A detailed summary of the proposal's requirements is provided in Sections III through XX of the **SUPPLEMENTARY INFORMATION**.

With respect to the impact of the proposal on small banks and intermediate banks, the Board distinguishes between: (i) Proposed requirements that are mandatory for small banks or intermediate banks or that apply to these banks by default, and (ii) proposed provisions that are voluntary for small banks or intermediate banks or that apply at these banks' election.

Mandatory or default requirements. Under the proposal, small banks would by default be evaluated under the small bank performance standards in § __.29, which evaluates a small bank's performance in helping to meet the credit needs of its facility-based assessment areas. These small bank performance standards are substantially the same as the small bank performance standards in the agencies' current CRA regulations.

Intermediate banks would by default be evaluated under the Retail Lending Test in § __.22 and the community development performance standards in § __.29(b)(2). The Retail Lending Test would evaluate an intermediate bank's record of helping to meet the credit needs of its facility-based assessment areas through the bank's origination and purchase of retail loans in each facility-based assessment area (and, as applicable, in its outside retail lending area).[311] The community development performance standards in § __.29(b)(2) would be used to evaluate an intermediate bank's community development performance. These community development performance standards are substantially the same as the criteria for evaluating an intermediate small bank under the community development test in the agencies' current CRA regulations.

In addition, both small banks and intermediate banks would be required to maintain a public file as provided in § __.43. The proposed public file requirements that are mandatory for small banks and intermediate banks are substantially the same as the public file requirements that are mandatory for small banks and intermediate small banks under the agencies' current CRA regulations. As under the current CRA regulations, small banks and intermediate banks would generally be exempt by default from the data collection, maintenance, and reporting requirements of § __.42 of the proposal.

Voluntary or elective provisions.[312] A small bank that does not wish to be evaluated under the small bank performance standards may elect to be evaluated pursuant to the proposed Retail Lending Test. Similarly, under the proposal, a small bank may voluntarily request additional consideration for activities that would qualify for consideration under the proposed Retail Services and Products Test, Community Development Financing Test, or Community Development Services Test. In general, even where a small bank opts to be evaluated under one or more of these alternative tests, it would not be required to comply with the corresponding data collection, maintenance, and reporting requirements that are applicable to large banks under the proposal, as described in detail in Section XIX of the **SUPPLEMENTARY INFORMATION**.

An intermediate bank that does not wish to be evaluated under the community development performance standards in § __.29(b)(2) may elect to be evaluated pursuant to the Community Development Financing Test. The Community Development Financing Test would evaluate an intermediate bank's record of helping to meet the community development financing needs of the bank's facility-based assessment areas, states, multistate MSAs, and nationwide area, through its provision of community development loans and community development investments. Where an intermediate bank elects to be evaluated under the Community Development Financing Test, the intermediate bank would be required to collect and maintain the loan and investment data specified in § __.42(a)(5)(ii). If an intermediate bank elects to be evaluated under the Community Development Financing Test, the intermediate bank may voluntarily request additional consideration for activities that would qualify for consideration under the proposed Retail Services and Products Test or Community Development Services Test. In general, where an intermediate bank requests additional consideration for activities that would qualify for consideration under the proposed Retail Services and Products Test or Community Development Services test, the intermediate bank would not be required to comply with the corresponding data collection, maintenance and reporting requirements that are applicable to large banks under the proposal, as described in detail in Section XIX of the **SUPPLEMENTARY INFORMATION**.

The agencies' current CRA regulations similarly allow small banks and intermediate small banks to voluntarily opt into one or more alternative tests in lieu of the mandatory or default requirements. However, based on the Board's supervisory experience with its current CRA regulation, few small banks or intermediate small banks choose to be evaluated under alternative tests, and the Board expects that this would continue to be the case under the proposal.

For the reasons described above, the Board does not believe that the proposed rule would have a significant economic impact on a substantial number of small entities.

e. Duplicative, Overlapping, and Conflicting Rules

The Board is not aware of any Federal rules that may duplicate, overlap with, or conflict with the proposed rule.

f. Significant Alternatives Considered

In developing the proposal, one important goal of the agencies was to tailor standards for bank size and business models and minimize data collection and reporting burden. Consistent with this goal, under the proposal, small entities subject to the proposal would generally continue to be evaluated in the same manner as under the agencies' current CRA regulations. In addition, the proposal would not impose new mandatory data collection, maintenance, and reporting requirements on small banks or

[311] Although the proposed Retail Lending Test represents a significant change from the lending test applicable to intermediate small banks in the agencies' current regulations, intermediate banks would not need to collect, maintain, or report data to facilitate the application of this test. Rather, as under the current regulations, examiners would continue to use information gathered from individual loan files or maintained on an intermediate bank's internal operating systems for purposes of the Retail Lending Test.

[312] In addition to the voluntary or elective provisions described herein, a small bank or intermediate bank may elect to be evaluated under a strategic plan, as under the agencies' current regulations. Additionally, any eligible bank may request to be designated as a wholesale or limited purpose bank. Under the proposal, a wholesale or limited purpose bank would be evaluated under the Community Development Financing Test for Wholesale or Limited Purpose Banks, which is similar to the community development test for wholesale or limited purpose banks under the agencies' current CRA regulations.

intermediate banks. The agencies did not consider an alternative to the proposal that would impose new compliance requirements on small entities subject to the proposal.

3. FDIC

The SBA has defined ''small entities'' to include banking organizations with total assets less than or equal to $750 million.[313] The proposed rule seeks to establish a definition of ''small'' insured depository institution as one with average assets of less than $600 million in either of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years. The agencies, including the FDIC, are in the process of seeking approval from the SBA to use the proposed $600 million threshold, adjusted annually for inflation, rather than the SBA's recently updated size standards, which include a $750 million threshold for small banks. In requesting this approval, the agencies believe that it is appropriate to evaluate banks with assets of between $600 million and $750 million under the proposed intermediate banks standards. While the FDIC undergoes that approval process it will employ the SBA's existing $750 million size standard in its Regulatory Flexibility Act compliance activities. Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-insured institutions. The FDIC does not believe that the proposed rule, if adopted, would have a significant economic effect on a substantial number of small entities. However, some expected effects of the proposed rule are difficult to assess or accurately quantify given current information, therefore the FDIC has included an IRFA in this section.

a. Reasons Why This Action Is Being Considered

Over the past two decades, technology and the expansion of interstate banking has transformed the financial services industry and how banking services are delivered and consumed. These changes affect all banks, regardless of size or location, and are most evident in banks that have a limited physical presence or that rely heavily on technology to deliver their products and services. As banking has evolved, banks' communities are not solely identifiable by the areas that surround their physical locations. The Federal banking agencies have also gained a greater understanding of communities' needs for lending and investment, such as the need for community development investments and loans with maturities longer than the typical CRA evaluation period. The current CRA regulatory framework has not kept pace with the transformation of banking and has had the unintended consequence of incentivizing banks to limit some of their community development loans to the length of a CRA evaluation period.

b. Policy Objectives

As previously discussed in the introductory paragraphs to, as well as in Sections I and II of, the **SUPPLEMENTARY INFORMATION**, in response to feedback, the agencies propose to strengthen the CRA regulatory framework to better achieve the underlying statutory purpose of encouraging banks to help serve the credit needs of their communities by making the CRA framework more objective, transparent, consistent, and easy to understand. To accomplish these goals, the proposal would: Clarify which activities qualify for CRA credit; update where activities count for CRA credit; create a more transparent and objective method for measuring CRA performance; and provide for more transparent, consistent, and timely CRA-related data collection, recordkeeping, and reporting. Revisions that reflect these objectives would provide clarity and visibility for all stakeholders on how a bank's CRA performance is evaluated and the level of CRA activities banks conduct. These changes also would encourage banks to serve their entire communities, including low- and moderate-income neighborhoods, more effectively through a broader range of CRA activities.

c. Legal Basis

The FDIC is issuing this proposed rule under the authorities granted to it under the Community Reinvestment Act of 1977. For a discussion of the legal basis of the proposed rule, please refer to Section I of the **SUPPLEMENTARY INFORMATION** of this proposed rule.

d. Description of the Rule

As previously discussed, the proposed rule, if adopted, would make the CRA regulatory framework more transparent and objective, and help ensure that all relevant compliance activities are considered and that the scope of the performance evaluation more accurately reflects the communities served by each institution. For a more extensive discussion of the proposed rule, please refer to Section II of the **SUPPLEMENTARY INFORMATION** of this proposed rule.

e. Small Entities Affected

The FDIC supervises 3,128 depository institutions, of which 2,355 are identified as small institutions by the terms of the RFA.[314] The proposed rule would affect all FDIC-supervised institutions, therefore the FDIC estimates that the proposed rule would affect 2,355 small, FDIC-supervised institutions. The proposed rule, if adopted, would make the CRA regulatory framework more transparent and objective, and help ensure that all relevant compliance activities are considered and that the scope of the compliance evaluation more accurately reflects the communities served by each institution. The proposed rule would impact four different groups of small, FDIC-supervised institutions: Small banks, intermediate banks, small banks designated as wholesale or limited purpose, and small banks examined under a strategic plan. Of the 2,355 small, FDIC-supervised institutions, 2,289 would meet the criteria for designation as a small bank, 52 would meet the criteria for designation as an intermediate bank, while four would meet the definition of wholesale or limited purpose institutions. Finally, 10 small, FDIC-supervised institutions have elected to use strategic plans.

Wholesale or limited purpose banks are subject to the combined community development test under the current CRA regulations, and would be subject to the Community Development Financing Test for Wholesale or Limited Purpose Banks under the proposed rule, if adopted. As previously discussed, the combined community development test is generally similar to the proposed Community Development Financing

[313] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 84 FR 34261, effective Aug. 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[314] Call Report, Sept. 30, 2021. Nine insured domestic branches of foreign banks are excluded from the count of FDIC-insured depository institutions. These branches of foreign banks are not ''small entities'' for purposes of the RFA.

Test for Wholesale or Limited Purpose Banks, and therefore the FDIC does not believe that the proposed rule would substantively affect these four entities.

As previously discussed, banks evaluated pursuant to an approved strategic plan are generally subject to similar recordkeeping, reporting and disclosure requirements under the current and proposed CRA regulations. However, the proposed rule is expected to change the way in which Strategic Plan banks are evaluated and therefore could pose some substantive effects. But, with the proposed rule the agencies seek to establish CRA evaluation metrics and goals that are responsive to the characteristics of the institutions to which they are applied. Therefore, the FDIC does not believe that the proposed rule would substantively affect these 10 small, FDIC-supervised institutions who have currently elected to be evaluated under strategic plans because their metrics and goals would appropriately reflect their breadth of activities for institutions of a smaller size.

Of the 2,355 small, FDIC-supervised institutions, 447 (19.0 percent) that are not wholesale, limited purpose, or strategic plan banks reported total assets of at least $346 million on both the December 31, 2021 and December 31, 2020 Call Reports, and reported less than $600 million in average assets for the four quarters of 2020 or the four quarters of 2021. Additionally, 52 (2.2 percent) small, FDIC-supervised institutions reported average assets of at least $600 million as of December 31 for both of the prior two calendar years and less than $750 million in affiliated and acquired assets, averaged over the preceding four quarters ending December 31, 2021. Therefore, the FDIC estimates that the proposed rule would most directly affect 447 small, FDIC-supervised institutions that are currently subject to the intermediate small bank performance standards but would be subject to the small bank performance standards of the proposed rule, and 52 small, FDIC-supervised institutions that are currently subject to the intermediate small bank performance standards but would be subject to the intermediate bank performance standards of the proposed rule. Apart from these 447 proposed small banks, 52 proposed intermediate banks and the 14 wholesale, limited purpose, and strategic plan banks, the remainder of the 2,355 small, FDIC-supervised institutions would be subject to the proposed small bank performance standards, just as they are subject to the standards applicable to the smallest institutions under the current regulation. As discussed in the **SUPPLEMENTARY INFORMATION** and below, the FDIC believes the proposed small bank performance standards are substantively similar to the current standards.

f. Expected Effects

If the proposed rule was adopted, small banks generally would see no change in their exam elements. Small banks are presently evaluated under the small bank performance standards,[315] which are substantively similar to the proposed small bank performance standards.[316] Small banks would have the option of being evaluated under the new Retail Lending Test, so there is the possibility that small banks could experience changes in compliance requirements related to the proposed rule. However, as small bank participation is voluntary in the investments and services elements of the current regulation, and the Retail Lending Test of the proposed rule, any changes resulting from these aspects of the proposed rule would likely not be disadvantageous or costly to small institutions.

If the proposed rule were adopted, small, FDIC-supervised institutions presently classified as intermediate small banks, but who would be classified as intermediate banks, could experience some change in their exam elements. Intermediate small banks are currently evaluated under a lending test[317] and a community development test,[318] which assesses community development loans, qualified investments, and community development services together. If adopted, the proposed rule would evaluate Intermediate banks under the proposed Retail Lending Test, with certain provisions tailored to intermediate banks, and the *status quo* community development test, unless they choose to opt into the Community Development Financing Test. The proposed Retail Lending Test is intended to make a bank's retail lending evaluation more transparent and predictable by specifying quantitative standards for lending consistent with achieving, for example, a ''Low Satisfactory'' or ''Outstanding'' conclusion in an assessment area. The proposed rule would limit the evaluation of an intermediate bank's retail lending performance to areas outside of its facility-based assessment areas only if it does more than 50 percent of its lending outside of its facility-based assessment areas. Intermediate banks would have the option of being evaluated under the new Community Development Financing Test, so there is the possibility that intermediate banks could experience changes in compliance requirements related to the proposed rule. However, since it is an intermediate bank's choice to participate in the Community Development Financing Test of the proposed rule or continue to be evaluated under the current intermediate small bank community development test as described in § __ .29, any changes resulting from these aspects of the proposed rule are likely not to be disadvantageous or costly to intermediate institutions.

The proposed rule would decrease compliance requirements for 447 small, FDIC-supervised institutions by making them subject to the small bank performance standards rather than the intermediate bank performance standards. Small banks that are also intermediate small banks are presently evaluated under the small bank performance standards and the community development test.[319] Under the proposed rule, 447 small, FDIC-supervised institutions would be newly classified as small banks, and therefore would no longer be subject to the community development test.

Small, FDIC-supervised institutions are unlikely to experience substantive changes to the regulatory costs of compliance with the CRA regulations as amended by the proposed rule. Under the proposed rule, as under the current CRA regulations, small and intermediate banks would generally be exempt from the data collection, reporting, and disclosure requirements of § __.42 of the proposal.

The proposed rule's publicly available list of examples of qualifying activities would benefit small, FDIC-supervised institutions by establishing a reference for qualifying activities. The proposal would establish an optional process through which FDIC-insured institutions can seek confirmation of a particular activity and have it added to the list. Institutions that seek to do this could incur some costs, but the FDIC believes that small, FDIC-supervised institutions would only incur such costs if they believe that the benefits outweigh the costs.

The proposed amendments to the CRA examination criteria and methods could result in changes to the ratings. Some small, FDIC-supervised institutions may experience changes in their CRA examination ratings, while

[315] 12 CFR 345.26(a)(1).

[316] 12 CFR 345.29(a) of the proposed regulations.

[317] 12 CFR __.26(b).

[318] 12 CFR __.26(c).

[319] 12 CFR 345.26(b) and 12 CFR 345.26(c).

others may experience no change. Further, such potential changes could cause some small, FDIC-supervised institutions to incur costs associated with making changes to their CRA policies and procedures. The FDIC does not currently have access to information that would enable it to estimate these effects of the proposed rule. However, as previously discussed, small banks generally would see no change in their exam elements. Additionally, participation by small banks in the Retail Lending Test is voluntary, and therefore the FDIC believes that any associated changes to CRA examination ratings for small banks are not likely to be substantial.

To the extent that the proposed rule, if adopted, affected the ratings that small, FDIC-supervised institutions receive from a CRA examination, it could affect their ability to accomplish other activities. Under current regulation and guidance, an institution's CRA examination rating is an element considered if an institution applies to establish a new domestic branch or other deposit-taking facility, exercise Trust Powers, or merge with or acquire another institution.[320] The FDIC does not have the information necessary to estimate such effects, if any, on insured institutions.

g. Other Statutes and Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflict between this proposed rule and any other Federal rule.

h. Alternatives Considered

The FDIC is proposing revisions to the CRA to advance the objectives discussed above. The FDIC considered the status quo alternative of not revising the existing CRA regulations. However, for reasons stated previously the FDIC considers the proposed rule to be a more appropriate alternative.

The FDIC also considered alternatives to the asset size thresholds that delineate small, intermediate, and large banks. For example, as previously discussed, the agencies are in the process of seeking approval from the SBA to use the proposed $600 million threshold, adjusted annually for inflation, rather than the SBA's recently updated size standards, which include a $750 million threshold for small banks. In requesting this approval, the agencies believe that it is appropriate to evaluate banks with assets of between $600 million and $750 million under the proposed intermediate bank standards, and that these banks have the capacity to conduct community development activities, as would be a required component of the evaluation for intermediate, but not small banks. Additionally, the agencies considered increasing the large bank asset threshold beyond the proposed $2 billion level, but decided it would remove a greater share of banks that play a significant role in fulfilling low- and moderate-income credit needs in local areas from the more comprehensive evaluation included in the proposed large bank evaluation approach.

The FDIC invites comments on all aspects of the supporting information provided in this section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified.

OCC Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that the OCC prepare a budgetary impact statement before promulgating a rule that includes any 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 (adjusted annually for inflation, currently $165 million) in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act (2 U.S.C. 1535) also requires the OCC to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

We estimate that expenditures to comply with mandates during the first 12-month period of the proposed rule's implementation would be approximately $42.8 million. Therefore, we conclude that the proposed rule would not result in an expenditure of $165 million or more annually by state, local, and tribal governments, or by the private sector. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

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 (RCDRIA), 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 agencies will consider, consistent with principles of safety and soundness and the public interest: (i) Any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and customers of depository institutions; and (ii) the benefits of the proposed rule. The agencies request comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions, and their customers, and the benefits of the proposed rule that the agencies should consider in determining the effective date and administrative compliance requirements for a final rule.

Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collections of information'' within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 through 3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The information collections contained in the proposed rule have been submitted to OMB for review and approval by the OCC and FDIC under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB. The agencies are proposing to extend for three years, with revision, these information collections.

Title of Information Collection: OCC Community Reinvestment Act; Board Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation BB; FDIC, Community Reinvestment Act.

OMB Control Numbers: OCC 1557–0160; Board 7100–0197; FDIC 3064–0092.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit.

Respondents:

OCC: National banks, Federal savings associations, Federal branches and agencies.

FDIC: All insured state nonmember banks, insured state-licensed branches of foreign banks, insured state savings associations, and bank service providers.

Board: All state member banks (as defined in 12 CFR 208.2(g)), bank holding companies (as defined in 12 U.S.C. 1841), savings and loan holding companies (as defined in 12 U.S.C. 1467a), foreign banking organizations (as defined in 12 CFR 211.21(o)), foreign

[320] 12 CFR 345.29(a).

banks that do not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(11) and (12)), Edge or agreement corporations (as defined in 12 CFR 211.1(c)(2) and (3)), and bank service providers.

The information collection requirements in the proposed rule are as follows:

§ __.26 Wholesale and limited purpose banks. Banks requesting a designation as either a wholesale bank or limited purpose bank would be required to file a request in writing with the appropriate Federal banking agency at least 3 months prior to the proposed effective date of the designation.

§ __.27 Strategic plan. Banks could submit a strategic plan to the appropriate Federal banking agency for approval. Requirements regarding the content of such a plan are set forth in § __.27 of the proposed rule. The appropriate Federal banking agency would assess a bank's record of helping to meet the credit needs of its facility-based assessment areas, and, as applicable, its retail assessment areas, and geographic areas served at the institution level under its strategic plan if the plan has been properly submitted, been approved, is in effect, and in operation for a minimum of one year. The proposal specifies requirements for the term of a strategic plan, the treatment of multiple assessment areas, the treatment of operations subsidiaries or operating subsidiaries, as applicable, and affiliates, public participation, submission, content, and amendment. Additionally, during the term of a plan, a bank could request that the appropriate Federal banking agency approve an amendment to the plan in the absence of a change in material circumstances. A bank that requests such an amendment would be required to provide an explanation regarding why it is necessary and appropriate to amend its plan goals.

§ __.42(a)(1) Small business and small farm loans data. A bank, except a small bank or an intermediate bank, would be required to collect and maintain in prescribed machine readable form, until the completion of its next CRA examination, data on small business and small farm loans originated or purchased by the bank during the evaluation period.

§ __.42(a)(2) Consumer loans data—automobile loans. A bank with assets of over $10 billion would be required to collect and maintain in prescribed machine readable form, until the completion of its next CRA examination, data for automobile loans originated or purchased by the bank during the evaluation period.

§ __.42(a)(4) Retail services and products data. A large bank would be required to collect and maintain data in a machine readable form until the completion of its next CRA examination. These data include information regarding branches and remote service facilities, and information with respect to retail services and products offered and provided by the bank during the evaluation period. Large banks with assets of over $10 billion, or large banks with assets of $10 billion or less that requests additional consideration for digital and other delivery systems, must collect and maintain data on the range of services and products offered through digital and other delivery systems and digital activity by individuals in low, moderate, middle, and upper-income census tracts. Large banks with assets of over $10 billion, or large banks with assets of $10 billion or less, that request additional consideration for responsive deposit products, must collect and maintain data including the number of deposit products opened and closed by individuals in low-, moderate-, middle-, and upper-income census tracts.

§ __.42(a)(5) Community development loans and community development investments data. A bank, except a small or an intermediate bank, would be required to collect and maintain the following data for community development loans and community development investments originated or purchased by the bank: general information on the loan or investment; community development loan or investment activity information; the indicators of the impact of the activity as applicable; location information; other information relevant to determining that an activity meets the standards under community development; and allocation of dollar value of the activity to counties served by the community development activity, if available. Large banks would be required to collect and maintain this information in prescribed machine readable form. An intermediate bank that opts to be evaluated under the Community Development Financing Test, would be required to collect and maintain this information in the format used by the bank in the normal course of business. Both of these types of banks would be required to maintain this data until completion of its next CRA examination. These banks would be required to collect and maintain, on an annual basis, data for loans and investments originated or purchased during the evaluation period. Likewise, these banks would be required to collect and maintain data on community development loans and investments from prior years that are held on the bank's balance sheet at the end of each quarter.

§ .42(a)(6) Community development services data. A large bank with assets of over $10 billion would be required to collect and maintain in prescribed machine readable form until the completion of its next CRA examination, community development services data including bank information, community development services activity information, and location information.

§ __.42(a)(7) Deposits data. A large bank that had assets of over $10 billion would be required to collect and maintain annually in prescribed machine readable form until the completion of its next CRA examination, the dollar amount of its deposits at the county level, based upon the address associated with the individual account (except for account types where an address is not available), calculated based on average daily balances as provided in statements such as monthly or quarterly statements. A large bank with assets of $10 billion or less that opts to collect and maintain deposits data would be required to do so in machine readable form, until completion of the bank's next CRA examination.

§ __.42(b)(1) Small business and small farm loan data. A bank, except a small or intermediate bank, would be required to report annually by April 1 in prescribed machine readable form, certain aggregate data for small business or small farm loans for each census tract in which the bank originated or purchased such loans.

§ __.42(b)(2) Consumer loans—automobile loans data. A bank with assets of over $10 billion would be required to report annually by April 1, in prescribed machine readable form, the aggregate number and amount of automobile loans and the number and amount of those loans made to low- and moderate-income borrowers for each census tract in which they originated or purchased such loans.

§ __.42(b)(3) Community development loan and community development investment data. A bank, except a small or an intermediate bank, would be required to report annually by April 1 the following community development loan and community development investment data: general information on loans and investments; community development loan or investment activity information; indicators of the impact of the activity;

location information; other information relevant to determining that an activity meets the standards under community development; and allocation of dollar value of activity to counties served by the community development activity (if available).

§ __.42(b)(4) Community development services data. A large bank with assets of over $10 billion would be required to report annually by April 1, community development services data including bank information.

§ __.42(b)(5) Deposits data. A large bank with assets of over $10 billion would be required to report annually by April 1 in prescribed machine readable form the deposits data for the previous calendar year including for each county, state, and multistate MSA and for the institution overall. The reporting would include the average annual deposit balances (calculated based on average daily balances as provided in statements such as monthly or quarterly statements, as applicable), in aggregate, of deposit accounts with associated addresses located in such county, state or multistate MSA where available, and for the institution overall.

§ __.42(c) Data on operations subsidiaries or operating subsidiaries. To the extent that their operations subsidiaries, or operating subsidiaries, as applicable, engage in retail lending, retail services, community development financing, or community development services activities, a bank would be required to collect, maintain, and report these activities for purposes of evaluating the bank's performance. For home mortgage loans, a bank would need to be prepared to identify the loans reported by the operations subsidiary, or operating subsidiary, under 12 CFR part 1003, if applicable, or collect and maintain home mortgage loans by the operations subsidiary that the bank would have collected and maintained under § _.42(a)(3) had the loans been originated or purchased by the bank.

§ __.42(d) Data on other affiliates. A bank that elects to have loans by an affiliate considered for purposes of this part would be required to collect, maintain, and report the lending and investments data they would have collected, maintained, and reported under § __.42(a) or (b) had the loans or investments been originated or purchased by the bank. For home mortgage loans, it would also need to identify the home mortgage loans reported by its affiliate under 12 CFR part 1003, if applicable, or collect and maintain home mortgage loans by the affiliate that the bank would have collected and maintained under § __.42(a)(3) had the loans been originated or purchased by the bank.

§ __.42(e) Data on community development financing by a consortium or a third party. A bank that elects to have community development loans and community development investments by a consortium or third party be considered for purposes of this part would be required to collect, maintain, and report the lending and investments data they would have collected, maintained, and reported under § __.42(a)(5) and (b)(3) if the loans or investments had been originated or purchased by the bank.

§ __.42(f)(1) Facility-based assessment areas. A bank, except a small bank or intermediate bank, would be required to collect and report to the [Agency] by April 1 of each year a list of each facility-based assessment area showing the states, MSAs, counties or county equivalents, metropolitan divisions, and nonmetropolitan counties within each facility-based assessment area.

§ __.42(f)(2) Retail lending assessment areas. A large bank would be required to delineate retail lending assessment area based on geographic, MSA, and nonmetropolitan areas of states criteria specified in the proposal. A large bank would be required to collect and report a list showing the MSAs and nonmetropolitan counties within each retail lending assessment area by April 1 of each year.

§§ __.43, __.44. Public File and Public Notice. Banks would be required to maintain a public file, in either paper or digital format, that includes prescribed information. Banks would be required to provide copies on request, either on paper or in another form acceptable to the person making the request, of the information in its public file. A bank would also be required to provide in the public area of its main office and branches the public notice set forth in proposed appendix F.

BURDEN ESTIMATES

Source and type of burden	Description	Estimated number of respondents	Average estimated time per response	Frequency of response	Total estimated annual burden
	Reporting				
§ __.26	*Wholesale and limited purpose banks.*				
	OCC	12	4	1	48
	Board	1	4	1	4
	FDIC	1	4	1	4
§ __.27	*Strategic plan.*				
	OCC	6	400	1	2,400
	Board	6	400	1	2,400
	FDIC	11	400	1	4,400
§ __.42(b)(1)	*Small business and small farm loan data.*				
	OCC	139	8	1	1,112
	Board	100	8	1	800
	FDIC	216	8	1	1,728
§ __.42(b)(2)	*Consumer loans—automobile loans data.*				
	OCC	50	8	1	400
	Board	25	8	1	200
	FDIC	48	8	1	384,336
§ __.42(b)(3)	*Community development loan and community development investment data.*				
	OCC	148	8	1	1,184
	Board	114	8	1	912
	FDIC	227	8	1	1,816
§ __.42(b)(4)	*Community development services data.*				

BURDEN ESTIMATES—Continued

Source and type of burden	Description	Estimated number of respondents	Average estimated time per response	Frequency of response	Total estimated annual burden
	OCC	46	8	1	368
	Board	36	8	1	288
	FDIC	48	8	1	384
§ __.42(b)(5)	*Deposits data.*				
	OCC	46	8	1	368
	Board	36	8	1	288
	FDIC	48	8	1	384
§ __.42(c)	*Data on operations subsidiaries/operating subsidiaries.*				
	OCC	174	38	1	6,612
	Board	191	38	1	7,258
	FDIC	684	38	1	25,992
§ __.42(d)	*Data on other affiliates.*				
	OCC	9	38	1	342
	Board	6	38	1	228
	FDIC	233	38	1	8,854
§ __.42(e)	*Data on community development financing by a consortium or a third party.*				
	OCC	31	17	1	527
	Board	15	17	1	255
	FDIC	13	17	1	221
§ __.42(f)(1)	*Facility-based assessment areas data.*				
	OCC	151	2	1	302
	Board	114	2	1	228
	FDIC	237	2	1	474
§ __.42(f)(2)	*Retail Lending Assessment Areas.*				
	OCC	139	4	1	556
	Board	15	4	1	60
	FDIC	69	4	1	276
Recordkeeping					
§ __.42(a)(1)	*Small business and small farm loan data.*				
	OCC	139	219	1	30,441
	Board	100	219	1	21,900
	FDIC	216	219	1	47,304
§ __.42(a)(2)	*Consumer loan data—automobile loans.*				
	OCC	50	75	1	3,750
	Board	25	75	1	1,875
	FDIC	48	75	1	3,600
§ __.42(a)(4)	*Retail services and products data.*				
	OCC	139	50	1	6,950
	Board	108	50	1	5,400
	FDIC	216	50	1	10,800
§ __.42(a)(5)	*Community development loan and community development investment data.*				
	OCC	148	300	1	44,400
	Board	114	300	1	34,200
	FDIC	227	300	1	68,100
§ __.42(a)(6)	*Community development services data.*				
	OCC	46	50	1	2,300
	Board	48	50	1	2,400
	FDIC	42	50	1	2,100
§ __.42(a)(7)	*Deposits data.*				
	OCC	46	350	1	16,100
	Board	36	350	1	12,600
	FDIC	48	350	1	16,800
Disclosures					
§ __.43	*Content and availability of public file.*				
§ __.44	*Public notice by banks.*				
	OCC	977	10	1	9,770
	Board	695	10	1	6,950
	FDIC	3,128	10	1	31,280
Total Estimated Annual Burden					
	OCC				127,930
	Board				97,646

BURDEN ESTIMATES—Continued

Source and type of burden	Description	Estimated number of respondents	Average estimated time per response	Frequency of response	Total estimated annual burden
	FDIC	....	....	....	225,201

Comments Are Invited on

(a) Whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information has practical utility;

(b) The accuracy of the agencies' estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Commenters may submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to the addresses listed in the **ADDRESSES** caption in the NPR. All comments will become a matter of public record. A copy of the comments may also be submitted to the OMB desk officer for the agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; by facsimile to (202) 395–5806; or by email to: *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies invite comment on how to make this proposed rule easier to understand.

For example:

- Have the agencies organized the material to inform your needs? If not, how could the agencies present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposal be more clearly stated?
- Does the proposed regulation contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the proposed regulation easier to understand?

XXIII. Text of Common Proposed Rule (All Agencies)

The text of the agencies' common proposed rule appears below:

PART __—COMMUNITY REINVESTMENT

Sec.

PART __—COMMUNITY REINVESTMENT

Subpart A—General

§ __.11 Authority, purposes, and scope.

(a) [Reserved].

(b) *Purposes.* This part implements the requirement in the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*) (CRA) that the [Agency] assess a bank's record of helping to meet the credit needs of the local communities in which the bank is chartered, consistent with the safe and sound operation of the bank, and to take this record into account in the agency's evaluation of an application for a deposit facility by the bank. Accordingly, this part:

(1) Establishes the framework and criteria by which the [Agency] assesses a bank's record of responding to the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank; and

(2) Provides that the [Agency] takes that record into account in considering certain applications.

(c) [Reserved].

§ __.12 Definitions.

For purposes of this part, the following definitions apply:

Affiliate means any company that controls, is controlled by, or is under common control with another company. The term ''control'' has the same meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

Affordable housing means activities described in § __.13(b).

Area median income means:

(1) The median family income for the metropolitan statistical area (MSA), if a person or census tract is located in an MSA, or for the metropolitan division, if a person or census tract is located in an MSA that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or census tract is located outside an MSA.

Bank means [Agency definition of bank].

Branch means a staffed banking facility, whether shared or unshared, that is approved or authorized as a branch by the [Agency] and that is open to, and accepts deposits from, the general public.

Census tract means a census tract delineated by the U.S. Census Bureau in the most recent decennial census.

Closed-end home mortgage loan has the same meaning given to the term ''closed-end mortgage loan'' in 12 CFR 1003.2(d), excluding multifamily loans as defined in this section.

Community development means activities described in § __.13(b) through (l).

Community Development Financial Institution (CDFI) has the same meaning given to that term in section 103(5)(A) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 *et seq.*).

Community development investment means a lawful investment, including a legally binding commitment to invest that is reported on Schedule RC–L of the Consolidated Reports of Condition and Income as filed under 12 U.S.C. 1817 (Call Report), deposit, membership share, grant, or monetary or in-kind donation that has a primary purpose of community development, as described in § __.13(a).

Community development loan means a loan, including a legally binding commitment to extend credit, such as a standby letter of credit, that:

(1) Has a primary purpose of community development, as described in § __.13(a); and

(2) Has not been considered by the bank, an [operations subsidiary or operating subsidiary] of the bank, or an affiliate of the bank under the Retail Lending Test as an automobile loan, closed-end home mortgage loan, open-end home mortgage loan, small business loan, or small farm loan, unless:

(i) The loan is for a multifamily dwelling (as defined in 12 CFR 1003.2(n)); or

(ii) In the case of an intermediate bank that is not required to report a home mortgage loan, a small business loan, or a small farm loan, the bank may opt to have the loan considered under the Retail Lending Test in § __.22 or under the intermediate bank community development performance standards in § __.29(b)(2), or, if the bank opts in, the Community Development Financing Test in § __.24.

Community development services means activities described in § __.25(d).

Consumer loan means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a closed-end home mortgage loan, an open-end home mortgage loan, a multifamily loan, a small business loan, or a small farm loan. A consumer loan includes the following categories of loans:

(1) *Automobile loan,* which means a consumer loan extended for the purchase of and secured by a new or used passenger car or other vehicle, such as a minivan, a pickup truck, a sport-utility vehicle, a van, or a similar light truck for personal use, as defined in Schedule RC–C of the Call Report;

(2) *Credit card loan,* which means a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a ''credit card,'' as defined in 12 CFR 1026.2;

(3) *Other revolving credit plan,* which means a revolving credit plan that is not accessed by credit card; and

(4) *Other consumer loan,* which is a consumer loan that is not included in one of the other categories of consumer loans.

County means any county or statistically equivalent entity as defined by the U.S. Census Bureau.

Deposits, for purposes of this part, has the following meanings:

(1) For banks that collect, maintain, and report deposits data as provided in § __.42, *deposits* means deposits in domestic offices of individuals, partnerships, and corporations, and of commercial banks and other depository institutions in the U.S. as defined in Schedule RC–E of the Call Report; deposits does not include U.S. Government deposits, state and local government deposits, domestically held deposits of foreign governments or official institutions, or domestically held deposits of foreign banks or other foreign financial institutions;

(2) For banks that collect and maintain, but that do not report, deposits data as provided in § __.42, *deposits* means deposits in domestic offices of individuals, partnerships, and corporations, and of commercial banks and other depository institutions in the U.S. as defined in Schedule RC–E of the Call Report; deposits does not include U.S. Government deposits, state and local government deposits, domestically held deposits of foreign governments or official institutions, or domestically held deposits of foreign banks or other foreign financial institutions, except that, for purposes of the Retail Lending Test's Market Volume Benchmark and for all community development financing benchmarks, *deposits* has the same meaning as in the FDIC's Summary of Deposits Reporting Instructions;

(3) For banks that do not collect and maintain deposits data as provided in § __.42, *deposits* has the same meaning as in the FDIC's Summary of Deposits Reporting Instructions.

Deposit location means:

(1) For banks that collect and maintain deposits data as provided in § __.42, the census tract or county, as applicable, in which the consumer resides, or the census tract or county, as applicable, in which the business is located if it has a local account.

(2) For banks that collect and maintain, but that do not report, deposits data as provided in § __.42, the census tract or county, as applicable, in which the consumer resides, or the census tract or county, as applicable, in which the business is located if it has a local account except that, for purposes of the Market Volume Benchmark and for all community development financing benchmarks, the county of the bank branch to which the deposits are assigned in the FDIC's Summary of Deposits.

(3) For banks that do no collect and maintain deposits data as provided in § __.42, the county of the bank branch to which the deposits are assigned in the FDIC's Summary of Deposits.

Dispersion of retail lending means how geographically diffuse or widely spread such lending is across census tracts of different income levels within a facility-based assessment area, retail lending assessment area, or outside retail lending area.

Distressed or underserved nonmetropolitan middle-income census tract means a census tract publicly designated as such by the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC), based on the criteria in paragraphs (1) and (2) of this definition, compiled in a list and published annually by the Federal Financial Institutions Examination Council (FFIEC).

(1) A nonmetropolitan middle-income census tract is designated as distressed if it is in a county that meets one or more of the following criteria:

(i) An unemployment rate of at least 1.5 times the national average;

(ii) A poverty rate of 20 percent or more; or

(iii) A population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

(2) A nonmetropolitan middle-income census tract is designated as underserved if it meets the criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the census tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The criteria for these designations are based on the Urban Influence Codes established by the U.S. Department of Agriculture's Economic Research Service numbered ''7,'' ''10,'' ''11,'' or ''12.''

Distribution of retail lending refers to how such lending is apportioned among borrowers of different income levels, businesses or farms of different sizes, or among census tracts of different income levels.

Evaluation period refers to the period of time between CRA examinations, generally in calendar years, in accordance with the [Agency's] guidelines and procedures.

Facility-based assessment area means a geographic area delineated in accordance with § __.16.

High opportunity area means:

(1) An area designated by the U.S. Department of Housing and Urban Development (HUD) as a ''Difficult Development Area'' (DDA); or

(2) An area designated by a state or local Qualified Allocation Plan as a High Opportunity Area, and where the poverty rate falls below 10 percent (for metropolitan areas) or 15 percent (for nonmetropolitan areas).

Home mortgage loan means a closed-end home mortgage loan or an open-end home mortgage loan as these terms are defined in this section and that is not an excluded transaction under 12 CFR 1003.3(c)(1) through (10) and (13).

Income level includes:

(1) *Low-income,* which means:

(i) For individuals within a census tract, an individual income that is less than 50 percent of the area median income; or

(ii) For a census tract, a median family income that is less than 50 percent of the area median income.

(2) *Moderate-income,* which means:

(i) For individuals within a census tract, an individual income that is at least 50 percent and less than 80 percent of the area median income; or

(ii) For a census tract, a median family income that is at least 50 percent and less than 80 percent of the area median income.

(3) *Middle-income,* which means:

(i) For individuals within a census tract, an individual income that is at least 80 percent and less than 120 percent of the area median income; or

(ii) For a census tract, a median family income that is at least 80 percent and less than 120 percent of the area median income.

(4) *Upper-income,* which means:

(i) For individuals within a census tract, an individual income that is 120 percent or more of the area median income; or

(ii) For a census tract, a median family income that is 120 percent or more of the area median income.

Intermediate bank means a bank that had average assets of at least $600 million in both of the prior two calendar years and less than $2 billion in either of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years. The $600 million figure and the $2 billion figure will be adjusted annually and published by the [Agency], based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million.

Large bank means a bank that had average assets of at least $2 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years. The $2 billion figure will be adjusted annually and published by the [Agency], based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million.

Limited purpose bank means a bank that offers only a narrow retail product line (such as credit cards, other revolving consumer credit plans, other consumer loans, or other non-reported commercial and farm loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § __.26.

Loan location. A loan is located as follows:

(1) A consumer loan is located in the census tract where the borrower resides at the time that the consumer submits the loan application;

(2) A home mortgage loan is located in the census tract where the property securing the loan is located; and

(3) A small business loan or small farm loan is located in the census tract where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

Low branch access census tract means a census tract with one bank, thrift, or credit union branch within:

(1) Ten miles of the census tract center of population or within the census tract in nonmetropolitan areas;

(2) Five miles of the census tract center of population or within the census tract in a census tract located in an MSA but primarily outside of the principal city components of the MSA; or

(3) Two miles of the census tract center of population or within the census tract in a census tract located in an MSA and primarily within the principal city components of the MSA.

Low-cost education loan means any private education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(8)) (including a loan under a state or local education loan program), originated by the bank for a student at an ''institution of higher education,'' as generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

Low-income credit union (LICU) has the same meaning given to that term in 12 CFR 701.34.

Metropolitan area means any MSA, combined MSA, or metropolitan division as defined by the Director of the Office of Management and Budget.

Metropolitan division has the same meaning given to that term by the Director of the Office of Management and Budget.

Metropolitan statistical area (MSA) has the same meaning given to that term by the Director of the Office of Management and Budget.

Military bank means a bank whose business predominately consists of serving the needs of military personnel who serve or have served in the armed forces (including the U.S. Air Force, U.S. Army, U.S. Coast Guard, U.S. Marine Corps, and U.S. Navy) or dependents of military personnel.

Minority depository institution (MDI) means an entity that:

(1) For purposes of activities conducted pursuant to 12 U.S.C. 2907(a) (*i.e.,* donating, selling on favorable terms (as determined by the [Agency]), or making available on a rent-free basis any branch of the bank, which is located in a predominately minority neighborhood) has the meaning given to that term in 12 U.S.C. 2907(b)(1); and

(2) For all other purposes:

(i) Has the meaning given to that term in 12 U.S.C. 2907(b)(1);

(ii) Is a minority depository institution, as defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 1463 note); or

(iii) Is considered to be a minority depository institution by the appropriate Federal banking agency. For purposes of this paragraph, ''appropriate Federal banking agency'' has the meaning given to it in 12 U.S.C. 1813(q).

Multifamily loan means a loan for a ''multifamily dwelling'' as defined in 12 CFR 1003.2(n).

Multistate metropolitan statistical area (multistate MSA) has the same meaning given to that term by the Director of the Office of Management and Budget.

Nationwide area means the entire United States and its territories.

Native land area means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the U.S. Government, as described in 18 U.S.C. 1151(a);

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, as described in 18 U.S.C. 1151(b);

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same, as defined in 18 U.S.C. 1151(c);

(4) Any land held in trust by the United States for Native Americans, as described in 38 U.S.C. 3765(1)(A);

(5) Reservations established by a state government for a tribe or tribes recognized by the state;

(6) Any Alaska Native village as defined in 43 U.S.C 1602(c);

(7) Lands that have the status of Hawaiian Home Lands as defined in section 204 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108), as amended;

(8) Areas defined by the U.S. Census Bureau as Alaska Native Village Statistical Areas, Oklahoma Tribal Statistical Areas, Tribal-Designated Statistical Areas, or American Indian Joint-Use Areas; and

(9) Land areas of state-recognized Indian tribes and heritage groups that are defined and recognized by individual states and included in the U.S. Census Bureau's annual Boundary and Annexation Survey.

Nonmetropolitan area means any area that is not located in an MSA.

Open-end home mortgage loan has the same meaning as given to the term ''open-end line of credit'' in 12 CFR 1003.2(o), excluding multifamily loans as defined in this section.

[*Operations subsidiary or operating subsidiary*] means [Agency definition of operations subsidiary or operating subsidiary].

Outside retail lending area means the nationwide area outside of a bank's facility-based assessment areas and, as applicable, retail lending assessment areas.

Remote service facility means an automated, virtually staffed, or unstaffed banking facility owned or operated by, or operated exclusively for, a bank, such as an automated teller machine (ATM), interactive teller machine, cash dispensing machine, or other remote electronic facility at which deposits are received, cash dispersed, or money lent.

Retail banking services means retail financial services provided by a bank to consumers, small businesses, and small farms and includes a bank's systems for delivering retail financial services.

Retail lending assessment area means a geographic area, separate and distinct from a facility-based assessment area, delineated in accordance with § __.17.

Retail loan. (1) For purposes of the Retail Lending Test in § __.22, retail loan means an automobile loan, closed-end home mortgage loan, open-end home mortgage loan, multifamily loan, small business loan, or small farm loan;

(2) For all other purposes, retail loan means a consumer loan, home mortgage loan, small business loan, or small farm loan.

Small bank means a bank that had average assets of less than $600 million in either of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years. The $600 million figure will be adjusted annually and published by the [Agency], based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million.

Small business means a business that had gross annual revenues for its preceding fiscal year of $5 million or less.

Small business loan means, notwithstanding the definition of ''small business'' in this section, a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Call Report.

Small farm means a farm that had gross annual revenues for its preceding fiscal year of $5 million or less.

Small farm loan means, notwithstanding the definition of ''small farm'' in this section, a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Call Report.

State means a U.S. state or territory, and includes the District of Columbia.

Targeted census tract means:

(1) A low-income census tract or a moderate-income census tract; or

(2) A distressed or underserved nonmetropolitan middle-income census tract.

Very low branch access census tract means a census tract with no bank, thrift, or credit union branches within:

(1) Ten miles of the census tract center of population or within the census tract in nonmetropolitan areas;

(2) Five miles of the census tract center of population or within the census tract located in an MSA but primarily outside of the principal city components of the MSA; or

(3) Two miles of the census tract center of population or within the census tract located in an MSA and primarily within the principal city components of the MSA.

Wholesale bank means a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale bank is in effect, in accordance with § __.26.

Women's depository institution (WDI) has the same meaning given to that term in 12 U.S.C. 2907(b)(2).

§ __.13 Community Development Definitions.

(a) *Consideration for activities with a primary purpose of community development.* A bank may receive community development consideration for a loan, investment, or service that has a primary purpose of community development. A bank will receive consideration for the entire activity where the activity meets the criteria for having a primary purpose of community development under paragraphs (a)(1)(i) and (a)(1)(ii) of this section, except that a bank will receive consideration for the portion of any activity considered to have a primary purpose of community development under paragraph (a)(1)(i)(A) of this section.

(1) *Primary purpose of community development.* A loan, investment, or service has a primary purpose of community development:

(i) If a majority of the dollars, applicable beneficiaries, or housing units of the activity are identifiable to one or more of the community development purposes in paragraph (a)(2) of this section;

(A) Where an activity supports rental housing purchased, developed, financed, rehabilitated, improved, or preserved in conjunction with a federal, state, local, or tribal government affordable housing plan, program, initiative, tax credit, or subsidy with a stated purpose or bona fide intent of providing affordable housing for low-income or moderate-income individuals under paragraph (b)(1) of this section, and fewer than 50 percent of the housing units supported by that activity are affordable, the activity has a primary purpose of community development only for the percentage of total housing units in any development that are affordable.

(B) Notwithstanding paragraph (a)(1)(i)(A) of this section, where an activity involves low-income housing tax credits to support affordable housing under paragraph (b) of this section, the activity has a primary purpose of community development for the full value of the investment even where fewer than 50 percent of the housing units supported by that activity are affordable.

(ii) If the express, bona fide intent of the activity is one or more of the community development purposes in paragraph (a)(2) of this section and the activity is specifically structured to achieve, or is reasonably certain to accomplish, the community development purpose.

(2) *Community development purposes.* Loans, investments, or services meet the definition of community development purpose if they promote one or more of the following:

(i) Affordable housing that benefits low- or moderate-income individuals, as described in paragraph (b) of this section;

(ii) Economic development that supports small businesses or small farms, as described in paragraph (c) of this section;

(iii) Community supportive services that serve or assist low- or moderate-income individuals, as described in paragraph (d) of this section;

(iv) Revitalization activities undertaken in conjunction with a federal, state, local, or tribal government plan, program, or initiative that must include an explicit focus on revitalizing or stabilizing targeted census tracts, as described in paragraph (e) of this section;

(v) Essential community facilities that benefit or serve residents of targeted census tracts, as described in paragraph (f) of this section;

(vi) Essential community infrastructure that benefits or serves residents of targeted census tracts, as described in paragraph (g) of this section;

(vii) Recovery activities that support the revitalization of a designated disaster area, as described in paragraph (h) of this section;

(viii) Disaster preparedness and climate resiliency activities that benefit or serve residents of targeted census tracts, as described in paragraph (i) of this section;

(ix) Activities undertaken with MDIs, WDIs, LICUs, or CDFIs certified by the U.S. Department of the Treasury's Community Development Institutions Fund (Treasury Department-certified CDFIs), as described in paragraph (j) of this section;

(x) Financial literacy programs or initiatives, including housing counseling, as described in paragraph (k) of this section; or

(xi) Activities undertaken in Native Land Areas that benefit or serve residents, including low- or moderate-income residents, of Native Land Areas, as described in paragraph (l) of this section.

(b) *Affordable housing.* Activities that support affordable housing for low- or moderate-income individuals are:

(1) *Rental housing in conjunction with a government affordable housing plan, program, initiative, tax credit, or subsidy.* Rental housing purchased, developed, financed, rehabilitated, improved, or preserved in conjunction with a federal, state, local, or tribal government affordable housing plan, program, initiative, tax credit, or subsidy with a stated purpose or bona fide intent of providing affordable housing for low- or moderate-income individuals;

(2) *Multifamily rental housing with affordable rents.* Rents are deemed affordable for purchased, developed, financed, rehabilitated, improved, or preserved multifamily rental housing if, for the majority of the units, the monthly rent as underwritten by the bank, reflecting post-construction or post-renovation changes as applicable, does not exceed 30 percent of 60 percent of the area median income for the metropolitan area or nonmetropolitan county, and:

(i) The housing is located in a low- or moderate-income census tract;

(ii) The housing is purchased, developed, financed, rehabilitated, improved, or preserved by any non-profit organization with a stated mission of, or that otherwise directly supports, providing affordable housing;

(iii) The property owner has made an explicit written pledge to maintain affordable rents for low- or moderate-income individuals for at least five years or the length of the financing, whichever is shorter; or

(iv) The bank provides documentation that a majority of the housing units are occupied by low- or moderate-income individuals or families.

(3) *Activities that support affordable owner-occupied housing for low- or moderate-income individuals.* Activities, excluding single-family home mortgage loans considered under the Retail Lending Test in § __.22, that directly assist low- or moderate-income individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing or activities that support programs, projects, or initiatives that assist low- or moderate-income individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing; and

(4) *Mortgage-backed securities.* Purchases of mortgage-backed securities that contain a majority of either loans financing housing for low- or moderate-income individuals or loans financing housing that otherwise qualifies as affordable housing under paragraph (b) of this section.

(c) *Economic development.* Economic development activities are:

(1) Activities undertaken consistent with federal, state, local, or tribal government plans, programs, or initiatives that support small businesses or small farms as those entities are defined in the plans, programs, or initiatives, notwithstanding how those entities are defined in § __.12, including lending to, investing in, or providing services to an SBA Certified Development Company (13 CFR 120.10), Small Business Investment Company (13 CFR 107), New Markets Venture Capital Company (13 CFR 108), qualified Community Development Entity (26 U.S.C. 45D(c)), or U.S. Department of Agriculture Rural Business Investment Company (7 CFR 4290.50);

(2) Support for financial intermediaries that lend to, invest in, or provide technical assistance to businesses or farms with gross annual revenues of $5 million or less; or

(3) Providing technical assistance to support businesses or farms with gross

annual revenues of $5 million or less, or providing services such as shared space, technology, or administrative assistance to such businesses or farms or to organizations that have a primary purpose of supporting such businesses or farms.

(d) *Community supportive services.* Community supportive services are general welfare services that serve or assist low- or moderate-income individuals including, but not limited to, childcare, education, workforce development and job training programs, and health services and housing services programs that serve or assist low- or moderate-income individuals, including:

(1) Activities conducted with a non-profit organization that has a defined mission or purpose of serving low- or moderate-income individuals or is limited to offering community supportive services exclusively to low- and moderate-income individuals;

(2) Activities conducted with a non-profit organization located in and serving low- or moderate-income census tracts;

(3) Activities conducted in low- or moderate-income census tracts and targeted to the residents of the census tract;

(4) Activities offered to individuals at a workplace where the majority of employees are low- or moderate-income, based on readily available U.S. Bureau of Labor Statistics data for the average wage for workers in that particular occupation or industry;

(5) Activities provided to students or their families through a school at which the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture's National School Lunch Program;

(6) Activities that have a primary purpose of benefitting or serving individuals who receive or are eligible to receive Medicaid;

(7) Activities that benefit or serve individuals who receive or are eligible to receive Federal Supplemental Security Income, Social Security Disability Insurance, or support through other Federal disability assistance programs; or

(8) Activities that benefit or serve recipients of government assistance plans, programs, or initiatives that have income qualifications equivalent to, or stricter than, the definitions of low- and moderate-income as defined in this part. Examples include, but are not limited to, HUD's section 8, 202, 515, and 811 programs or the U.S. Department of Agriculture's section 514, 516, and Supplemental Nutrition Assistance programs.

(e) *Revitalization activities undertaken in conjunction with a government plan, program, or initiative.* Revitalization activities are those undertaken in conjunction with a federal, state, local, or tribal government plan, program, or initiative that includes an explicit focus on revitalizing or stabilizing targeted census tracts. Revitalization activities include, and are not limited to, adaptive reuse of vacant or blighted buildings, brownfield redevelopment, or activities consistent with a plan for a business improvement district or main street program. Revitalization activities do not include housing-related activities. Revitalization activities must meet the following criteria:

(1) The activities benefit or serve residents, including low- or moderate-income residents, in one or more of the targeted census tracts; and

(2) The activities do not displace or exclude low- or moderate-income residents in the targeted census tracts.

(f) *Essential community facilities activities.* Essential community facilities activities are those that provide financing or other support for public facilities that provide essential services generally accessible by a local community, including, but not limited to, schools, libraries, childcare facilities, parks, hospitals, healthcare facilities, and community centers. Activities that support essential community facilities are activities conducted in targeted census tracts that meet the following criteria:

(1) The activities benefit or serve residents, including low- or moderate-income residents, in one or more of the targeted census tracts;

(2) The activities do not displace or exclude low- or moderate-income residents in the targeted census tracts; and

(3) An activity that finances or supports essential community facilities must be conducted in conjunction with a federal, state, local, or tribal government plan, program, or initiative that includes an explicit focus on benefitting or serving the targeted census tracts.

(g) *Essential community infrastructure activities.* Essential community infrastructure activities are those that provide financing and other support for infrastructure, including, but not limited to, broadband, telecommunications, mass transit, water supply and distribution, and sewage treatment and collection systems. Activities that support essential community infrastructure are activities conducted in targeted census tracts that meet the following criteria:

(1) The activities benefit or serve residents, including low- or moderate-income residents, in one or more of the targeted census tracts;

(2) The activities do not displace or exclude low- or moderate-income residents in the targeted census tracts; and

(3) An activity that finances or supports essential community infrastructure must be conducted in conjunction with a federal, state, local, or tribal government plan, program, or initiative that includes an explicit focus on benefitting the targeted census tracts.

(h) *Recovery activities in designated disaster areas.* Activities that promote recovery from a designated disaster:

(1) Are activities that revitalize or stabilize geographic areas subject to a Major Disaster Declaration administered by the Federal Emergency Management Agency (FEMA). Activities that promote recovery from a designated disaster exclude activities that revitalize or stabilize counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures), unless the Board, the FDIC, and the OCC announce a temporary exception. Activities are eligible for 36 months after a Major Disaster Declaration, unless extended by the Board, the FDIC, and the OCC;

(2) Must benefit or serve residents, including low- or moderate-income residents, and not displace or exclude low- or moderate-income residents, of such geographic areas; and

(3) Must be conducted in conjunction with a federal, state, local, or tribal government disaster plan that includes an explicit focus on benefitting the designated disaster area.

(i) *Disaster preparedness and climate resiliency activities.* Disaster preparedness and climate resiliency activities are activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks. Disaster preparedness and climate resiliency activities are those conducted in targeted census tracts that meet the following criteria:

(1) The activities benefit or serve residents, including low- or moderate-income residents, in one or more of the targeted census tracts; and

(2) The activities do not displace or exclude low- or moderate-income residents in the targeted census tracts;

(3) A disaster preparedness and climate resiliency activity must be conducted in conjunction with a federal, state, local, or tribal government plan, program, or initiative focused on

disaster preparedness or climate resiliency that includes an explicit focus on benefitting a geographic area that includes the targeted census tracts.

(j) *Activities with MDIs, WDIs, LICUs, or CDFIs.* Activities with MDIs, WDIs, LICUs, or CDFIs are:

(1) Investments, loan participations, and other ventures undertaken by any bank, including by MDIs and WDIs, in cooperation with other MDIs, other WDIs, or LICUs; and

(2) Lending, investment, and service activities undertaken in connection with a Treasury Department-certified CDFI. A bank's lending, investment, and service activities undertaken in connection with a Treasury Department-certified CDFI at the time of the activity will be presumed to qualify for favorable community development consideration.

(k) *Financial literacy.* Activities that promote financial literacy are those that assist individuals and families, including low- or moderate-income individuals and families, to make informed financial decisions regarding managing income, savings, credit, and expenses, including with respect to homeownership.

(l) *Qualifying activities in Native Land Areas.* (1) Activities in Native Land Areas are activities related to revitalization, essential community facilities, essential community infrastructure, and disaster preparedness and climate resiliency that are specifically targeted to and conducted in Native Land Areas. Activities in Native Land Areas must benefit residents of Native Land Areas, including low- or moderate-income residents.

(i) Revitalization activities in Native Land Areas are those undertaken in conjunction with a Federal, state, local, or tribal government plan, program, or initiative that includes an explicit focus on revitalizing or stabilizing Native Land Areas and a particular focus on low- or moderate-income households. Revitalization activities in Native Land Areas:

(A) Must benefit or serve residents of Native Land Areas, with substantial benefits for low- or moderate-income residents; and

(B) Must not displace or exclude low- or moderate-income residents

(ii) Essential community facilities in Native Land Areas are public service facilities that provide essential services to a community, including, but not limited to, schools, libraries, childcare facilities, parks, hospitals, healthcare facilities, and community centers. Activities that support essential community facilities must benefit or serve residents, including low- or moderate-income residents, of Native Land Areas;

(iii) Eligible community infrastructure in Native Land Areas includes, but is not limited to, broadband, telecommunications, mass transit, water supply and distribution, and sewage treatment and collection systems. Activities that support eligible community infrastructure must benefit or serve residents, including low- or moderate-income residents, of one or more of Native Land Areas; and

(iv) Disaster preparedness and climate resiliency activities in Native Land Areas are activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks. Disaster preparedness and climate resiliency activities must benefit or serve residents, including low- or moderate-income residents, of Native Land Areas.

(2) Activities that support and benefit Native Land Areas under paragraphs (l)(1)(ii) and (l)(1)(iii) of this section must:

(i) Benefit or serve residents, including low- or moderate-income residents, of Native Land Areas, and must not displace or exclude low- or moderate-income residents of such geographic areas; and

(ii) Be conducted in conjunction with a Federal, state, local, or tribal government plan, program, or initiative that benefits or serves residents of Native Land Areas.

(3) Activities that support and benefit Native Land Areas under paragraph (l)(1)(iv) of this section must:

(i) Benefit or serve residents, including low- or moderate-income residents, of Native Land Areas, and must not displace or exclude low- or moderate-income residents of such geographic areas; and

(ii) Be conducted in conjunction with a Federal, state, local, or tribal government plan, program, or initiative focused on disaster preparedness or climate resiliency that benefits or serves residents of Native Land Areas.

§ __.14 Qualifying activities confirmation and illustrative list of activities.

(a) *Illustrative activities list.* The Board, the FDIC, and the OCC maintain a publicly available illustrative list of non-exhaustive examples of community development activities that qualify for CRA consideration.

(b) *Modifying the illustrative activities list.* (1) The Board, the FDIC, and the OCC will update the illustrative list of activities periodically.

(2) If the Board, the FDIC, and the OCC determine that an activity is no longer eligible for CRA community development consideration, the owner of the loan or investment at the time of the determination will continue to receive CRA consideration for the remaining term or period of the loan or investment. However, these loans or investments will not be considered eligible for CRA community development consideration for any purchasers of that loan or investment after the determination.

(c) *Confirmation of an eligible activity.* Pursuant to paragraph (d) of this section, a bank subject to this part may submit a request to the [Agency] for confirmation that an activity is eligible for CRA consideration. When the Board, the FDIC, and the OCC confirm that an activity is or is not eligible for CRA consideration, the [Agency] will notify the requestor, and the Board, the FDIC, and the OCC may add the activity to the publicly available illustrative list of activities, incorporating any conditions imposed, if applicable.

(d) *Process.* (1) A bank may request that the [Agency] confirm that an activity is eligible for CRA consideration by submitting a request to the [Agency], in a format prescribed by the [Agency].

(2) In responding to a request for confirmation that an activity is eligible for CRA consideration, the Board, the FDIC, and the OCC will consider:

(i) The information provided to describe and support the request;

(ii) Whether the activity is consistent with the safe and sound operation of the bank; and

(iii) Any other information that the agencies deem relevant.

(3) The Board, the FDIC, and the OCC may impose any conditions on confirmation of an activity's eligibility for CRA consideration, in order to ensure consistency with the requirements of this part.

§ __.15 Impact Review of Community Development Activities.

(a) *Impact review, in general.* Under the Community Development Financing Test in § __.24, the Community Development Services Test in § __.25, and the Community Development Financing Test for Wholesale or Limited Purpose Banks in § __.26, the [Agency] evaluates the impact and responsiveness of a bank's community development activities in each facility-based assessment area and, as applicable, each state, multistate MSA, and nationwide area. In evaluating the impact and responsiveness of a bank's qualifying activities, the [Agency] may take into account performance context information set out in § __.21(e), as applicable.

(b) *Impact review factors.* Factors considered in evaluating the impact and responsiveness of a bank's qualifying activities include, but are not limited to, whether the activities:

(1) Serve persistent poverty counties, defined as counties or county-equivalents that have had poverty rates of 20 percent or more for the past 30 years, as measured by the most recent decennial censuses;

(2) Serve geographic areas with low levels of community development financing;

(3) Support an MDI, WDI, LICU, or Treasury Department-certified CDFI;

(4) Serve low-income individuals and families;

(5) Support small businesses or small farms with gross annual revenues of $250,000 or less;

(6) Directly facilitate the acquisition, construction, development, preservation, or improvement of affordable housing in High Opportunity Areas;

(7) Benefit Native communities, such as qualifying activities in Native Land Areas under § __.13(l);

(8) Are a qualifying grant or donation;

(9) Reflect bank leadership through multi-faceted or instrumental support; or

(10) Result in a new community development financing product or service that addresses community development needs for low- or moderate-income individuals and families.

Subpart B—Geographic Considerations

§ __.16 Facility-based assessment areas.

(a) *In general.* A bank must delineate one or more facility-based assessment areas within which the [Agency] evaluates the bank's record of helping to meet the credit needs of its community pursuant to the standards in this part. The [Agency] does not evaluate the bank's delineation of its facility-based assessment areas as a separate performance criterion, but the [Agency] reviews the delineation for compliance with the requirements of this section.

(b) *Facility-based assessment areas for evaluating performance.* (1) A facility-based assessment area must include each county in which a bank has a main office, a branch, any other staffed bank facility that accept deposits, or a deposit-taking remote service facility, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business loans, small farm loans, and automobile loans). For purposes of this paragraph, facilities refers to those that are open to the general public and excludes nonpublic facilities.

(2) Except as provided in paragraph (b)(3) of this section, a facility-based assessment area must consist of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous counties within an MSA, metropolitan division, or the nonmetropolitan area of a state and may not extend beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA or combined statistical area.

(3) An intermediate bank or a small bank may adjust the boundaries of its facility-based assessment areas to include only the portion of a county that it reasonably can be expected to serve, subject to paragraph (c) of this section. A facility-based assessment area that includes a partial county must consist only of whole census tracts.

(c) *Limitations on the delineation of a facility-based assessment area.* Each bank's facility-based assessment areas:

(1) May not reflect illegal discrimination; and

(2) May not arbitrarily exclude low- or moderate-income census tracts, taking into account the bank's size and financial condition.

(d) *Military banks.* Notwithstanding the requirements of this section, a bank whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its assessment area.

(e) *Use of facility-based assessment areas.* The [Agency] uses the facility-based assessment areas delineated by a bank in its evaluation of the bank's CRA performance unless the [Agency] determines that the facility-based assessment areas do not comply with the requirements of this section.

§ __.17 Retail lending assessment areas.

(a) *In general.* The [Agency] evaluates a large bank's performance, including a large bank that elects to be evaluated under an approved strategic plan, by assessing the bank's retail lending activities in one or more retail lending assessment areas outside of the bank's facility-based assessment areas. A large bank must delineate retail lending assessment areas based upon the criteria in paragraphs (b) and (c) of this section.

(b) *Geographic requirements regarding retail lending assessment areas.* (1) A retail lending assessment area must consist of either:

(i) The entirety of a single MSA (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation applies), excluding counties inside facility-based assessment areas; or

(ii) All of the counties in a single state that are not included in an MSA (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation applies), excluding counties inside facility-based assessment areas, aggregated into a single retail lending assessment area.

(2) A retail lending assessment area may not extend beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA or combined statistical area.

(c) *Delineation of retail lending assessment areas.* A large bank must delineate a retail lending assessment area in any MSA or nonmetropolitan area of a state, respectively, in which it originated, as of December 31 of each of the two preceding calendar years, in that geographic area:

(1) At least 100 home mortgage loans outside of facility-based assessment areas; or

(2) At least 250 small business loans outside of facility-based assessment areas.

(d) *Use of retail lending assessment areas.* The [Agency] uses the retail lending assessment areas delineated by a large bank in its evaluation of the bank's retail lending performance unless the [Agency] determines that the retail lending assessment areas do not comply with the requirements of this section.

§ __.18 Areas for eligible community development activity.

In addition to a bank receiving consideration under this part for community development activities conducted in its facility-based assessment areas, a bank will also receive consideration for community development loans, community development investments, and community development services provided outside of its facility-based assessment areas within the states and multistate MSAs in which the bank has a facility-based assessment area and in a nationwide area, as provided in §§ __.21, __.24, __.25, __.26, __.28, and appendices C and D of this part, as applicable.

Subpart C—Standards for Assessing Performance

§ __.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests.* The [Agency] uses the following performance tests and standards to assess a bank's CRA performance:

(1) The Retail Lending Test as provided in § __.22.

(2) The Retail Services and Products Test as provided in § __.23.

(3) The Community Development Financing Test as provided in § __.24.

(4) The Community Development Services Test as provided in § __.25.

(5) The Community Development Financing Test for Wholesale or Limited Purpose Banks as provided in § __.26.

(6) The small bank performance standards as provided in § __.29(a).

(7) The intermediate bank community development performance standards as provided in § __.29(b)(2).

(8) Standards in a strategic plan approved as provided in § __.27.

(b) *Application of performance tests and standards.* (1) *Large banks.* To evaluate the performance of a large bank, the [Agency] applies the Retail Lending Test, the Retail Services and Products Test, the Community Development Financing Test, and the Community Development Services Test.

(2) *Intermediate banks.* (i) To evaluate the performance of an intermediate bank, the [Agency] applies the Retail Lending Test and either the community development performance standards as provided in § __.29(b)(2) or, if the bank chooses, the Community Development Financing Test.

(ii) If an intermediate bank chooses evaluation under the Community Development Financing Test, the following applies:

(A) The [Agency] evaluates the intermediate bank for the evaluation period preceding the bank's next CRA examination under the Community Development Financing Test and continues evaluations under the Community Development Financing Test for subsequent evaluation periods until the bank opts out. If an intermediate bank opts out of the Community Development Financing Test, the [Agency] reverts to evaluating the bank under the intermediate bank community development performance standards, starting with the entire evaluation period preceding the bank's next CRA examination.

(B) The intermediate bank may request additional consideration for activities that qualify under the Retail Services and Products Test or the Community Development Services Test and, after considering such activities, the [Agency] may adjust the bank's rating at the institution level from ''Satisfactory'' to ''Outstanding,'' if the bank would have received a ''Satisfactory'' before the additional consideration.

(3) *Small banks.* (i) To evaluate the performance of a small bank, the [Agency] applies the small bank performance standards as provided in § __.29(a), unless the bank chooses evaluation under the Retail Lending Test.

(ii) If a small bank chooses evaluation under the Retail Lending Test, the following applies:

(A) The [Agency] applies the same provisions used for evaluating intermediate banks under the Retail Lending Test to the small bank, except for § __.22(a)(3).

(B) The [Agency] evaluates the small bank for the evaluation period preceding the bank's next CRA examination under the Retail Lending Test and continues evaluations under the Retail Lending Test for subsequent evaluation periods until the bank opts out. If a small bank opts out of the Retail Lending Test, the [Agency] reverts to evaluating the bank under the small bank performance standards as provided in § __.29(a), starting with the entire evaluation period preceding the bank's next CRA examination.

(C) The small bank may request additional consideration for activities that qualify under the Retail Services and Products Test, the Community Development Financing Test, or the Community Development Services Test and, after considering such activities, the [Agency] may adjust the bank's rating at the institution level from ''Satisfactory'' to ''Outstanding.''

(4) *Wholesale or limited purpose banks.* (i) The [Agency] evaluates a wholesale or limited purpose bank under the Community Development Financing Test for Wholesale or Limited Purpose Banks.

(ii) A wholesale or limited purpose bank may request additional consideration for activities that qualify under the Community Development Services Test and, after considering such activities, the [Agency] may adjust the bank's rating at the institution level from ''Satisfactory'' to ''Outstanding.''

(5) *Banks operating under a strategic plan.* The [Agency] evaluates the performance of a bank that chooses evaluation under a strategic plan approved under § __.27 in accordance with the goals set forth in such plan.

(c) *Activities of [operations subsidiaries or operating subsidiaries] and other affiliates.* In the performance evaluation of a bank, the [Agency] considers the qualifying activities of a bank's [operations subsidiaries or operating subsidiaries] and other affiliates in accordance with paragraphs (c)(1) and (c)(2) of this section, provided that no other bank, other [operations subsidiaries or operating subsidiaries], or other affiliates of the bank claim the activity for purposes of this part.

(1) *Activities of [operations subsidiaries or operating subsidiaries].* The [Agency] considers the qualifying activities of a bank's [operations subsidiaries or operating subsidiaries] as part of the bank's performance evaluation, unless an [operations subsidiary or operations subsidiary] is independently subject to the CRA. The bank must collect, maintain, and report data on the activities of its [operations subsidiaries or operating subsidiaries] as provided in § __.42(d).

(2) *Activities of other affiliates.* The [Agency] considers the qualifying activities of affiliates of a bank that are not [operations subsidiaries or operating subsidiaries], if the bank so chooses, subject to the following:

(i) The affiliate is not independently subject to the CRA.

(ii) The bank collects, maintains, and reports data on the activities of the affiliate as provided in § __.42(e).

(iii) Under the Retail Lending Test, if a bank chooses to have the [Agency] consider retail loans within a retail loan category that are made or purchased by one or more of the bank's affiliates in a particular facility-based assessment area, retail lending assessment area, outside retail lending area, state, or multistate MSA, or nationwide, the [Agency] will consider, subject to paragraphs (c)(2)(i) and (c)(2)(ii) of this section, all of the retail loans within that retail loan category made by all of the bank's affiliates in, respectively, the particular facility-based assessment area, retail lending assessment area, outside retail lending area, state, or multistate MSA, or nationwide.

(d) *Community development financing by a consortium or a third party.* If a bank participates in a consortium that makes community development loans or community development investments, or if a bank invests in a third party that makes such loans or investments, those loans or investments may be considered, at the bank's option, subject to the following limitations:

(i) The bank must report the data pertaining to these loans and investments under § __.42(f);

(ii) If the participants or investors choose to allocate qualifying loans or investments among themselves for consideration under this section, no participant or investor may claim a loan origination, loan purchase, or investment if another participant or investor claims the same loan origination, loan purchase, or investment; and

(iii) The bank may not claim loans or investments accounting for more than its percentage share (based on the level of its participation or investment) of the total qualifying loans or investments made by the consortium or third party.

(e) *Performance context information considered.* When applying the performance tests and standards provided in paragraphs (a) and (b) of this section, including in considering whether to approve a strategic plan, the [Agency] may consider performance context information to the extent that it is not considered as part of the tests and standards in paragraphs (a) and (b) of this section, including:

(1) Any information regarding a bank's institutional capacity or constraints, including the size and financial condition of the bank, safety and soundness limitations, or any other bank-specific factors that significantly affect the bank's ability to conduct retail banking or community development activities in its facility-based assessment areas;

(2) Any information regarding the bank's past performance;

(3) Demographic data on income levels and income distribution, nature of housing stock, housing costs, economic climate, or other relevant data pertaining to the geographic areas in which the bank is evaluated;

(4) Any information about retail banking and community development needs and opportunities in the geographic areas in which the bank is evaluated provided by the bank or other relevant sources, including but not limited to members of the community, community organizations, state, local, and tribal governments, and economic development agencies;

(5) Data and information provided by the bank regarding the bank's business strategy and product offerings;

(6) The bank's public file, as described in § __.43, including any oral or written comments about the bank's CRA performance submitted to the bank or the [Agency] and the bank's responses to those comments; and

(7) Any other information deemed relevant by the [Agency].

(f) *Conclusions and ratings.* (1) *Conclusions.* As provided in § __.28 and appendix C of this part, the [Agency] assigns to a bank, other than a small bank, conclusions for the bank's performance on the applicable tests and standards in this section, as follows: ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.'' As provided in § __.28 and appendix E of this part, the [Agency] assigns to a small bank conclusions for the bank's performance on the applicable tests and standards in this section, as follows: ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

(2) *Ratings.* The [Agency] assigns to a bank a rating regarding its overall CRA performance, as applicable, in each state, in each multistate MSA, and at the institution level. The ratings assigned by the [Agency] reflect the bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank. As provided in § __.28 and appendices D and E of this part, the [Agency] assigns to a bank a rating of: ''Outstanding''; ''Satisfactory''; ''Needs to Improve''; or ''Substantial Noncompliance.''

(3) *Performance scores.* As provided in § __.28 and appendices C and D of this part, the [Agency] develops performance scores in connection with assigning conclusions and ratings for a bank, other than a small bank evaluated under the small bank performance standards in § __.29(a), a wholesale or limited purpose bank under the Community Development Financing Test for Wholesale or Limited Purpose Banks in § __.26, or a bank evaluated based on a strategic plan under § __.27.

(g) *Safe and sound operations.* The CRA and this part do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound banking practices, including underwriting standards. Banks are permitted to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income individuals, small businesses or small farms, and low- or moderate-income census tracts, only if consistent with safe and sound operations.

§ __.22 Retail lending test.

(a) *Retail Lending Test—scope.* (1) *General.* The Retail Lending Test evaluates a bank's record of helping to meet the credit needs of its facility-based assessment areas through a bank's origination and purchase of retail loans in each facility-based assessment area.

(2) *Large banks.* For large banks, the Retail Lending Test also evaluates a bank's record of helping to meet credit needs, through the bank's origination and purchase of retail loans, as applicable:

(i) In each retail lending assessment area; and

(ii) In its outside retail lending area, at the institution level.

(3) *Intermediate banks.* For intermediate banks, the Retail Lending Test also evaluates, at the institution level, a bank's record of helping to meet credit needs through the bank's origination and purchase of retail loans in its outside retail lending area if the bank originates and purchases over 50 percent of its retail loans, by dollar amount, outside of its facility-based assessment areas over the relevant evaluation period.

(4) *Major product line.* (i) *Major product line* refers to retail lending in each of the following, separate categories:

(A) Closed-end home mortgage loans: (to include home purchase, home refinance, home improvement, and other purpose closed-end loans, but not including multifamily loans);

(B) Open-end home mortgage loans (to include, but not limited to, home equity lines of credit, but not including multifamily loans);

(C) Multifamily loans;

(D) Small business loans;

(E) Small farm loans; and

(F) Automobile loans;

(ii) Major product line with regard to closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, and small farm loans, respectively, means any category of such loans that individually comprises 15 percent or more of a bank's retail lending in a particular facility-based assessment area, retail lending assessment area, or outside retail lending area, by dollar amount, over the relevant evaluation period;

(iii) (A) Major product line with regard to automobile loans means automobile loans that collectively comprise 15 percent or more of a bank's retail lending in a particular facility-based assessment area, retail lending assessment area, or outside retail lending area, based on a combination of the dollar amount and number of loans, over the relevant evaluation period.

(B) Specifically, automobile loans will be considered a major product line if the average of the percentage of automobile lending dollars out of total retail lending dollars and the percentage of automobile loans by loan count out of all total retail lending by loan count is 15 percent or greater in a particular facility-based assessment area, retail lending assessment area, or outside retail lending area.

(5) *Exclusion.* (i) A retail loan may be considered only under the Retail Lending Test and is not eligible for

consideration under the Community Development Financing Test in § __.24 or the intermediate bank community development performance standards in § __.29(b)(2);

(ii) Notwithstanding paragraph (a)(5)(i), a multifamily loan under § __.13(b) may be considered under the Retail Lending Test and under the Community Development Financing Test;

(iii) Notwithstanding paragraph (a)(5)(i), in the case of an intermediate bank that is not required to report a home mortgage loan, a small business loan, or a small farm loan, the bank may opt to have the loan considered under the Retail Lending Test or, if the loan is a qualifying activity pursuant to § __.13, under the Community Development Financing Test or the intermediate bank community development performance standards in § __.29(b)(2).

(b) *Methodology.* (1) *Retail lending volume screen.* The [Agency] first reviews numerical metrics regarding a bank's retail lending volume in each facility-based assessment area that are developed under paragraph (c) of this section.

(2) *Retail lending distribution metrics.* The [Agency] also uses numerical metrics, developed under paragraph (d) of this section, to evaluate the geographic and borrower distribution of a bank's major product lines in each facility-based assessment area and, as applicable:

(i) In each retail lending assessment area; and

(ii) In its outside retail lending area, at the institution level, using a tailored benchmark based on the bank's specific geographic markets served.

(3) *Additional factors considered.* The [Agency] also uses criteria described in paragraph (e) of this section to evaluate a bank's retail lending performance in its facility-based assessment areas.

(c) *Retail lending volume screen.* (1) *Banks that meet or surpass the retail lending volume threshold in a facility-based assessment area.* If the [Agency] determines that a bank meets or surpasses the Retail Lending Volume Threshold in a facility-based assessment area under paragraph (c)(3) of this section:

(i) The [Agency] will evaluate a bank's retail loan distribution for each major product line under paragraph (d) of this section to determine a bank's applicable recommended conclusion for retail lending performance; and

(ii) The [Agency] will assign the bank a recommended Retail Lending Test conclusion in the facility-based assessment area based upon its retail lending performance under paragraphs (c) and (d) of this section. The [Agency] will also evaluate the criteria in paragraph (e) of this section to determine whether to adjust the recommended Retail Lending Test conclusion.

(2) *Banks that fail to meet the retail lending volume threshold in a facility-based assessment area.* If the [Agency] determines that a bank fails to meet the Retail Lending Volume Threshold in a facility-based assessment area under paragraph (c)(3) of this section:

(i) If, after reviewing the factors in in paragraph (c)(2)(iii) of this section, the [Agency] determines that there is an acceptable basis for the bank failing to meet Retail Lending Volume Threshold in a facility-based assessment area, the [Agency] will evaluate the bank's retail loan distribution for each major product line under paragraph (d) of this section to develop a recommended Retail Lending Test conclusion. The [Agency] will also evaluate the criteria in paragraph (e) of this section to determine whether to adjust the recommended Retail Lending Test conclusion;

(ii) (A) If, after reviewing the factors described in paragraph (c)(2)(iii) of this section, the [Agency] determines there is not an acceptable basis for a large bank failing to meet Retail Lending Volume Threshold in a facility-based assessment area, the [Agency] will assign the bank a Retail Lending Test conclusion of ''Substantial Noncompliance'' or ''Needs to Improve'' in that facility-based assessment area based upon:

(*1*) The bank's retail lending volume and the extent by which it failed to meet the Retail Lending Volume Threshold;

(*2*) Its retail loan distribution for each major product line under paragraph (d) of this section; and

(*3*) The criteria in paragraph (e) of this section.

(B) If, after reviewing the factors described in paragraph (c)(2)(iii) of this section, the [Agency] determines there is not an acceptable basis for an intermediate bank, or a small bank that opts to be evaluated under the Retail Lending Test, failing to meet the Retail Lending Volume Threshold in a facility-based assessment area, the [Agency] will take into account the bank's performance relative to the Retail Lending Volume Threshold when determining the bank's recommended Retail Lending Test conclusion in that facility-based assessment area.

(iii) The [Agency] will determine whether there is an acceptable basis for a bank failing to meet the Retail Lending Volume Threshold in a facility-based assessment area by considering the bank's institutional capacity and constraints, including the financial condition of a bank, the presence or lack thereof of other lenders in the geographic area, safety and soundness limitations, business strategy, and other factors that limit the bank's ability to lend in the assessment area.

(3) *Retail lending volume threshold.* The [Agency] determines that a bank has met or surpassed the Retail Lending Volume Threshold in a facility-based assessment area where the bank has a Bank Volume Metric of 30 percent or greater of the Market Volume Benchmark for that facility-based assessment area. The Bank Volume Metric and the Market Volume Benchmark for a facility-based assessment are derived under section I of appendix A of this part.

(d) *Retail lending distribution metrics.* (1) *Scope.* For each major product line, the [Agency] evaluates the geographic and borrower distributions of a bank's retail loans, as applicable:

(i) In each facility-based assessment area;

(ii) In each retail lending assessment area; and

(iii) In its outside retail lending area, at the institution level.

(2) *Recommended Retail Lending Test conclusions.* (i) Using bank borrower and geographic distributions for each major product line compared against applicable performance ranges, as described in appendix A of this part, the [Agency] will assign a bank recommended Retail Lending Test conclusion, as determined in appendix A of this part, in:

(A) (*1*) Each facility-based assessment area of a large bank where the bank meets or surpasses the Retail Lending Volume Threshold under paragraph (c) of this section or the [Agency] determines that the bank has an acceptable basis for failing to meet the Retail Lending Volume Threshold; and

(*2*) Each facility-based assessment area of an intermediate bank;

(B) Each retail lending assessment area of a large bank; and

(C) As applicable, a large bank's or an intermediate bank's outside retail lending area, at the institution level.

(ii) *Geographic distribution measures.* Regarding a bank's geographic distribution of retail lending, the [Agency] will review a bank's performance in low- and moderate-income census tracts using the following measures:

(A) A Geographic Bank Metric, derived under section III.1 of appendix A of this part;

(B) A Geographic Market Benchmark, derived under section III.2.a of appendix A of this part; and

(C) A Geographic Community Benchmark, derived under section III.2.b of appendix A of this part.

(D). For each major product line, the [Agency] will compare the following in low-income census tracts and moderate-income census tracts, respectively:

(*1*) The bank's performance, as captured by the Geographic Bank Metric and as described in sections V.2.b and V.2.c of appendix A of this part, compared against:

(*2*) Performance ranges, with boundaries based upon the Geographic Market Benchmark and the Geographic Community Benchmark as described in section V.2 of appendix A of this part, associated with each potential recommended Retail Lending Test performance conclusion: ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' and ''Substantial Noncompliance.''

(iii) *Borrower distribution measures.* Regarding the bank's borrower distribution of retail lending, apart from multifamily lending, the [Agency] will review a bank's retail lending performance regarding, as applicable, low-income borrowers and moderate-income borrowers, small businesses with gross annual revenues of $250,000 or less and small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million, and small farms with gross annual revenues of $250,000 or less and small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million, using the following measures:

(A) A Borrower Bank Metric, derived under section IV.1 of appendix A of this part;

(B) A Borrower Market Benchmark, derived under section IV.2.a of appendix A of this part; and

(C) A Borrower Community Benchmark, derived under section IV.2.b of appendix A of this part.

(D) For each major product line, the [Agency] will compare the following regarding lending to, as applicable: low-income borrowers and moderate-income borrowers; small businesses with gross annual revenues of $250,000 or less and small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million, and small farms with gross annual revenues of $250,000 or less and small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million:

(*1*) The bank's performance, as captured by the Borrower Bank Metric and as described in section V.2 of appendix A of this part, compared against:

(*2*) Performance ranges, with boundaries based upon the Borrower Market Benchmark and the Borrower Community Benchmark as described in sections V.2.d and V.2.e of appendix A of this part, associated with each potential recommended Retail Lending Test performance conclusion: ''Outstanding''; ''High Satisfactory''; ''Low Satisfactory''; ''Needs to Improve''; and ''Substantial Noncompliance.''

(e) *Additional factors considered when evaluating retail lending performance.* In addition to considering how a bank performs relative to the Retail Lending Volume Threshold described in paragraph (c) of this section and the performance ranges described in paragraph (d) of this section, the [Agency] evaluates the retail lending performance of a bank in each facility-based assessment area by considering:

(1) Information indicating that a bank has purchased retail loans for the sole or primary purpose of inappropriately influencing its retail lending performance evaluation, including but not limited to subsequent resale of some or all of those retail loans or any indication that some or all of the loans have been considered in multiple banks' CRA evaluations.

(2) The dispersion of retail lending within the facility-based assessment area to determine whether there are gaps in lending in the facility-based assessment area that are not explained by performance context.

(3) The number of banks whose reported retail lending and deposits data is used to establish the applicable Retail Lending Volume Threshold, geographic distribution, and borrower distribution thresholds.

(4) Missing or faulty data that would be necessary to calculate the relevant metrics and benchmarks or any other factors that prevent the [Agency] from calculating a recommended conclusion. If unable to calculate a recommended conclusion, the [Agency] will assign a Retail Lending Test conclusion based on consideration of the relevant available data.

(f) *Retail Lending Test performance conclusions and ratings.* (1) *Conclusions.* As provided in § __.28 and appendix C of this part, the [Agency] assigns conclusions for a bank's Retail Lending Test performance in, as applicable, its facility-based assessment areas, retail lending assessment areas, and outside retail lending area. As described in appendix C of this part, conclusions assigned for a bank's performance in facility-based assessment areas and, as applicable, retail lending assessment areas are the basis for assigned conclusions at the state, multistate MSA, and institution levels. As applicable, a bank's assigned conclusion at the institution level is also informed by the bank's retail lending activities in its outside retail lending area.

(2) *Ratings.* As provided in § __.28 and appendix D of this part, the [Agency] incorporates a bank's Retail Lending Test conclusions into, as applicable, its state, multistate MSA, and institution ratings.

§ __.23 Retail services and products test.

(a) *Scope of Retail Services and Products Test.* (1) *In general.* The Retail Services and Products Test evaluates the availability and responsiveness of a bank's retail banking services and products targeted to low- and moderate-income individuals and in low- and moderate-income census tracts in a bank's facility-based assessment areas and at the state, multistate MSA, and institution levels. The [Agency] considers the bank's delivery systems, as described in paragraph (b) of this section, and the bank's products and other services, as described in paragraph (c) of this section.

(2) *Exclusion.* Activities considered for a bank under the Community Development Services Test may not be considered under the Retail Services and Products Test.

(b) *Delivery systems.* To evaluate a bank's delivery systems, the [Agency] analyzes the following: branch availability and services, as provided in paragraph (b)(1) of this section and remote service facility availability, as provided in paragraph (b)(2) of this section. For a large bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, the [Agency] also analyzes digital and other delivery systems, as provided in paragraph (b)(3) of this section. A large bank that had average assets of $10 billion or less in either of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, may request additional consideration under the Retail Services and Products Test for its digital and other delivery systems under paragraph (b)(3) of this section.

(1) *Branch availability and services.* The [Agency] evaluates a bank's branch distribution, branch openings and closings, and branch hours of operation

and services responsive to the needs of low- and moderate-income individuals and in low- and moderate-income communities.

(i) *Branch distribution.* The [Agency] evaluates a bank's branch distribution based on the following:

(A) *Branch distribution metrics.* The [Agency] considers the number and percentage of the bank's branches within low-, moderate-, middle-, and upper-income census tracts.

(B) *Benchmarks.* The [Agency]'s consideration of the branch distribution metrics in a facility-based assessment area is informed by the following benchmarks:

(*1*) Percentage of census tracts in the facility-based assessment area by low-, moderate-, middle-, and upper-income census tracts, respectively;

(*2*) Percentages of households in the facility-based assessment area by low-, moderate-, middle-, and upper-income census tracts, respectively;

(*3*) Percentage of total businesses in the facility-based assessment area by low-, moderate-, middle-, and upper-income census tracts, respectively; and

(*4*) Percentage of all full-service bank branches in the facility-based assessment area by low-, moderate-, middle-, and upper-income census tracts, respectively.

(C) *Geographic considerations.* The [Agency] considers the availability of branches in the following census tracts:

(*1*) Low branch access census tracts or very low branch access census tracts, as defined in § __.12;

(*2*) Middle- and upper-income census tracts in which branches deliver services to low- and moderate-income individuals;

(*3*) Distressed or underserved nonmetropolitan middle-income census tracts; and

(*4*) Native Land Areas.

(ii) *Branch openings and closings.* The [Agency] evaluates the bank's record of opening and closing branches since the previous examination to inform the degree of accessibility of banking services to low- and moderate-income individuals and low- and moderate-income census tracts.

(iii) *Branch hours of operation and services.* The [Agency] evaluates the following:

(A) The reasonableness of branch hours in low- and moderate-income census tracts compared to middle- and upper-income census tracts, including but not limited to whether branches offer extended and weekend hours.

(B) The range of services provided at branches in low-, moderate-, middle-, and upper-income census tracts, respectively, including but not limited to:

(*1*) Bilingual and translation services;

(*2*) Free or low-cost check cashing services, including but not limited to government and payroll check cashing services;

(*3*) Reasonably priced international remittance services; and

(*4*) Electronic benefit transfer accounts.

(C) The degree to which branch services are responsive to the needs of low- and moderate-income individuals in a bank's facility-based assessment areas.

(2) *Remote service facility availability.* The [Agency] evaluates a bank's remote service facility availability in a facility-based assessment area based on the following:

(i) *Remote service facility distribution metrics.* The [Agency] considers the number and percentage of the bank's remote service facilities within low-, moderate-, middle-, and upper-income census tracts.

(ii) *Benchmarks.* The [Agency]'s consideration of the remote service facility distribution metrics is informed by the following benchmarks:

(A) Percentage of census tracts in the facility-based assessment area by low-, moderate-, middle-, and upper-income census tracts, respectively;

(B) Percentage of households in the facility-based assessment area by low-, moderate-, middle-, and upper-income census tracts, respectively; and

(C) Percentage of total businesses in the facility-based assessment area by low-, moderate-, middle-, and upper-income census tracts, respectively.

(iii) *Access to out-of-network remote service facilities.* The [Agency] reviews whether the bank offers customers fee-free access to out-of-network ATMs in low- and moderate-income census tracts.

(3) *Digital and other delivery systems.* The [Agency] evaluates the availability and responsiveness of a bank's digital and other delivery systems, including to low- and moderate-income individuals, by reviewing the following:

(i) Digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, respectively, such as:

(A) The number of checking and savings accounts opened digitally in low-, moderate-, middle-, and upper-income census tracts, respectively;

(B) Accountholder usage data by type of digital and other delivery systems in low-, moderate-, middle-, and upper-income census tracts, respectively;

(ii) The range of digital and other delivery systems, including but not limited to online banking, mobile banking, and telephone banking; and

(iii) The bank's strategy and initiatives to serve low- and moderate-income individuals with digital and other delivery systems.

(c) *Credit and deposit products.* As provided in paragraph (c)(1) of this section, the [Agency] analyzes the responsiveness of credit products and programs not covered under paragraph (b) of this section to the needs of low- and moderate-income individuals, small businesses, and small farms. As provided in paragraph (c)(2) of this section, for a large bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, the [Agency] also analyzes a bank's deposit products and other services not covered under paragraph (b) of this section. A large bank that had average assets of $10 billion or less in either of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, may request additional consideration under the Retail Services and Products Test for its deposit products and other services under paragraph (c)(2) of this section.

(1) *Responsiveness of credit products and programs to the needs of low- and moderate-income individuals, small businesses, and small farms.* The [Agency] evaluates whether a bank's credit products and programs are, in a safe and sound manner, responsive to the needs of low- and moderate-income individuals (including through low-cost education loans), small businesses, and small farms. Categories of responsive credit products and programs may include, but are not limited to, credit products and programs that:

(i) Facilitate home mortgage and consumer lending targeted to low- or moderate-income borrowers in a safe and sound manner.

(ii) Meet the needs of small businesses and small farms, including the smallest businesses and smallest farms, in a safe and sound manner; or

(iii) Are conducted in cooperation with MDIs, WDIs, LICUs, or Treasury Department-certified CDFIs in a safe and sound manner.

(2) *Deposit products responsive to the needs of low- and moderate-income individuals.* (i) *Availability of deposit products responsive to the needs of low- and moderate-income individuals.* The [Agency] evaluates whether the bank offers deposit products that have features and cost characteristics responsive to the needs of low- and moderate-income individuals, consistent with safe and sound operations, including but not limited to

deposit products with the following types of features:

(A) Low-cost features, including but not limited to deposit products with no overdraft or insufficient funds fees, no or low minimum opening balance, no or low monthly maintenance fees, or free or low-cost check-cashing and bill-pay services;

(B) Features facilitating broad functionality and accessibility, including but not limited to deposit products with in-network ATM access, debit cards for point-of-sale and bill payments, and immediate access to funds for customers cashing government, payroll, or bank-issued checks; or

(C) Features facilitating inclusivity of access by persons without banking or credit histories, or with adverse banking histories.

(ii) *Usage of deposit products responsive to the needs of low- and moderate-income individuals.* The [Agency] evaluates the usage of a bank's deposit products that have features and cost characteristics responsive to the needs of low- and moderate-income individuals by considering, for example, the following:

(A) The number of responsive deposit accounts opened and closed during each year of the evaluation period in low-, moderate-, middle-, and upper-income census tracts, respectively.

(B) In connection with § __ .23(c)(2)(ii)(A), the percentage of responsive deposit accounts compared to total deposit accounts for each year of the evaluation period.

(C) Marketing, partnerships, and other activities that the bank has undertaken to promote awareness and use of responsive deposit accounts by low- and moderate-income individuals.

(d) *Retail Services and Products Test performance conclusions and ratings.* (1) *Conclusions.* As provided in § __.28 and appendix C of this part, the [Agency] assigns conclusions for the retail services and products performance of a bank based upon the [Agency]'s assessment of the bank's performance in, as applicable, each facility-based assessment area, state, multistate MSA, and at the institution level.

(2) *Ratings.* As provided in § __.28 and appendix D of this part, the [Agency] incorporates a bank's Retail Services and Products Test conclusions into, as applicable, its state, multistate MSA, and institution ratings.

§ __.24 Community development financing test.

(a) *Scope of Community Development Financing Test.* (1) *In general.* The Community Development Financing Test evaluates a bank's record of helping to meet the community development financing needs of the bank's facility-based assessment areas, states, multistate MSAs, and nationwide area, through its provision of community development loans and community development investments. In determining whether a bank's community development loans or community development investments serve a facility-based assessment area, state, multistate MSA, or nationwide area, the [Agency] considers information provided by the bank and, as needed, publicly available information and information provided by government or community sources that demonstrates that the activity includes serving individuals or census tracts located within the facility-based assessment area, state, multistate MSA, or nationwide area. Community development financing dollars will be allocated in accordance with section 13 of appendix B of this part.

(2) *Exclusion.* (i) In general, a retail loan may only be considered under the Retail Lending Test in § __.22 and is not eligible for consideration under the Community Development Financing Test;

(ii) A multifamily loan described in § __.13(b) may be considered both under the Retail Lending Test in § __.22 and under the Community Development Financing Test;

(iii) An intermediate bank that is not required to report a home mortgage loan, a small business loan, or a small farm loan may opt to have the home mortgage loan, small business loan, or small farm loan considered either under the Retail Lending Test in § __.22 or, if the loan is a qualifying activity pursuant to § __.13, under the Community Development Financing Test or the intermediate bank community development evaluation in § __.29, as applicable.

(b) *Bank performance in a facility-based assessment area.* The [Agency] evaluates the community development financing performance of a bank in a facility-based assessment area based on consideration of the numerical metrics under paragraph (b)(1) of this section and a review of the impact and responsiveness of the bank's activities in a facility-based assessment area under § __.15.

(1) *Bank Assessment Area Community Development Financing Metric.* The Bank Assessment Area Community Development Financing Metric, as specified in section 2 of appendix B of this part, measures the dollar value of a bank's community development loans and community development investments that serve the facility-based assessment area for each year, averaged over the years of the evaluation period, against the dollar value of deposits from the bank's deposit accounts in the facility-based assessment area, averaged over the evaluation period.

(2) *Benchmarks.* The Bank Assessment Area Community Development Financing Metric is compared to the following benchmarks:

(i) *Assessment Area Community Development Financing Benchmark.* The Assessment Area Community Development Financing Benchmark, as specified in section 3 of appendix B of this part, measures the community development financing activity of large banks in the aggregate in the bank's facility-based assessment area against the total dollar value of deposits from large bank deposit accounts in the facility-based assessment area.

(ii) *Metropolitan and Nonmetropolitan Nationwide Community Development Financing Benchmarks.* The Metropolitan and Nonmetropolitan Nationwide Community Development Financing Benchmarks, as specified in section 4 of appendix B of this part, measure the community development financing activity of large banks in the aggregate nationally for metropolitan areas (if the relevant facility-based assessment area is in a metropolitan area) or for nonmetropolitan areas (if the relevant facility-based assessment area is in a nonmetropolitan area) against the total dollar value of deposits from large bank deposit accounts in those areas, respectively.

(c) *Bank performance in a state, multistate MSA, and nationwide area.* (1) *In general.* The [Agency] evaluates the community development financing performance of a bank in a state, multistate MSA, and nationwide area, as applicable, based on the two components in paragraph (c)(1)(i) and (c)(1)(ii) of this section. The [Agency] assigns a conclusion for the bank's performance at each state, multistate MSA, and nationwide area, respectively, based on a weighted combination of these components in accordance with section 15 of appendix B of this part:

(i) A weighted average under paragraphs (c)(2)(i), (c)(3)(i), and (c)(4)(i) of this section of the bank's facility-based assessment area conclusions for each area where conclusions are assigned, as applicable, calculated in accordance with section 16 of appendix B of this part; and

(ii) An assessment under paragraphs (c)(2)(ii), (c)(3)(ii), and (c)(4)(ii) of this section, respectively, which combines consideration of the applicable metrics and benchmarks with a review of the impact of the bank's activities in those respective areas under § __.15.

(2) *Bank performance in a state.* The two components of the [Agency]'s assessment of a bank's community development performance in a state are as follows:

(i) *Component one—weighted average of facility-based assessment area performance conclusions in a state.* The [Agency] considers the weighted average of the bank's conclusions for its facility-based assessment areas within the state, calculated in accordance with section 16 of appendix B of this part.

(ii) *Component two—metrics and impact assessment in a state.* The [Agency] considers the numerical metrics of this paragraph and the impact of the bank's activities in a state under § __.15. The [Agency] combines the results of the metrics and benchmarks and the impact review in accordance with section 15.iii of appendix B of this part.

(A) *Bank State Community Development Financing Metric.* The Bank State Community Development Financing Metric, as specified in section 5 of appendix B of this part, measures the dollar value of a bank's community development loans and community development investments that serve a state against the dollar value of deposits from the bank's deposit accounts in the state.

(B) *Benchmarks.* The Bank State Community Development Financing Metric is compared to the following benchmarks:

(*1*) *State Community Development Financing Benchmark.* The State Community Development Financing Benchmark, as specified in section 6 of appendix B of this part, measures the community development financing activity of large banks in the state in the aggregate against the total dollar value of deposits from large bank deposit accounts in the state.

(*2*) *State Weighted Assessment Area Community Development Financing Benchmark.* The State Weighted Assessment Area Community Development Financing Benchmark, as specified in section 7 of appendix B of this part, is the average of the bank's Assessment Area Community Development Financing Benchmarks for each facility-based assessment area within the state, weighted in accordance with section 17 of appendix B of this part.

(3) *Bank performance in a multistate MSA.* The two components of the [Agency]'s assessment of a bank's community development performance in a multistate MSA are as follows:

(i) *Component one—weighted average of facility-based assessment area performance in a multistate MSA.* The [Agency] considers the weighted average of the bank's conclusions for its facility-based assessment areas within the multistate MSA, calculated in accordance with section 16 of appendix B of this part.

(ii) *Component two—metrics and impact assessment in a multistate MSA.* The [Agency] considers the numerical metrics in this paragraph and the impact of the bank's activities in a multistate MSA under § __.15. The [Agency] combines the results of the metrics and benchmarks and the impact review in accordance with section 15.iii of appendix B of this part.

(A) *Bank Multistate MSA Community Development Financing Metric.* The Bank Multistate MSA Community Development Financing Metric, as specified in section 8 of appendix B of this part, measures the dollar value of a bank's community development loans and community development investments that serve a multistate MSA against the dollar value of deposits from deposit accounts in the multistate MSA.

(B) *Benchmarks.* The Bank Multistate MSA Community Development Financing Metric is compared to the following benchmarks:

(*1*) *Multistate MSA Community Development Financing Benchmark.* The Multistate MSA Community Development Financing Benchmark, as specified in section 9 of appendix B of this part, measures the community development activity of large banks in the aggregate in the multistate MSA against the total dollar value of deposits from large bank deposit accounts in the multistate MSA.

(*2*) *Multistate MSA Weighted Assessment Area Community Development Financing Benchmark.* The Multistate MSA Weighted Assessment Area Community Development Financing Benchmark, as specified in section 10 of appendix B of this part, is the weighted average of the bank's Bank Assessment Area Community Development Financing Benchmarks for each facility-based assessment area within the multistate MSA, calculated in accordance with section 17 of appendix B of this part.

(4) *Bank performance in a nationwide area.* The two components of the [Agency]'s assessment of a bank's community development performance in a nationwide area are as follows:

(i) *Component one—weighted average of facility-based assessment area performance in a nationwide area.* The [Agency] considers the average of the bank's conclusions for its assessment areas within the nationwide area, weighted in accordance with section 16 of appendix B of this part.

(ii) *Component two—metrics and impact assessment in a nationwide area.* The [Agency] considers the numerical metrics of this paragraph and the impact of the bank's activities in a nationwide area under § __.15. The [Agency] combines the results of the metrics and benchmarks and the impact review in accordance with section 15.iii of appendix B of this part.

(A) *Bank Nationwide Community Development Financing Metric.* The Bank Nationwide Community Development Financing Metric, as specified in section 11 of appendix B of this part, measures the bank's total community development financing activity in a nationwide area for each year, averaged over the years of the evaluation period, divided by the total dollar amount of deposits from bank deposit accounts in a nationwide area, averaged over the years of the evaluation period.

(B) *Benchmarks.* The Bank Nationwide Community Development Financing Metric is compared to the following benchmarks:

(*1*) *Nationwide Community Development Financing Benchmark.* The Nationwide Community Development Financing Benchmark, as specified in section 12 of appendix B of this part, measures the community development financing activity of large banks in the aggregate in a nationwide area for each year, averaged over the years of the evaluation period, divided by the total dollar amount of deposits from large bank deposit accounts in a nationwide area, averaged over the years of the evaluation period.

(*2*) *Nationwide Weighted Assessment Area Community Development Financing Benchmark.* The Nationwide Weighted Assessment Area Community Development Financing Benchmark, as specified in section 13 of appendix B of this part, is the weighted average of the bank's Bank Assessment Area Community Development Financing Benchmarks for each facility-based assessment area within the nationwide area, calculated in accordance with section 17 of appendix B of this part.

(d) *Community Development Financing Test performance conclusions and ratings.* (1) *Conclusions.* As provided in § __.28 and appendix C of this part, the [Agency] assigns conclusions for the Community Development Financing Test performance of a bank based upon the [Agency]'s assessment of the bank's performance in each facility-based assessment area, state, multistate MSA, and nationwide area.

(2) *Ratings.* As provided in § __.28 and appendix D of this part, the [Agency] incorporates a bank's Community Development Financing Test conclusions into, as applicable, its state, multistate MSA, and institution ratings.

§ __.25 Community development services test.

(a) *Scope of Community Development Services Test.* The Community Development Services Test evaluates a bank's record of helping to meet the community development services needs of the bank's facility-based assessment areas, states, multistate MSAs, and nationwide area. Community development services are defined in paragraph (d) of this section. In determining whether a bank's community development services serve a facility-based assessment area, state, multistate MSA, or nationwide area, the [Agency] considers publicly available information and information provided by the bank or government or community sources that demonstrates that the activity includes serving individuals or census tracts located within the facility-based assessment area, state, multistate MSA, or nationwide area, as applicable.

(b) *Bank performance in a facility-based assessment area.* The [Agency] evaluates the community development services performance of a bank in a facility-based assessment area based on a review of the bank's provision of community development services under paragraph (b)(1) of this section and, as applicable, a metric measuring the bank's community development services hours under paragraph (b)(2) of this section. The [Agency] also reviews the impact and responsiveness of a bank's community development services activities in a facility-based assessment area under paragraph (b)(3) of this section.

(1) *Review of the provision of community development services.* The [Agency] reviews the extent to which a bank provides community development services based on any relevant information provided to the [Agency] by a bank, including any information required to be collected under § __.42, as applicable. This review may include consideration of one or more of the following types of information:

(i) The total number of hours for all community development services performed by a bank;

(ii) The number and type of community development services offered;

(iii) For nonmetropolitan areas, the number of activities related to the provision of financial services;

(iv) The number and proportion of community development service hours completed by, respectively, executive and other employees of the bank;

(v) The extent to which community development services are used, as demonstrated by information such as the number of low- and moderate-income participants, organizations served, and sessions sponsored, as applicable; and

(vi) Any other evidence that the bank's community development services benefit low- and moderate-income individuals or are otherwise responsive to community development needs.

(2) *Bank Assessment Area Community Development Service Hours Metric.* For a large bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, as of December 31, the [Agency] also considers the Bank Assessment Area Community Development Service Hours Metric. The Bank Assessment Area Community Development Service Hours Metric measures the total number of hours for all community development services performed by a bank in a facility-based assessment area during the evaluation period, divided by the total number of full-time equivalent bank employees in the facility-based assessment area, to obtain the average number of community development service hours per full-time equivalent employee.

(3) *Impact review.* The [Agency] evaluates the impact and responsiveness of the bank's community development services in a facility-based assessment area under § __.15.

(c) *Bank performance in a state, multistate MSA, or nationwide area.* The [Agency] evaluates the community development services performance of a bank in a state, multistate MSA, or nationwide area, as applicable under § __.18, based on two components:

(1) *Component one—weighted average of facility-based assessment area performance in a state, multistate MSA, or nationwide area.* The [Agency] considers the weighted average of the bank's Community Development Services Test conclusions for its facility-based assessment areas within a state, multistate MSA, or nationwide area, as applicable under § __.18, calculated in accordance with section 16 of appendix B of this part.

(2) *Component two—evaluation of community development services outside of facility-based assessment areas.* For each state, multistate MSA, or nationwide area, as applicable, the [Agency] may adjust the results of the weighted average derived under paragraph (c)(1) upward, based on an evaluation of the bank's community development services activities outside of its facility-based assessment areas, which may consider the following information:

(i) The number, hours, and type of community development services conducted in the state, multistate MSA, or nationwide area;

(ii) The proportion of activities related to the provision of financial services, as described in paragraph (d)(3) of this section; and

(iii) The impact and responsiveness of the community development services in the state, multistate MSA, or nationwide area, consistent with the factors in paragraph (b)(3) of this section.

(d) *Community development services—defined.* (1) *In general.* Community development services means activities that:

(i) Have a primary purpose of community development, as defined in § __.13(a)(1);

(ii) Are volunteer activities performed by bank board members or employees of the bank; and

(iii) Are related to financial services as described in paragraph (d)(3) of this section, unless otherwise indicated in paragraph (d)(4) of this section.

(2) *Exclusions.* Community development services do not include volunteer activities by bank board members or employees of the bank who are not acting in their capacity as representatives of the bank.

(3) *Activities related to the provision of financial services.* Activities related to the provision of financial services are generally activities that relate to credit, deposit, and other personal and business financial services. Activities related to financial services include, but are not limited to:

(i) Serving on the board of directors of an organization that has a primary purpose of community development;

(ii) Providing technical assistance on financial matters to non-profit, government, or tribal organizations or agencies supporting community development activities;

(iii) Providing support for fundraising to organizations that have a primary purpose of community development;

(iv) Providing financial literacy education as described in § __.13(k); or

(v) Providing services reflecting other areas of expertise at the bank, such as human resources, information technology, and legal services.

(4) *Community development services in nonmetropolitan areas.* Banks may receive community development services consideration for volunteer activities undertaken in nonmetropolitan areas that otherwise meet the criteria for one or more of the community development definitions, as described in § __.13, even if unrelated to financial services. Examples of qualifying activities not related to financial services include, but are not limited to:

(i) Assisting an affordable housing organization to construct homes;

(ii) Volunteering at an organization that provides community support such as a soup kitchen, a homeless shelter, or a shelter for victims of domestic violence; and

(iii) Organizing or otherwise assisting with a clothing drive or a food drive for a community service organization.

(e) *Community Development Services Test performance conclusions and ratings.* (1) *Conclusions.* As provided in § __.28 and appendix C of this part, the [Agency] assigns conclusions for a bank's Community Development Services Test performance in, as applicable, each facility-based assessment area, state, multistate MSA, and at the institution level.

(2) *Ratings.* As provided in § __.28 and appendix D of this part, the [Agency] incorporates a bank's Community Development Services Test conclusions into, as applicable, its state, multistate MSA, and institution ratings.

§ __.26 Wholesale or limited purpose banks.

(a) *Bank request for designation as a wholesale or limited purpose bank.* To receive a designation as a wholesale or limited purpose bank, a bank must file a request, in writing, with the [Agency] at least three months prior to the proposed effective date of the designation. If the [Agency] approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the [Agency] notifies a wholesale or limited purpose bank that the [Agency] has revoked the designation on its own initiative.

(b) *Performance evaluation.* (1) To evaluate a wholesale or limited purpose bank, the [Agency] applies the Community Development Financing Test for Wholesale or Limited Purpose Banks described in paragraphs (c) through (f) of this section.

(2) A wholesale or limited purpose bank may request additional consideration for activities that would qualify for consideration under the Community Development Services Test. Based on a review of these activities, if warranted, the [Agency] may raise the bank's rating at the institution level from ''Satisfactory'' to ''Outstanding.''

(c) *Scope of Community Development Financing Test for Wholesale or Limited Purpose Banks.* (1) The Community Development Financing Test for Wholesale or Limited Purpose Banks evaluates a wholesale or limited purpose bank's record of helping to meet the community development financing needs of the bank's facility-based assessment areas, states, multistate MSAs, and nationwide area, through its provision of community development loans and community development investments.

(2) In determining whether a wholesale or limited purpose bank's community development financing activities serve a facility-based assessment area, state, multistate MSA, or nationwide area, the [Agency] considers information provided by the bank and, as needed, publicly available information and information provided by government or community sources that demonstrate that the activities include serving individuals or census tracts located within the bank's facility-based assessment area, state, multistate MSA, or nationwide area.

(3) Community development financing dollars will be allocated in accordance with section 14 of appendix B of this part.

(d) *Wholesale or limited purpose bank performance in a facility-based assessment area.* The [Agency] evaluates the community development financing performance of a wholesale or limited purpose bank in a facility-based assessment area based on consideration of the total dollar value of a bank's community development loans and community development investments that serve the facility-based assessment area for each year and a review of the impact and responsiveness of the bank's activities in the facility-based assessment area under § __.15.

(e) *Wholesale or limited purpose bank performance in a state or multistate MSA.* The [Agency] evaluates the community development financing performance of a wholesale or limited purpose bank in a state or multistate MSA based on consideration of the following:

(1) The bank's community development financing performance in its facility-based assessment areas in the state or multistate MSA; and

(2) The dollar value of a bank's community development loans and community development investments that serve the state or multistate MSA during the evaluation period and a review of the impact of the bank's activities in the state or multistate MSA under § __.15.

(f) *Wholesale or limited purpose bank performance in a nationwide area.* The [Agency] evaluates the community development financing performance of a wholesale or limited purpose bank in a nationwide area based on consideration of the following:

(1) The bank's community development financing performance in all of its facility-based assessment areas; and

(2) The Wholesale or Limited Purpose Bank Community Development Financing Metric and a review of the impact of the bank's nationwide activities under § __.15. The Wholesale or Limited Purpose Bank Community Development Financing Metric, as specified in section 18 of appendix B of this part, measures the average total dollar value of a bank's community development loans and community development investments over the evaluation period against the bank's quarterly average total assets over the evaluation period.

(g) *Community Development Financing Test for Wholesale or Limited Purpose Banks performance conclusions and ratings.* (1) *Conclusions.* As provided in § __.28 and appendix C of this part, the [Agency] assigns conclusions for a wholesale or limited purpose bank's Community Development Financing Test performance in, as applicable, each facility-based assessment area, state, multistate MSA, and nationwide area.

(2) *Ratings.* As provided in § __.28 and appendix D of this part, the [Agency] incorporates a wholesale or limited purpose bank's Community Development Financing Test conclusions into, as applicable, its state, multistate MSA, and institution ratings.

§ __.27 Strategic plan.

(a) *Alternative election.* The [Agency] will assess a bank's record of helping to meet the credit needs of its facility-based assessment areas and, as applicable, its retail lending assessment areas and other geographic areas served by the bank at the institution level under a strategic plan, if:

(1) The bank has submitted the plan to the [Agency] as provided for in this section;

(2) The [Agency] has approved the plan;

(3) The plan is in effect; and

(4) The bank has been operating under an approved plan for at least one year.

(b) *Data reporting.* The [Agency]'s approval of a plan does not affect the bank's obligation, if any, to report data as required by § __.42.

(c) *Plans in general.* (1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the [Agency] will evaluate the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare:

(i) A single plan for all of its facility-based assessment areas and, as applicable, retail lending assessment areas and geographic areas outside of its facility-based assessment areas and retail lending assessment areas at the institution level, with goals for each geographic area; or

(ii) Separate plans for one or more of its facility-based assessment areas and, as applicable, retail lending assessment areas, and geographic areas outside of its facility-based assessment areas and retail lending assessment areas at the institution level.

(3) *Treatment of [operations subsidiaries or operating subsidiaries] and affiliates.* (i) The activities of a bank's [operations subsidiary or operating subsidiary] must be included in its plan(s) or be evaluated pursuant to the default evaluation methodology under which the bank would be examined in the absence of an approved plan, unless the [operations subsidiary or operating subsidiary] is subject to CRA requirements.

(ii) Additionally, at a bank's option, activities of other affiliates may be included in a plan, if those activities are not claimed for purposes of this part by any other institution. Other affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that those activities are not claimed for purposes of this part by another bank.

(iii) The method by which loans are allocated among affiliated institutions for CRA purposes must reflect a reasonable basis for the allocation of banking activities among the institutions and must not be designed solely to artificially enhance any institution's CRA evaluation.

(d) *Public participation in plan development.* Before submitting a plan to the [Agency] for approval, a bank must:

(1) Informally seek suggestions from members of the public in its facility-based assessment areas covered by the plan while developing the plan;

(2) Once the bank has developed a draft plan, formally solicit public comment on the draft plan for at least 30 days by submitting the draft plan for publication on the [Agency]'s website and by publishing the draft plan on its website, or if the bank does not maintain a website by publishing notice in at least one print newspaper or digital publication of general circulation in each facility-based assessment area covered by the plan (or for military banks in at least one print newspaper or digital publication of general circulation targeted to members of the military). The draft plan should include both an electronic means by which, and a postal address where, members of the public can submit comments on the bank's plan; and

(3) During the period when the bank is formally soliciting public comment on its draft plan, make copies of the draft plan available for review at no cost at all offices of the bank in any facility-based assessment area covered by the plan and provide copies of the draft plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The bank must submit its draft plan to the [Agency] at least three months prior to the proposed effective date of the plan. The bank must also submit with its draft plan a description of its efforts to seek suggestions from members of the public, including who was contacted and how information was gathered; any written or other public input received; and, if the plan was revised in light of the public input received, the initial draft plan as released for public comment.

(f) *Plan content.* (1) *Appropriateness of strategic plan election.* A bank's draft plan must include the same performance tests and standards that would otherwise be applied under this part, unless the bank is substantially engaged in activities outside the scope of these tests. The draft plan must specify how these activities are outside the scope of the otherwise applicable performance tests and standards and why being evaluated pursuant to a plan would be a more appropriate means to assess its record of helping to meet the credit needs of its community than if it were evaluated pursuant to the otherwise applicable performance tests and standards.

(2) *Appropriateness of geographic coverage of plan.* A bank's draft plan must incorporate measurable goals for all geographic areas that would be included pursuant to the performance tests and standards that would otherwise be applied in the absence of an approved plan.

(3) *Measurable goals.* (i) As applicable, pursuant to the performance tests and standards that would otherwise be applied in the absence of an approved plan, a bank must specify measurable goals in its draft plan for helping to meet the:

(A) Retail lending needs of, as applicable, its facility-based assessment areas, retail lending assessment areas, and outside retail lending area that are covered by the draft plan;

(B) Retail services and products needs of its facility-based assessment areas and at the institution level that are covered by the draft plan;

(C) Community development financing needs of its facility-based assessment areas, states, multistate MSAs, and nationwide areas that are covered by the draft plan; and

(D) Community development services needs of its facility-based assessment areas and other geographic areas served by the bank that are covered by the draft plan.

(ii) A bank must consider public comments and the bank's capacity and constraints, product offerings, and business strategy in developing measurable goals in its draft plan that are appropriate for its retail lending, retail services and products, community development financing, and community development services activities.

(iii) A bank must include in its draft plan a focus on the credit needs of low- and moderate-income individuals, small businesses, small farms, and low- and moderate-income census tracts, and explain how its draft plan's measurable goals are responsive to the characteristics and credit needs of, as applicable, its assessment areas and other geographic areas served by the bank, considering public comment and the bank's capacity and constraints, product offerings, and business strategy;

(iv) In developing measurable goals related to its retail lending, a bank must incorporate measurable goals in its draft plan for each retail lending major product line and may develop additional goals that cover other lending-related activities based on the bank's specific business strategy.

(v) If a bank's draft plan's measurable goals related to its retail lending do not incorporate the Retail Lending Test's metrics-based methodology as described in § __.22, the bank must explain why measurable goals that do not incorporate the Retail Lending Test's metrics-based methodology are appropriate.

(vi) If a bank's draft plan's measurable goals related to its community development financing do not incorporate, as applicable, the Community Development Financing Test's or the Community Development Financing Test for Wholesale or Limited Purpose Banks' metrics-based methodology as described in §§ __.24 and __.26, respectively, or for an intermediate bank address the community development performance standards for intermediate banks as provided in § __.29(b)(2), the bank must include an explanation as to why measurable goals do not incorporate, as applicable, the Community Development Financing Test or the Community Development Financing Test for Wholesale or Limited Purpose Banks' metrics-based methodology, or for intermediate banks address the community development performance standards for intermediate banks.

(4) *Confidential information.* A bank may submit additional information to the [Agency] on a confidential basis, but the goals stated in the draft plan must be sufficiently specific to enable the public and the [Agency] to judge the merits of the plan.

(5) ''*Satisfactory*'' *and* ''*Outstanding*'' *ratings goals.* A bank must specify in its draft plan measurable goals that constitute ''Satisfactory'' performance and may specify measurable goals that constitute ''Outstanding'' performance. If a bank submits, and the [Agency] approves, both ''Satisfactory'' and ''Outstanding'' measurable goals, the [Agency] will consider the bank eligible for an ''Outstanding'' rating.

(6) *Election if* ''*Satisfactory*'' *ratings goals not substantially met.* A bank may elect in its draft plan that, if the bank fails to meet substantially its plan goals for a ''Satisfactory'' rating, the [Agency] will evaluate the bank's performance using the performance tests and standards that would otherwise be applied in the absence of an approved plan.

(g) *Plan approval.* (1) *Timing.* The [Agency] will act upon a draft plan within 90 calendar days after the [Agency] receives the complete draft plan and other material required under paragraph (e) of this section. If the [Agency] fails to act within this time period, the draft plan will be deemed approved unless the [Agency] extends the review period for good cause.

(2) *Public participation.* In evaluating the draft plan's goals, the [Agency] will consider:

(i) The public's involvement in formulating the draft plan, including specific information regarding the members of the public and organizations the bank contacted, how the bank collected information relevant to the draft plan, the nature of the public input, and whether the bank revised the draft plan in light of public input;

(ii) Written public comment on the draft plan; and

(iii) Any response by the bank to public comment on the draft plan.

(3) *Criteria for evaluating plan.* The [Agency] evaluates a draft plan's measurable goals, including the appropriateness of those goals and the information provided by the bank in § __.27(e) and (f), using the following criteria, as appropriate, and based on the bank's capacity and constraints, product offerings, and business strategy:

(i) The extent and breadth of retail lending or retail lending-related activities to address credit needs, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels and the qualitative aspects of the bank's retail lending programs, as described in § __.22;

(ii) The dollar amount and qualitative aspects of the bank's community development loans and investments in light of community development needs;

(iii) The availability of bank retail products and the effectiveness of the bank's systems for delivering retail banking services; and

(iv) The number, hours, and type of community development services performed by the bank and the extent to which the bank's community development services are impactful.

(h) *Plan amendment.* (1) *Material change in circumstances.* During the term of a plan, a bank must amend its plan goals if a material change in circumstances:

(i) Impedes its ability to substantially meet approved plan goals, such as financial constraints caused by significant events that impact the local or national economy; or

(ii) Significantly increases its financial capacity and ability, such as through a merger or consolidation, to engage in retail lending, retail services and products, community development financing, or community development services activities referenced in an approved plan.

(2) *Elective revision of plan.* (i) During the term of a plan, a bank may request the [Agency] to approve an amendment to the plan in the absence of a material change in circumstances.

(ii) A bank that requests the [Agency] to approve an amendment to a plan in the absence of a material change in circumstances must provide an explanation regarding why it is necessary and appropriate to amend its plan goals.

(3) *Public participation in plan revision.* A bank must develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment.* (1) *In general.* The [Agency] approves the goals and assesses performance under a plan as provided for in appendix D of this part.

(2) In determining whether a bank has substantially met its plan goals, the [Agency] will consider:

(i) The number of unmet goals;

(ii) The degree to which the goals were not met;

(iii) The importance of those unmet goals to the plan as a whole; and

(iv) Any circumstances beyond the control of the bank, such as economic conditions or other market factors or events that have adversely impacted the bank's ability to perform.

§ __.28 Assigned conclusions and ratings.

(a) *Conclusions.* (1) *In general.* The [Agency] assigns conclusions for a bank's performance under the respective performance tests that apply to the bank, as provided in §§ __.21 through __.28, __.29(b), and appendix C of this part of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

(2) *Small banks.* The [Agency] assigns performance conclusions for the performance of a small bank evaluated under § __.29(a), as provided in § __.28 and appendix C of this part, of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

(b) *Ratings.* (1) *In general.* Subject to paragraph (d) of this section, the [Agency] assigns ratings for a bank's overall performance at the state, multistate MSA, and institution level under §§ __.21 through __.27 and __.29, as applicable, of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

(2) *Performance score.* Other than for a small bank evaluated under the small bank performance standards in § __.29(a), a wholesale or limited purpose bank under the Community Development Financing Test for Wholesale or Limited Purpose Banks in § __.26, a bank evaluated based on a strategic plan under § __.27, the [Agency] assigns a rating for the bank's overall performance at the state, multistate MSA, and institution levels, respectively, in connection with a performance score, derived as provided in appendix D of this part, and any

adjustments in accordance with paragraph (d) of this section, § __.28, and appendix D of this part.

(c) *States and multistate MSAs.* Regarding the [Agency]'s evaluation of a bank's performance in a state or multistate MSA under this part, the following applies:

(1) *States.* (i) The [Agency] evaluates a bank's performance in any state in which the bank maintains one or more facility-based assessment areas.

(ii) In assigning conclusions and ratings for a state, the [Agency] does not consider a bank's activities in that state that take place in the portion of the state comprising any multistate MSA identified in paragraph (c)(2) of this section.

(2) *Multistate MSAs.* The [Agency] evaluates a bank's performance under this part in any multistate MSA in which the bank maintains a branch in two or more states located within that multistate MSA.

(d) *Effect of evidence of discriminatory or other illegal practices.* (1) *Scope.* At the state, multistate MSA, and institution levels, the [Agency]'s evaluation of a bank's performance under this part is adversely affected by evidence of discriminatory or other illegal practices:

(i) In any census tract by the bank, including by [an operations subsidiary or operating subsidiary] of the bank; or

(ii) In any facility-based assessment area, retail lending assessment area, or outside retail lending area by any affiliate whose retail loans are considered as part of the bank's lending performance.

(2) *Evidence of discriminatory or other illegal practices.* Evidence of discriminatory or other practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of 12 U.S.C. 5531 (regarding unfair, deceptive, or abusive acts or practices in connection with consumer financial products or services);

(v) Violations of section 8 of the Real Estate Settlement Procedures Act;

(vi) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission;

(vii) Violations of the Military Lending Act; and

(viii) Violations of the Servicemembers Civil Relief Act.

(3) *Agency considerations.* In determining the effect of evidence of practices described in paragraph (d)(2) of this section on the bank's assigned state, multistate MSA, and institution ratings, the [Agency] will consider: The root cause or causes of any violations of law; the severity of any consumer harm resulting from violations of law; the duration of time over which the violations occurred; the pervasiveness of the violations; the degree to which the bank, [operations subsidiary or operating subsidiary], or affiliate, as applicable, has established an effective compliance management system across the institution to self-identify risks and to take the necessary actions to reduce the risk of non-compliance and consumer harm.

(e) *Consideration of past performance.* When assigning ratings, the [Agency] considers a bank's past performance. If a bank's prior rating was ''Needs to Improve,'' the [Agency] may determine that a ''Substantial Noncompliance'' rating is appropriate where the bank failed to improve its performance since the previous evaluation period, with no acceptable basis for such failure.

§ __.29 Performance standards for small banks and intermediate banks.

(a) *Small bank performance criteria.* Unless a small bank opts to be evaluated under the Retail Lending Test in § __.22, the [Agency] evaluates a small bank's performance in helping to meet the credit needs of its facility-based assessment areas pursuant to the criteria in this section.

(1) *Lending evaluation.* A small bank's retail lending performance is evaluated pursuant to the following criteria:

(i) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other retail and community development lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or community development investments;

(ii) The percentage of loans and, as appropriate, other lending-related activities located in the bank's facility-based assessment areas;

(iii) The bank's record of lending to and, as appropriate, engaging in other retail and community development lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(iv) The bank's geographic distribution of retail loans; and

(v) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its facility-based assessment areas.

(2) *Additional consideration.* The [Agency] may adjust a small bank rating of ''Satisfactory'' to ''Outstanding'' at the institution level, where a small bank requests and receives additional consideration for its performance in making community development investments and services and its performance in providing branches and other services and delivery systems that enhance credit availability in its facility-based assessment areas.

(3) *Small bank performance ratings.* The [Agency] rates the performance of a small bank evaluated under this section as provided in appendix E of this part.

(b) *Intermediate bank performance criteria.* (1) *Retail Lending Test and optional Community Development Financing Test.* The [Agency] evaluates an intermediate bank under the Retail Lending Test in § __.22 and the community development performance standards as provided in § __.29(b)(2), unless an intermediate bank chooses to be evaluated under the Community Development Financing Test in § __.24.

(2) *Intermediate bank community development evaluation.* An intermediate bank's community development performance is evaluated pursuant to the following criteria:

(i) The number and amount of community development loans;

(ii) The number and amount of community development investments;

(iii) The extent to which the bank provides community development services; and

(iv) The bank's responsiveness through such activities to community development lending, investment, and services needs.

(3) *Additional consideration.* For an intermediate bank that opts to be evaluated under the Community Development Financing Test in § __.24, the [Agency] may adjust an intermediate bank rating of ''Satisfactory'' to ''Outstanding'' at the institution level if the bank requests and receives additional consideration for activities that qualify under the Retail Services and Products Test in § __.23, the Community Development Services Test in § __.25, or both.

(4) *Intermediate bank performance ratings.* The [Agency] rates the performance of an intermediate bank evaluated under this section as provided in appendices D and E of this part.

§ __.31 [Reserved]

Subpart D—Records, Reporting, Disclosure, and Public Engagement Requirements

§ __.42 Data collection, reporting, and disclosure.

(a) *Information required to be collected and maintained.* (1) *Small business and small farm loans data.* A bank, except a small bank or an intermediate bank, must collect and maintain in machine readable form, as prescribed by the [Agency], until the completion of its next CRA examination, the following data, for each small business or small farm loan originated or purchased by the bank during the evaluation period:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) An indicator for the loan type as reported on the bank's Call Report;

(iii) The date of the loan origination or purchase;

(iv) The loan amount at origination or purchase;

(v) The loan location, including state, county, and census tract;

(vi) An indicator for whether the loan was originated or purchased by the bank; and

(vii) An indicator for whether the loan was to a business or farm with gross annual revenues of $1 million or less.

(2) *Consumer loans data—automobile loans.* A bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, must collect and maintain in machine readable form, as prescribed by the [Agency], until the completion of its next CRA examination, the following data, for each automobile loan originated or purchased by the bank during the evaluation period:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The date of the loan origination or purchase;

(iii) The loan amount at origination or purchase;

(iv) The loan location, including state, county, and census tract;

(v) An indicator for whether the loan was originated or purchased by the bank; and

(vi) The borrower annual income on which the bank relied when making the credit decision.

(3) *Home mortgage loans.* If a bank, except a small or an intermediate bank, is subject to reporting under 12 CFR part 1003, the bank must collect and maintain, in machine readable form, as prescribed by the [Agency], until the completion of its next CRA examination, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the bank has a home or branch office (or outside any MSA) in accordance with the requirements of 12 CFR part 1003.

(4) *Retail services and products data.* (i) A large bank must collect and maintain in machine readable form, as prescribed by the [Agency], until completion of the bank's next CRA examination, the following data with respect to retail services and products offered and provided by the bank during the evaluation period:

(A) Number and location of branches and remote service facilities. As applicable, location information must include:

(*1*) Street address;

(*2*) City;

(*3*) County;

(*4*) State; and

(*5*) Zip code;

(B) An indicator for whether each branch is full-service or limited-service, and for each remote service facility whether it is deposit-taking, cash-advancing, or both;

(C) Locations and dates of branch and remote service facility openings and closings, as applicable;

(D) Hours of operation of each branch and remote service facility, as applicable;

(E) Services offered at each branch that are responsive to low- and moderate-income individuals and low- and moderate-income census tracts;

(ii) A large bank that had average assets of over $10 billion in both of the prior two calendar years (based on the assets reported on its four quarterly Call Reports for each of those calendar years) and a large bank that had average assets of $10 billion or less in either of the prior two calendar years (based on the assets reported on its four quarterly Call Reports for each of those calendar years) that requests additional consideration for digital and other delivery systems under § __.23(b)(3), must collect and maintain in machine readable form, as prescribed by the [Agency], until completion of the bank's next CRA examination, the following data:

(A) The range of services and products offered through digital and other delivery systems;

(B) Digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, respectively, such as:

(*1*) Number of savings and checking accounts opened through digital and other delivery systems, by census tract income level for each calendar year;

(*2*) Accountholder usage data by type of digital and other delivery systems, by census tract income level for each calendar year; and

(C) Optionally, additional information that demonstrates that digital and other delivery systems serve low- and moderate-income individuals and low- and moderate-income census tracts.

(iii) A large bank that had average assets of over $10 billion in both of the prior two calendar years (based on the assets reported on its four quarterly Call Reports for each of those calendar years) and a large bank that had average assets of $10 billion or less in either of the prior two calendar years (based on the assets reported on its four quarterly Call Reports for each of those calendar years) that requests additional consideration for deposit products responsive to the needs of low- and moderate- income individuals under § __.23(c)(2), must collect and maintain in machine readable form, as prescribed by the [Agency], until completion of the bank's next CRA examination, the following data:

(A) The number of responsive deposit accounts opened and closed during each year of the evaluation period in low-, moderate-, middle-, and upper-income census tracts, respectively;

(B) In connection with § __.23(c)(2)(ii)(A), the percentage of responsive deposit accounts compared to total deposit accounts for each year of the evaluation period;

(C) Optionally, additional information regarding the responsiveness of deposit products to the needs of low- and moderate-income individuals and low- and moderate-income census tracts.

(5) *Community development loans and community development investments data.* (i)(A) A bank, except a small or an intermediate bank, must collect and maintain in machine readable form, as prescribed by the [Agency], until the completion of the bank's next CRA examination, the data listed in paragraph (a)(5)(ii) of this section for community development loans and community development investments originated or purchased by the bank.

(B) An intermediate bank that opts to be evaluated under the Community Development Financing Test in § __.24 must collect and maintain in the format used by the bank in the normal course of business, until the completion of the bank's next CRA examination, the data listed in paragraph (a)(5)(ii) of this section for community development loans and community development investments originated or purchased by the bank.

(C) Pursuant to § __.42(a)(5)(i)(A) and (B), a bank must collect and maintain, on an annual basis, data for loans and investments originated or purchased during the evaluation period and for loans and investments from prior years that are held on the bank's balance sheet at the end of each quarter (March 31, June 30, September 30, December 31) of the calendar year.

(ii) Pursuant to § __.42(a)(5)(i)(A) and (B), a bank must collect and maintain the following data:

(A) General information on the loan or investment:

(*1*) A unique number or alpha-numeric symbol that can be used to identify the loan or investment;

(*2*) Date of origination, purchase, or transaction of the loan or investment;

(*3*) Date the loan or investment was sold or paid off; and

(*4*) (*i*) For the first year of the loan or investment, the loan or investment amount at origination or purchase for originations or purchases as of December 31 of the calendar year; and

(*ii*) For all years following the first year of the loan or investment, the loan or investment amount reflected on the bank's balance sheet as of the end of each quarter (March 31, June 30, September 30, December 31) of the calendar year.

(B) Community development loan or investment activity information:

(*1*) Name of organization or entity;

(*2*) Activity type (loan or investment);

(*3*) Community development purpose, as described in § __.13(a)(2); and

(*4*) Activity detail, such as the specific type of financing and type of entity supported (*e.g.,* low-income housing tax credit, New Markets Tax Credit, Small Business Investment Company, multifamily mortgage, private business, non-profit or mission-driven organization, mortgage-backed security, or other).

(C) Indicators of the impact of the activity, as applicable:

(*1*) Activity serves persistent poverty counties;

(*2*) Activity serves geographic areas with low levels of community development financing;

(*3*) Activity supports an MDI, WDI, LICU, or Treasury Department-certified CDFI;

(*4*) Activity serves low-income individuals and families;

(*5*) Activity supports small businesses or small farms with gross annual revenues of $250,000 or less;

(*6*) Activity directly facilitates the acquisition, construction, development, preservation, or improvement of affordable housing in High Opportunity Areas;

(*7*) Activity benefits Native communities, such as qualifying activities in Native Land Areas under § __.13(l);

(*8*) Activity is a qualifying grant or donation;

(*9*) Activity reflects bank leadership through multi-faceted or instrumental support; and

(*10*) Activity results in a new community development financing product or service that addresses community development needs for low- or moderate-income individuals and families.

(D) Location information:

(*1*) Street address;

(*2*) City;

(*3*) County;

(*4*) State;

(*5*) Zip code; and

(*6*) Whether a bank is seeking consideration at the assessment area, statewide, or nationwide levels;

(E) Other information relevant to determining that an activity meets the standards under § __.13; and

(F) Allocation of dollar value of activity to counties served by the community development activity (if available):

(*1*) Specific information about the dollar value of the activity that was allocated to each county served by the activity; and

(*2*) A list of the geographic areas served by the activity, specifying any county, counties, state, states, or nationwide area served.

(6) *Community development services data.* A large bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, must collect and maintain in machine readable form, as prescribed by the [Agency], until the completion of the bank's next CRA examination, the following community development services data:

(i) Bank information:

(A) Number of full-time equivalent employees at the facility-based assessment area, state, multistate MSA, and institution levels; and

(B) Total number of community development services hours performed by the bank in each facility-based assessment area, state, multistate MSA, and in total.

(ii) Community development services activity information:

(A) Date of activity;

(B) Name of organization or entity;

(C) Community development purpose, as described in § __.13(a)(2);

(D) Capacity served (*e.g.,* board member, technical assistance, financial education, general volunteer); and

(E) Whether the activity is related to the provision of financial services.

(iii) Location information:

(A) Street address;

(B) City;

(C) County;

(D) State;

(E) Zip code; and

(F) Whether bank is seeking consideration at the assessment area, statewide, or nationwide level.

(7) *Deposits data.* A large bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, must collect and maintain annually, in machine readable form as prescribed by the [Agency], until the completion of its next CRA examination, the dollar amount of its deposits at the county level, based upon the address associated with the individual account (except for account types where an address is not available), calculated based on average daily balances as provided in statements such as monthly or quarterly statements. A large bank that had average assets of $10 billion or less in either of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, that opts to collect and maintain the data in this paragraph must do so in machine readable form, as prescribed by the [Agency], until completion of the bank's next CRA examination.

(b) *Information required to be reported.* (1) *Small business and small farm loan data.* A bank, except a small bank or an intermediate bank, must report annually by April 1 to the [Agency] in machine readable form, as prescribed by the [Agency], the data listed in paragraphs (b)(1)(i) through (b)(1)(iv) of this section for the prior calendar year. For each census tract in which the bank originated or purchased a small business or small farm loan, the bank must report the aggregate number and amount of small business and small farm loans:

(i) With an amount at origination of $100,000 or less;

(ii) With an amount at origination of more than $100,000 but less than or equal to $250,000;

(iii) With an amount at origination of more than $250,000; and

(iv) To businesses and farms with gross annual revenues of $1 million or less (using the revenues that the bank considered in making its credit decision).

(2) *Consumer loans—automobile loans data.* A bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, must report annually by April 1 to the [Agency] in machine readable form, as prescribed by the [Agency], for each census tract in which the bank originated or purchased an automobile loan, the aggregate number and amount of automobile loans and the number and amount of those loans made to low- and moderate-income borrowers. The [Agency] will not make automobile lending data reported under this paragraph publicly available in the form of a data set for all reporting banks.

(3) *Community development loans and community development investments data.* A bank, except a small or an intermediate bank, must report annually by April 1 to the [Agency] community development loan and community development investment data described in paragraph (a)(5)(ii) of this section, except for the data described in paragraph (a)(5)(ii)(B)(*1*) of this section.

(4) *Community development services data.* A large bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, must report annually by April 1 to the [Agency] the community development services data listed in paragraph (a)(6)(i) of this section.

(5) *Deposits data.* A large bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, must report annually by April 1 to the [Agency] in machine readable form, as prescribed by the [Agency], the deposits data for the previous calendar year collected and maintained in accordance with paragraph (a)(7) of this section. This reporting must include, for each county, state, and multistate MSA and for the institution overall, the average annual deposit balances (calculated based on average daily balances as provided in statements such as monthly or quarterly statements, as applicable), in aggregate, of deposit accounts with associated addresses located in such county, state, or multistate MSA where available, and for the institution overall. The [Agency] will not make deposits data reported under this paragraph publicly available in the form of a data set for all reporting banks.

(c) *Data on* [*operations subsidiaries or operating subsidiaries*]. To the extent that [operations subsidiaries or operating subsidiaries] engage in retail lending, retail services, community development financing, or community development services activities, a bank must collect, maintain, and report such activities of its [operations subsidiaries or operating subsidiaries] pursuant to paragraphs (a) and (b) of this section, as applicable, for purposes of evaluating the bank's performance. For home mortgage loans, the bank must identify the home mortgage loans reported by the [operations subsidiary or operating subsidiary] under 12 CFR part 1003, if applicable, or collect and maintain home mortgage loans by the [operations subsidiary or operating subsidiary] that the bank would have collected and maintained under paragraphs (a)(3) of this section had the loans been originated or purchased by the bank.

(d) *Data on other affiliates.* A bank that elects to have the [Agency] consider loans by an affiliate, for purposes of this part must collect, maintain, and report the lending and investments data that the bank would have collected, maintained, and reported pursuant to paragraphs (a) and (b) of this section had the loans or investments been originated or purchased by the bank. For home mortgage loans, the bank must also identify the home mortgage loans reported by affiliates under 12 CFR part 1003, if applicable, or collect and maintain home mortgage loans by the affiliate that the bank would have collected and maintained under paragraphs (a)(3) of this section had the loans been originated or purchased by the bank.

(e) *Data on community development financing by a consortium or a third party.* A bank that elects to have the [Agency] consider community development loans and community development investments by a consortium or third party for purposes of this part must collect, maintain, and report the lending and investments data that the bank would have collected, maintained, and reported under paragraphs (a)(5) and (b)(3) of this section had the loans or investments been originated or purchased by the bank.

(f) *Assessment area data.* (1) *Facility-based assessment areas.* A bank, except a small bank or an intermediate bank, must collect and report to the [Agency] annually by April 1 a list for each facility-based assessment area showing the states, MSAs, counties or county-equivalents, and metropolitan divisions within the facility-based assessment area.

(2) *Retail lending assessment areas.* A large bank must collect and report to the [Agency] annually by April 1 a list for each retail lending assessment area showing the MSAs and counties within the retail lending assessment area, as applicable.

(g) *CRA Disclosure Statement.* The [Agency] prepares annually, for each bank that reports data pursuant to this section, a CRA Disclosure Statement that contains, on a state-by-state basis:

(1) For each county (and for each facility-based assessment area and each retail lending assessment area smaller than a county, if applicable) with a population of 500,000 persons or fewer in which the bank reported a small business or a small farm loan:

(i) The number and amount of small business loans and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each census tract according to whether the census tract is low-, moderate-, middle-, or upper-income;

(iii) A list showing each census tract in which the bank reported a small business loan or a small farm loan; and

(iv) The number and amount of small business loans and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each facility-based assessment area and retail lending assessment area smaller than a county, if applicable) with a population in excess of 500,000 persons in which the bank reported a small business loan or a small farm loan:

(i) The number and amount of small business loans and small farm loans reported as originated or purchased located in census tracts with median income relative to the area median income of less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list grouping each census tract in the county, facility-based assessment area, or retail lending assessment area according to whether the median income in the census tract relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more; and

(iii) A list showing each census tract in which the bank reported a small business loan or a small farm loan; and

(3) The number and amount of small business loans and small farm loans located inside each facility-based assessment area and retail lending assessment area reported by the bank and the number and amount of small business loans and small farm loans located outside of the facility-based assessment areas and retail lending assessment areas reported by the bank;

(4) The number and amount of community development loans and community development investments reported as originated or purchased inside each facility-based assessment area, each state in which the bank has a branch, each multistate MSA in which a bank has a branch in two or more states of the multistate MSA, and nationwide outside of these states and multistate MSAs.

(h) *Aggregate disclosure statements.* The [Agency], in conjunction with the [other Agencies], prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of reported small business lending, small farm lending, community development lending, and community development investments by all banks subject to reporting under 12 CFR parts 25, 228, or 345. These disclosure statements indicate, for each census tract and with respect to community development loans, and community development investments for each county, the number and amount of all small business loans, small farm loans, community development loans, and community development investments, originated or purchased by reporting banks, except that the [Agency] may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of a bank.

(i) *Central data depositories.* The [Agency] makes the aggregate disclosure statements, described in paragraph (h) of this section, and the individual bank CRA Disclosure Statements, described in paragraph (g) of this section, available on the FFIEC's website at *www.ffiec.gov.*

(j) *Race and ethnicity disclosure.* (1) *In general.* The [Agency] includes in a large bank's CRA performance evaluation the information in paragraph (j)(2) of this section concerning the distribution of a bank's originations and applications of home mortgage loans by race and ethnicity in each of the bank's assessment areas. This information is disclosed for each year of the evaluation period based on data reported under the Home Mortgage Disclosure Act (HMDA).

(2) *Data disclosed in CRA performance evaluations.* For each of the bank's facility-based assessment areas, and as applicable, its retail lending assessment areas, the [Agency] discloses the number and percentage of originations and applications of a bank's home mortgage loans by borrower race and ethnicity, and compares such data to the aggregate mortgage lending of all lenders in the assessment area and the demographic data in that assessment area.

(3) *Effect on CRA conclusions and ratings.* The disclosures made under paragraphs (j)(1) and (j)(2) of this section do not impact the conclusions or ratings of the bank.

§ __.43 Content and availability of public file.

(a) *Information available to the public.* A bank must maintain a public file, in either paper or digital format, that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the bank's performance in helping to meet community credit needs, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;

(2) A copy of the public section of the bank's most recent CRA performance evaluation prepared by the [Agency]. The bank must include this copy in the public file within 30 business days after its receipt from the [Agency];

(3) A list of the bank's branches, their street addresses, and census tracts;

(4) A list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses, and census tracts;

(5) A list of retail banking services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. A bank may elect to include information regarding the availability of other systems for delivering retail banking services (for example, mobile or online banking, loan production offices, and bank-at-work or mobile branch programs);

(6) A map of each facility-based assessment area and retail lending assessment area showing the boundaries of the area and identifying the census tracts contained within the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) *Additional information available to the public*—(1) *Banks other than small banks and intermediate banks.* A bank subject to the data reporting requirements described in § __.42 must include in its public file a written notice that the bank's CRA Disclosure Statement pertaining to the bank, its [operations subsidiaries or operating subsidiaries], and its other affiliates, if applicable, may be obtained on the FFIEC's website at *https://www.ffiec.gov/craadweb/disrptmain.aspx.* The bank must include the written notice in the public file within three business days after receiving notification from the FFIEC of the availability of the disclosure statement.

(2) *Banks required to report HMDA data.* A bank required to report home mortgage loan data pursuant to 12 CFR part 1003 must include in its public file a written notice that the bank's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (CFPB's) website at *www.consumerfinance.gov/hmda.* In addition, if the [Agency] considered the home mortgage lending of a bank's [operations subsidiaries or operating subsidiaries] or, at a bank's election, the [Agency] considered the home mortgage lending of other bank affiliates, the bank must include in its public file the names of the [operations subsidiaries or operating subsidiaries] and the names of the affiliates and a written notice that the [operations subsidiaries' or operating subsidiaries'] and other affiliates' HMDA Disclosure Statements may be obtained at the CFPB's website. The bank must include the written notices in the public file within three business days after receiving notification from the FFIEC of the availability of the disclosure statements.

(3) *Small banks.* A small bank or a bank that was a small bank during the prior calendar year must include in its public file: The bank's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio.

(4) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan must include in its public file a copy of that plan. A bank need not include information submitted to the [Agency] on a confidential basis in conjunction with the plan.

(5) *Banks with less than ''Satisfactory'' ratings.* A bank that received a less than ''Satisfactory'' rating during its most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank must update the description quarterly, by March 31, June 30, September 30, and December 31, respectively.

(c) *Location of public information.* A bank must make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) All information required for the bank's public file under this section must be maintained on the bank's website. If the bank does not maintain a website, the information must be maintained at the main office and, if an interstate bank, at one branch office in each state; and

(2) The public file must contain the following information:

(i) A copy of the public section of the bank's most recent CRA performance evaluation and a list of services provided by the branch; and

(ii) Within five calendar days of the request, all the information that the bank is required to maintain under this section in the public file relating to the facility-based assessment area in which the branch is located.

(d) *Copies.* Upon request, a bank must provide copies, either on paper or in digital form acceptable to the person making the request, of the information in its public file. The bank may charge a reasonable fee not to exceed the cost of copying and mailing (if not provided in digital form).

(e) *Timing requirements.* Except as otherwise provided in this section, a bank must ensure that its public file contains the information required by this section for each of the previous three calendar years, with the most recent calendar year included in its file annually by April 1 of the current calendar year.

§ __.44 Public notice by banks.

A bank must provide in the public area of its main office and each of its branches the appropriate public notice set forth in appendix F of this part. Only a branch of a bank having more than one facility-based assessment area must include the bracketed material in the notice for branch offices. Only a bank that is an affiliate of a holding company must include the next to the last sentence of the notices. A bank must include the last sentence of the notices only if it is an affiliate of a holding company that is not prevented by statute from acquiring additional banks.

§ __.45 Publication of planned examination schedule.

The [Agency] publishes on its public website, at least 60 days in advance of the beginning of each calendar quarter, a list of banks scheduled for CRA examinations for the next two quarters.

§ __.46 Public engagement.

(a) *In general.* The [Agency] encourages communication between members of the public and banks, including through members of the public submitting written public comments regarding community credit needs and opportunities as well as regarding a bank's record of helping to meet community credit needs. The [Agency] will take these comments into account in connection with the bank's next scheduled CRA examination.

(b) *Submission of public comments.* Members of the public may submit public comments regarding community credit needs and a bank's CRA performance by submitting comments to the [Agency] electronically at [Agency contact information].

(c) *Timing of public comments.* If the [Agency] receives a public comment before the close date of a bank's CRA examination, the public comment will be considered in connection with that CRA examination. If the [Agency] receives a public comment after the close date of a bank's CRA examination, it will be considered in connection with the bank's subsequent CRA examination.

(d) *Distribution of public comments.* The [Agency] will forward all public comments received regarding a bank's CRA performance to the bank. The [Agency] may also publish the public comments on its public website.

Subpart E—Transition Rules

§ __.51 Applicability dates, and transition provisions.

(a) *Applicability dates.* (1) *In general.* Except as provided in paragraphs (a)(2), (b), and (c) of this section, this part is applicable to banks, and banks must comply with any requirements in this part, beginning on the first day of the first calendar quarter that is at least 60 days after publication of the final rule.

(2) *Specific applicability dates.* The following sections are applicable to banks, and banks must comply with any requirements in these sections, on the following dates:

(i) On [DATE ONE YEAR AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]: §§ __.12, excluding the definitions of ''small business'' and ''small farm,'' through __.15; __.17 through __.28; __.29(b)(1) and (b)(3); __.42(a), (c), (d), (e), and (f); and appendices A through F.

(ii) On [DATE TWO YEARS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], § __.12 with respect to the definitions of ''small business'' and ''small farm''; and § __.42(b), (g), (h) and (i).

(b) *Examinations.* (1) *Start Date for CRA Examinations under New Tests.* The [Agency] will begin conducting CRA examinations pursuant to the relevant performance tests described in §§ __.22 through __.28, as applicable, and § .42(j), after [DATE TWO YEARS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

(2) *Consideration of Bank Activities.* (i) In assessing a bank's CRA performance, the [Agency] will consider any loan, investment, or service that was eligible for CRA consideration at the time the bank conducted the activity.

(ii) Notwithstanding paragraph (i), in assessing a bank's CRA performance the [Agency] will consider any loan or investment that was eligible for CRA consideration at the time that the bank entered into a legally binding commitment to make the loan or investment.

(c) *Strategic Plans.* (1) *New and replaced strategic plans.* The CRA regulatory requirements in effect on [DATE ONE DAY BEFORE DATE OF PUBLICATION DATE IN THE **FEDERAL REGISTER**] applies to any new strategic plan, including a plan that replaces an expired strategic plan, submitted to the [Agency] for approval on or after [DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] but before [DATE ONE YEAR AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Strategic plans approved under this paragraph remain in effect until the expiration date of the plan.

(2) *Existing strategic plans.* A strategic plan in effect as of [DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] remains in effect until the expiration date of the plan.

Appendix A to Part __—Calculations for the Retail Tests

Appendix A, based on requirements described in §§ __.22, __.23, and __.28, includes the following sections:

Retail Lending Volume Screen;

Geographic Distribution and Borrow Distribution Metrics and Benchmarks—In General

Geographic Distribution Metrics and Benchmarks;

Borrower Distribution Metrics and Benchmarks;

Recommended Retail Lending Test Conclusions; and

Retail Lending Test and Retail Services and Products Test Weighting and Conclusions in States, Multistate MSAs, and at the Institution Level.

I. Retail Lending Volume Screen

Section __.22(c)(3) provides that a large bank must have a Bank Volume Metric of 30 percent or greater of the Market Volume Benchmark, or the [Agency] must determine that there is an acceptable basis for the bank failing to meet this threshold after reviewing the additional factors described in § __ .22(c)(2)(iii), to be eligible for a recommended Retail Lending Test conclusion of ''Outstanding,'' ''High Satisfactory,'' or ''Low Satisfactory'' in a facility-based assessment area. An intermediate bank, or a small bank that opts to be evaluated under the Retail Lending Test, that does not have a Bank Volume Metric of 30 percent or greater of the Market Volume Benchmark, where the [Agency] does not determine that there is an acceptable basis for the bank failing to meet the metric after reviewing the additional factors in § __ .22(c)(2)(iii), remains eligible for all possible recommended Retail Lending Test conclusions in a facility-based assessment area, with the [Agency] assessing the bank's performance relative to the Retail Lending Volume Threshold as one factor in assigning a conclusion.

The [Agency] calculates the Bank Volume Metric and the Market Volume Benchmark for a facility-based assessment area, and determines whether the bank has passed the Retail Lending Volume Threshold in that facility-based assessment area, as set forth below.

1. *Bank Volume Metric.* The [Agency] calculates the Bank Volume Metric by dividing the annual average of the year-end total dollar amount of the bank's originated and purchased automobile, closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm loans in the facility-based assessment area by the annual average of the bank's deposits in that facility-based assessment area over the evaluation period. For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits in each assessment area is the annual average of deposits over the evaluation period. For banks that do not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits in each assessment area as the annual average of deposits assigned to branches that the bank operates in its assessment area, as reported in the FDIC's Summary of Deposits, available at *www.FDIC.gov,* over the evaluation period.

Example: Assume that the year-end total dollar amount of a bank's originated and purchased loans in a facility-based assessment area, averaged over the years considered in the evaluation period, is $1 million. Assume further that the evaluation period annual average of deposits in that facility-based assessment area is $5 million. The Bank Volume Metric for that facility-based assessment area would be $1 million divided by $5 million, or 20 percent.

$$\frac{Bank\ Retail\ Loans\ (\$1\ million)}{Bank\ Deposits\ (\$5\ million)} = Bank\ Volume\ Metric\ (20\%)$$

2. *Market Volume Benchmark.* For each facility-based assessment area, the [Agency] calculates the Market Volume Benchmark. The numerator of the Market Volume Benchmark is the annual average of the year-end total dollar amount of all originated automobile, closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm loans in counties wholly or partially within the facility-based assessment area originated and reported by large banks that operated a branch in those counties at the end of that year. This numerator is divided by the annual average of the deposits of those banks from those counties. The deposits in the facility-based assessment area is the sum of: (i) The annual average of deposits in counties in the facility-based assessment area reported by all large banks with assets of over $10 billion that operate a branch in the assessment area in the years of the evaluation period during which they operated a branch at the end of the year; and (ii) the annual average of deposits assigned to branches in the facility-based assessment area by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the annual average of the year-end total dollar amount of all retail loans originated in counties wholly or partially within the facility-based assessment area by banks that operated a branch in that assessment area is $20 million. Assume further that the deposits sourced by those banks wholly or partially within the facility-based assessment area is $50 million. The Market Volume Benchmark for that facility-based assessment area would be $20 million divided by $50 million, or 40 percent.

$$\frac{Aggregate\ Market\ Retail\ Loans\ (\$20\ million)}{Aggregate\ Market\ Deposits\ (\$50\ million)} = Market\ Volume\ Benchmark\ (40\%)$$

3. *Retail Lending Volume Threshold.* For each facility-based assessment area, the [Agency] calculates a Retail Lending Volume Threshold by multiplying the Market Volume Benchmark for that facility-based assessment area by 30 percent (or 0.3). The bank passes the Retail Lending Volume Threshold in a facility-based assessment area if the Bank Volume Metric is greater than or equal to the Retail Lending Volume Threshold.

Example: Based on the above examples, the Retail Lending Volume Threshold would be calculated by multiplying the Market Volume Benchmark of 40 percent by 0.3 for a result of 12 percent. The Bank Volume Metric, 20 percent, is greater than the Retail Lending Volume Threshold. Accordingly, the bank passes the Retail Lending Volume Threshold.

Bank Volume Metric (20%) > Retail Lending Volume Threshold {(40%) × 0.3 = 12%}

II. Geographic Distribution and Borrower Distribution Metrics and Benchmarks—in General

1. The distribution metrics and benchmarks in this section apply: In a bank's facility-based assessment areas and, as applicable, in retail lending assessment areas, and outside retail lending area. As applicable, the [Agency] assesses a bank's Retail Lending Test performance in an outside retail lending area only at the institution level, using benchmarks tailored to the bank's specific geographic areas served.

2. An intermediate bank's retail lending in an outside retail lending area is only evaluated if the bank originates and purchases over 50 percent of its retail loans, by dollar amount, outside of its facility-based assessment areas over the relevant evaluation period.

3. A bank's retail lending performance in the specified geographies is compared against applicable retail lending performance ranges, using geographic and borrower retail loan distribution metrics, as calculated in paragraphs III and IV of this appendix.

4. With the exception of the facility-based assessment area of a large bank in which it failed to meet the Retail Lending Volume Threshold and the [Agency] did not find an acceptable basis for the bank failing to meet the threshold, a bank will be assigned a recommended Retail Lending Test conclusion in the specified geographic areas of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

III. Geographic Distribution Metrics and Benchmarks

For each of the bank's major product lines in applicable geographic areas, a bank's geographic distribution performance will be measured by means of a comparison of the Geographic Bank Metric to the Geographic Market Benchmark and the Geographic Community Benchmark. The relevant calculations are described below.

1. *Calculation of Geographic Bank Metrics.* For each of a bank's major product lines, the [Agency] measures the bank's geographic distribution of retail lending, originated and purchased, in the applicable geographic area. For this measure, the [Agency] derives Geographic Bank Metrics, as set out below.

The [Agency] calculates a Geographic Bank Metric for each of the bank's major product lines in low-income census tracts and moderate-income census tracts by dividing the total number of the bank's originated and purchased loans in low-income census tracts and moderate-income census tracts, respectively, by the total number of the bank's originated and purchased loans in the geographic area overall for that product line.

Example: Assume that a bank originated and purchased 25 small farm loans in one of its facility-based assessment areas during the evaluation period, and that five of these were located in low-income census tracts. The Geographic Bank Metric for small farm loans in low-income census tracts would be five divided by 25, for a result of 20 percent. Assume that the bank originated and purchased six small farm loans in moderate-income census tracts. The Geographic Bank Metric for small farm loans in moderate-income census tracts would be six divided by 25, for a result of 24 percent.

$$\frac{Bank\ Loans\ in\ Low-Income\ Census\ Tracts\ (5)}{Bank\ Loans\ (25)} = Geographic\ Bank\ Metric\ (20\%)$$

$$\frac{Bank\ Loans\ in\ Moderate-Income\ Census\ Tracts\ (6)}{Bank\ Loans\ (25)}$$

$$= Geographic\ Bank\ Metric\ (24\%)$$

2. *Calculation of Geographic Market Benchmarks and Geographic Community Benchmarks.* For each of a bank's major product lines in an applicable geographic area, the [Agency] compares the bank's geographic distribution of retail lending, originated and purchased, in the geographic area, as measured by the Geographic Bank Metric, to benchmarks set by overall lending activity in the area, as well as other information. The [Agency] derives Geographic Market Benchmarks and Geographic Community Benchmarks, as set out below. The method for calculating the Geographic Market Benchmarks and Geographic Community Benchmarks in outside retail lending areas includes additional steps to tailor the benchmarks to the geographic areas in which the bank's retail lending is concentrated.

a. *Geographic Market Benchmarks in Facility-Based Assessment Areas and Retail Lending Assessment Areas.* The [Agency] calculates the Geographic Market Benchmark for each of the bank's major product lines, in low-income census tracts and moderate-income census tracts respectively, by dividing the total number of loans in each major product line that were originated by lenders that report relevant data for that product line by the total number of loans in that product line in the geographic area overall that were originated by lenders that report relevant data for that product line.

Example: Assume that lenders that report small farm loan data originated 100 small farm loans in the counties within the assessment area, and that 40 of these were located in low-income census tracts. The Geographic Market Benchmark for small farm loans in low-income census tracts would be 40 divided by 100, or 40 percent. Assume that an additional 30 of these were located in moderate-income census tracts. The Geographic Market Benchmark for small farm loans in moderate-income census tracts would be 30 divided by 100, or 30 percent.

$$\frac{Aggregate\ Market\ Loans\ in\ Low-Income\ Census\ Tracts\ (40)}{Aggregate\ Market\ Loans\ (100)}$$

$$= Geographic\ Market\ Benchmark\ (40\%)$$

$$\frac{Aggregate\ Market\ Loans\ in\ Moderate-Income\ Census\ Tracts\ (30)}{Aggregate\ Market\ Loans\ (100)}$$

$$= Geographic\ Market\ Benchmark\ (30\%)$$

b. *Geographic Community Benchmarks in Facility-Based Assessment Areas and Retail Lending Assessment Areas.* The [Agency] calculates the Geographic Community Benchmark for each major product line, in low-income census tracts and moderate-income census tracts respectively, as follows:

i. For closed-end home mortgage loans and open-end home mortgage loans, by dividing the total number of owner-occupied residential units in low-income census tracts and moderate-income census tracts, respectively, by the total number of owner-occupied residential units in the geographic area overall.

ii. For multifamily loans, by dividing the total number of residential units in multifamily buildings in low-income census tracts and moderate-income census tracts, respectively, by the total number of residential units in multifamily buildings in the geographic area overall.

iii. For small business loans, by dividing the total number of small businesses in low-income census tracts and moderate-income census tracts, respectively, by the total number of small businesses in the geographic area overall.

iv. For small farm loans, by dividing the total number of small farms in low-income census tracts and moderate-income census tracts, respectively, by the total number of small farms in the geographic area overall.

v. For automobile loans, by dividing the total number of households in low-income census tracts and moderate-income census tracts, respectively, by the total number of households in the geographic area overall.

Example: Assume that there were 4,000 small business establishments in the assessment area, and that 500 of these were in low-income census tracts. The Geographic Community Benchmark for small business loans in low-income census tracts would be 500 divided by 4,000, or 12.5 percent. Assume that an additional 1,000 of these were in moderate-income census tracts. The Geographic Community Benchmark for small business loans in moderate-income census tracts would be 1,000 divided by 4,000, or 25 percent.

$$\frac{Small\ Businesses\ in\ Low-Income\ Census\ Tracts\ (500)}{Small\ Businesses\ (4{,}000)} = Geographic\ Community\ Benchmark\ (12.5\%)$$

$$\frac{Small\ Businesses\ in\ Moderate-Income\ Census\ Tracts\ (1{,}000)}{Small\ Businesses\ (4{,}000)} = Geographic\ Community\ Benchmark\ (25\%)$$

c. *Tailored Geographic Market Benchmarks in Outside Retail Lending Areas.* The [Agency] calculates the Tailored Geographic Market Benchmark for each of the bank's major product lines, in low-income census tracts and moderate-income census tracts respectively, in outside retail lending areas. The Tailored Geographic Market Benchmark is calculated by means of a weighted average of the Geographic Market Benchmark from every MSA and the nonmetropolitan portion of every state, weighted by the percentage, in dollars, of the bank's retail lending outside of facility-based assessment areas and retail lending assessment areas in each of those MSAs and nonmetropolitan portions of states. Specifically:

i. The [Agency] calculates the Geographic Market Benchmarks for each major product line and income group separately for each MSA and for the nonmetropolitan portion of each state, following the formula described in section III.2.a of this appendix.

ii. The [Agency] calculates local weights as the dollar amount of the bank's retail lending that occurred outside of its facility-based assessment areas and retail lending assessment areas in each MSA and the nonmetropolitan portion of each state, as a percentage of the bank's total dollar amount of retail lending in its outside retail lending area.

iii. The [Agency] then calculates the Tailored Geographic Market Benchmarks as the weighted average of the benchmarks calculated in section III.2.c.i of this appendix, using the weights calculated in section III.2.c.ii.

For retail lending in outside retail lending areas, the [Agency] will use the Tailored Geographic Market Benchmark as the relevant Geographic Market Benchmark for calculating the Performance Ranges described in section V of this appendix.

d. *Tailored Geographic Community Benchmarks in Outside Retail Lending Areas.* The [Agency] calculates the Tailored Geographic Community Benchmark for each of the bank's major product lines, in low-income census tracts and moderate-income census tracts respectively, in outside retail lending areas. The Tailored Geographic Community Benchmark is calculated by means of a weighted average of the Geographic Community Benchmark from every MSA and the nonmetropolitan portion of every state, weighted by the percentage, in dollars, of the bank's retail lending outside of facility-based assessment areas and retail lending assessment areas in each of those MSAs and nonmetropolitan portions of states. Specifically:

i. The [Agency] calculates the Geographic Community Benchmarks for each major product line and income group separately for each MSA and for the nonmetropolitan portion of each state, following the formula described in section III.2.b of this appendix.

ii. The [Agency] calculates local weights as the dollar amount of the bank's retail lending that occurred outside of its facility-based assessment areas and retail lending assessment areas in each MSA and the nonmetropolitan portion of each state, as a percentage of the bank's total dollar amount of retail lending in outside retail lending areas.

iii. The [Agency] then calculates the Tailored Geographic Community Benchmarks as the weighted average of the benchmarks calculated in section III.2.d.i of this appendix, using the weights calculated in section III.2.d.ii.

For retail lending in outside retail lending areas, the [Agency] will use the Tailored Geographic Community Benchmark as the relevant Geographic Community Benchmark for calculating the Performance Ranges described in section V of this appendix.

IV. Borrower Distribution Metrics and Benchmarks

For each of the bank's major product lines, excluding multifamily lending, in applicable geographic areas, a bank's borrower distribution performance will be measured by means of a comparison of the Borrower Bank Metric to the Borrower Market Benchmark and the Borrower Community Benchmark.

The relevant calculations for applicable geographic areas are described below.

1. *Calculation of Borrower Bank Metrics.* The [Agency] calculates the Borrower Bank Metric for each major product line, excluding multifamily loans, in an applicable geographic area as follows:

i. For closed-end home mortgage loans, by dividing the total number of the bank's originated and purchased closed-end home mortgage loans to low-income borrowers or moderate-income borrowers, respectively, in the geographic area by the total number of the bank's originated and purchased closed-end home mortgage loans in that geographic area overall.

ii. For open-end home mortgage loans, by dividing the total number of the bank's originated and purchased open-end home mortgage loans to low-income borrowers or moderate-income borrowers, respectively, in the geographic area by the total number of the bank's originated and purchased open-end home mortgage loans in that geographic area overall.

iii. For small business loans, by dividing the total number of the bank's originated and purchased small business loans to small businesses with gross annual revenues of $250,000 or less or small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million, respectively, in the geographic area by the total number of the bank's originated and purchased small business loans in that geographic area overall. (Until such time as the data reported under the CFPB's Section 1071 Rulemaking is available, the Borrower Bank Metric would instead be the total number of small business loans to businesses with gross annual revenues of less than or equal to $1 million divided by the total number of small business loans.)

iv. For small farm loans, by dividing the total number of the bank's originated and purchased small farm loans to small farms with gross annual revenues of $250,000 or less or small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million, respectively, in the geographic area by the total number of the bank's originated and purchased small farm loans in that geographic area overall. (Until such time as the data reported under the CFPB's Section 1071 Rulemaking is available, the Borrower Bank Metric would instead be the total number of small farm loans to farms with gross annual revenues of less than or equal to $1 million divided by the total number of small farm loans.)

v. For automobile loans, by dividing the total number of the bank's originated and purchased automobile loans to low-income borrowers or moderate-income borrowers, respectively, in the geographic area by the total number of the bank's originated and purchased automobile loans in that geographic area overall.

Example: Assume that a bank originated and purchased 100 closed-end home mortgage loans in one of its facility-based assessment areas during the evaluation period, and that 20 of these went to low-income borrowers. The Borrower Bank Metric for closed-end home mortgage loans to low-income borrowers would be 20 divided by 100, or 20 percent. Assume that an additional 30 of these went to moderate-income borrowers. The Borrower Bank Metric for closed-end home mortgage loans to moderate-income borrowers would be 30 divided by 100, or 30 percent.

$$\frac{Bank\ Loans\ to\ Low-Income\ Borrowers\ (20)}{Bank\ Loans\ (100)} = Borrower\ Bank\ Metric\ (20\%)$$

$$\frac{Bank\ Loans\ to\ Moderate-Income\ Borrowers\ (30)}{Bank\ Loans\ (100)} = Borrower\ Bank\ Metric\ (30\%)$$

2. *Calculation of Borrower Market Benchmarks and Borrower Community Benchmarks.* For each of a bank's major product lines in an applicable geographic area, the [Agency] compares the bank's borrower distribution of retail lending, originated and purchased, in the geographic area, as measured by the Borrower Bank Metric, to benchmarks set by overall lending activity in the area, as well as other information. The [Agency] derives Borrower Market Benchmarks and Borrower Community Benchmarks, as set out below. The method for calculating the Borrower Market Benchmarks and Borrower Community Benchmarks in outside retail lending areas includes additional steps to tailor the benchmarks to the regions in which the bank's retail lending is concentrated.

a. *Borrower Market Benchmarks in Facility-Based Assessment Areas and Retail Lending Assessment Areas.* The [Agency] calculates the Borrower Market Benchmark for each of the bank's major product lines, excluding multifamily loans, for borrowers of each applicable income level in an applicable geographic area as follows.

i. For closed-end home mortgage loans, by dividing the total number of closed-end home mortgage loans to low-income borrowers or moderate-income borrowers, respectively, in the geographic area overall that were originated by all lenders that report home mortgage loan data by the total number of closed-end home mortgage loans in that geographic area overall that were originated by all lenders that report home mortgage loan data.

ii. For open-end home mortgage loans, by dividing the total number of open-end home mortgage loans to low-income borrowers or moderate-income borrowers, respectively, in the geographic area overall that were originated by all lenders that report home mortgage loan data by the total number of open-end home mortgage loans in that geographic area overall that were originated by all lenders that report home mortgage loan data.

iii. For small business loans, by dividing the total number of small business loans to small businesses with gross annual revenues of $250,000 or less or small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million, respectively, in the geographic area overall that were originated by all lenders that report small business loan data by the total number of small business loans in that geographic area overall that were originated by all lenders that report small business loan data. (Until such time as the data reported under the CFPB's Section 1071 Rulemaking is available, the Borrower Market Benchmark would instead be the total number of small business loans to businesses with gross annual revenues of less than or equal to $1 million divided by the total number of small business loans.)

iv. For small farm loans, by dividing the total number of small farm loans to small farms with gross annual revenues of $250,000 or less or small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million, respectively, in the geographic area overall that were originated by all lenders that report small farm loan data by the total number of small farm loans in that geographic area overall that were originated by all lenders that report small farm loan data. (Until such time as the data reported under the CFPB's Section 1071 Rulemaking is available, the Borrower Market Benchmark would instead be the total number of small farm loans to farms with gross annual revenues of less than or equal to $1 million divided by the total number of small farm loans.)

v. For automobile loans, by dividing the total number of the automobile loans to low-incomer borrowers or moderate-income borrowers, respectively, in the geographic area overall that were originated by all lenders that report automobile loan data by the total number of automobile loans in that geographic area overall that were originated by all lenders that report automobile loan data.

Example: Assume that all lenders that report home mortgage loan data originated and purchased 1,000 closed-end home mortgage loans in the counties that encompass the bank's facility-based assessment area during the evaluation period, and that 100 of these went to low-income borrowers. The Borrower Market Benchmark for closed-end home mortgage loans to low-income borrowers would be 100 divided by 1,000, or 10 percent. Assume that an additional 200 of these went to moderate-income borrowers. The Borrower Market Benchmark for closed-end home mortgage loans to moderate-income borrowers would be 200 divided by 1,000, or 20 percent.

$$\frac{Aggregate\ Market\ Loans\ to\ Low-Income\ Borrowers\ (100)}{Aggregate\ Market\ Loans\ (1{,}000)}$$

$$= Borrower\ Market\ Benchmark\ (10\%)$$

$$\frac{Aggregate\ Loans\ to\ Moderate-Income\ Borrowers\ (200)}{Aggregate\ Market\ Loans\ (1{,}000)}$$

$$= Borrower\ Market\ Benchmark\ (20\%)$$

b. *Borrower Community Benchmarks in Facility-Based Assessment Areas and Retail Lending Assessment Areas.* The [Agency] calculates the Borrower Community Benchmark for each of the bank's major product lines, excluding multifamily loans, in an applicable geographic area as follows.

i. For closed-end home mortgage loans and open-end home mortgage loans, by dividing the total number of low-income families or moderate-income families, respectively, in the geographic area by the total number of families in that geographic area overall.

ii. For small business loans, by dividing the total number of small businesses with gross annual revenues of $250,000 or less or small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million, respectively, in the geographic area by the total number of small businesses in that geographic area overall. (Until such time as the data reported under the CFPB's Section 1071 Rulemaking is available, the Borrower Community Benchmark would instead be the total number of businesses with gross annual revenues of less than or equal to $1 million divided by the total number of small businesses.)

iii. For small farm loans, by dividing the total number of small farms with gross annual revenues of $250,000 or less or small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million, respectively, in the geographic area by the total number of small farms in that geographic area overall. (Until such time as the data reported under the CFPB's Section 1071 Rulemaking is available, the Borrower Community Benchmark would instead be the total number of farms with gross annual revenues of less than or equal to $1 million divided by the total number of small farms.)

iv. For automobile loans, by dividing the total number of low-income households or moderate-income households, respectively, in the geographic area by the total number of households in that geographic area overall.

Example: Assume that there were 4,000 families in the facility-based assessment area, and that 1,000 of these were low-income families. The facility-based assessment area Borrower Community Benchmark for, respectively, closed-end home mortgages and open-end home mortgages for low-income families would be 1,000 divided by 4,000, or 25 percent. Assume that an additional 1,200 of these were moderate-income families. The facility-based assessment area Borrower Community Benchmark for, respectively, closed-end home mortgages and open-end home mortgages for moderate-income families would be 1,200 divided by 4,000, or 30 percent.

$$\frac{Low-Income\ Families\ (1{,}000)}{Families\ (4{,}000)} = Borrower\ Community\ Benchmark\ (25\%)$$

$$\frac{Moderate-Income\ Families\ (1{,}200)}{Families\ (4{,}000)} = Borrower\ Community\ Benchmark\ (30\%)$$

c. *Tailored Borrower Market Benchmarks in Outside Retail Lending Areas.* The [Agency] calculates the Tailored Borrower Market Benchmark for each of the bank's major product lines, excluding multifamily loans, to borrowers of different income categories respectively, in outside retail lending areas. The Tailored Borrower Market Benchmark is calculated by means of a weighted average of the Borrower Market Benchmark from every MSA and the nonmetropolitan portion of every state, weighted by the percentage, in dollars, of the bank's retail lending outside of facility-based assessment areas and retail lending assessment areas in each of those MSAs and nonmetropolitan portions of states. Specifically:

i. The [Agency] calculates the Borrower Market Benchmarks for each major product line and income group separately for each MSA and for the nonmetropolitan portion of each state, following the formula described in section IV.2.a of this appendix.

ii. The [Agency] calculates local weights as the dollar amount of the bank's retail lending that occurred in outside retail lending areas in each MSA and the nonmetropolitan portion of each state, as a percentage of the bank's total dollar amount of retail lending in outside retail lending areas.

iii. The [Agency] then calculates the Tailored Borrower Market Benchmarks as the weighted average of the Benchmarks calculated in section IV.2.c.i of this appendix, using the weights calculated in section IV.2.c.ii.

For retail lending in outside retail lending areas, the [Agency] will use the Tailored Borrower Market Benchmark as the relevant Borrower Market Benchmark for calculating the Performance Ranges described in section V of this appendix.

d. *Tailored Borrower Community Benchmarks in Outside Retail Lending Areas.* The [Agency] calculates the Tailored Borrower Community Benchmark for each of the bank's major product lines, except for multifamily loans, to borrowers of different income categories respectively, in the bank's outside retail lending area. The Tailored Borrower Community Benchmark is calculated by means of a weighted average of the Borrower Community Benchmark from every MSA and the nonmetropolitan portion of every state, weighted by the percentage, in dollars, of the bank's retail lending outside of facility-based assessment areas and retail lending assessment areas in each of those MSAs and nonmetropolitan portions of states. Specifically:

i. The [Agency] calculates the Borrower Community Benchmarks for each major product line and income group separately for each MSA and for the nonmetropolitan portion of each state, following the formula described in section IV.2.b of this appendix.

ii. The [Agency] calculates local weights as the dollar amount of the bank's retail lending that occurred in outside retail lending areas in each MSA and the nonmetropolitan portion of each state, as a percentage of the bank's total dollar amount of retail lending in outside retail lending areas.

iii. The [Agency] then calculates the Tailored Borrower Community Benchmarks as the weighted average of the Benchmarks calculated in section IV.2.d.i of this appendix, using the weights calculated in section IV.2.d.ii.

For retail lending in a bank's outside retail lending area, the [Agency] will use the Tailored Borrower Community Benchmark as the relevant Borrower Community Benchmark for calculating the Performance Ranges described in section V of this appendix.

V. Recommended Retail Lending Test Conclusions

1. The [Agency] calculates an eligible bank's recommended Retail Lending Test performance conclusion in each facility-based assessment area, excluding the facility-based assessment areas of a large bank in which it failed to meet or surpass the Retail Lending Volume Threshold and the [Agency] did not find an acceptable basis for that failure, and, as applicable, each retail lending assessment area, and in its outside retail lending area by comparing a bank's borrower and geographic distribution metrics for each major product line to a set of performance ranges determined by the market and community benchmarks. For facility-based assessment areas, the [Agency] will then consider the additional factors described in § __.22(e) to adjust a bank's recommended Retail Lending Test conclusion in those assessment areas, as appropriate. For facility-based assessment areas of a large bank in which it failed to meet the Retail Lending Volume Threshold and the [Agency] did not find an acceptable basis for that failure, the [Agency] will use the recommended conclusion developed in this section along with other factors to determine whether the bank should be assigned a ''Needs to Improve'' or ''Substantial Noncompliance'' conclusion in that facility-based assessment area.

2. In evaluating a bank's Retail Lending Test performance in any applicable geographic area:

a. For each major product line, the [Agency] will develop separate supporting conclusions for each of the categories outlined below regarding retail lending performance in the geographic area. These conclusions are based upon a comparison of the bank's performance to the applicable set of performance ranges. Each supporting conclusion in the categories outlined below will receive a Performance Score: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

TABLE 1 TO APPENDIX A—RETAIL LENDING TEST CONCLUSION CATEGORIES

Major product line	Lending in numerator of bank geographic metric	Lending in numerator of bank borrower metric
Closed-End Home Mortgage Loans	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Open-End Home Mortgage Loans	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Multifamily Loans	Low-Income Census Tracts	N/A.
	Moderate-Income Census Tracts	N/A.
Home Mortgage Loans	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Small Business Loans	Low-Income Census Tracts	Small Businesses with Gross Annual Revenues of $250,000 or Less.
	Moderate-Income Census Tracts	Small Businesses with Gross Annual Revenues of More than $250,000 but Less Than or Equal to $1 million.
Small Farm Loans	Low-Income Census Tracts	Small Farms with Gross Annual Revenues of $250,000 or Less.
	Moderate-Income Census Tracts	Small Farms with Gross Annual Revenues of More than $250,000 but Less Than or Equal to $1 million.
Automobile Loans	Low-Income Census Tracts	Low-Income Households.
	Moderate-Income Census Tracts	Moderate-Income Households.

b. *Geographic Distribution Performance Ranges.* For assessing geographic distribution, for each major product line the [Agency] will compare the bank's performance as measured by the relevant Geographic Bank Metrics in connection with, as applicable, lending in low-income census tracts and moderate-income census tracts to a set of Geographic Performance Ranges associated with each potential recommended Retail Lending Test conclusion for that income level.

The Geographic Performance Ranges are each defined by the minimum Geographic Performance Threshold that the Geographic Bank Metric must meet or surpass to fall within a given Geographic Performance Range. The Geographic Performance Thresholds are determined by the values of the Geographic Market Benchmark and Geographic Community Benchmark, as well as set of Market Multipliers and Community Multipliers associated with each conclusion category. The [Agency] will calculate the Geographic Performance Thresholds and the resulting Geographic Performance Ranges in any applicable geographic area as follows:

i. The Geographic Performance Threshold for a recommended ''Outstanding'' Retail Lending Test conclusion is the minimum of either:

A. The product of 1.0 times the Geographic Community Benchmark; or

B. The product of 1.25 times the Geographic Market Benchmark.

The Outstanding Geographic Performance Range is all potential values of the Geographic Bank Metric equal to or above the Outstanding Geographic Performance Threshold.

ii. The Geographic Performance Threshold for a recommended ''High Satisfactory'' Retail Lending Test conclusion is the minimum of either:

A. The product of 0.9 times the Geographic Community Benchmark; or

B. The product of 1.1 times the Geographic Market Benchmark.

The High Satisfactory Geographic Performance Range is all potential values of the Geographic Bank Metric equal to or above the High Satisfactory Geographic Performance Threshold but below the Outstanding Geographic Performance Threshold.

iii. The Geographic Performance Threshold for a recommended ''Low Satisfactory'' Retail Lending Test conclusion is the minimum of either:

A. The product of 0.65 times the Geographic Community Benchmark; or

B. The product of the 0.8 times the Geographic Market Benchmark.

The Low Satisfactory Geographic Performance Range is all potential values of the Geographic Bank Metric equal to or above the Low Satisfactory Geographic Performance Threshold but below the High Satisfactory Geographic Performance Threshold.

iv. The Geographic Performance Threshold for a recommended ''Needs to Improve'' Retail Lending Test conclusion is the minimum of either:

A. The product of 0.33 times the Geographic Community Benchmark; or

B. The product of 0.33 times the Geographic Market Benchmark.

The Needs to Improve Geographic Performance Range is all potential values of the Geographic Bank Metric equal to or above the Needs to Improve Geographic Performance Threshold but below the Low Satisfactory Geographic Performance Threshold.

v. The Substantial Noncompliance Geographic Performance Range is all potential values of the Geographic Bank Metric below the Needs to Improve Geographic Performance Threshold.

c. *Geographic Distribution Recommended Retail Lending Test Conclusions and Performance Scores.* The [Agency] will compare the Geographic Bank Metric to the Geographic Performance Ranges described in paragraphs V.2.b.i through V.2.b.v of this appendix. The recommended Retail Lending Test conclusion for the geographic distribution performance will be the Geographic Performance Range the Geographic Bank Metric falls within. Based on this recommended Retail Lending Test conclusion, geographic performance for the product and income group is assigned a numerical performances score using the following points values: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

d. *Borrower Distribution Performance Ranges.* For assessing borrower distribution, for each major product line, apart from multifamily lending, the [Agency] will compare the bank's performance as measured by the relevant Borrower Bank Metrics in connection with, as applicable, lending to low-income borrowers, moderate-income borrowers, small businesses with annual revenues of $250,000 or less and small businesses with annual revenues of more than $250,000 but less than or equal to $1 million, and small farms with annual revenues of $250,000 or less and small farms with annual revenues of more than $250,000 but less than or equal to $1 million, to a set of Borrower Performance Ranges associated with each potential recommended Retail Lending Test conclusion for that borrower segment.

The Borrower Performance ranges are each defined by the minimum Borrower Performance Threshold that the Borrower Bank Metric must meet or surpass to fall within a given Borrower Performance Range. The Borrower Performance Thresholds are determined by the values of the Borrower Market Benchmark and Borrower Community Benchmark, as well as the set of Market Multipliers and Community Multipliers associated with each conclusion category. The [Agency] will calculate the Borrower Performance Thresholds and the resulting Borrower Performance Ranges in any applicable geographic area, as follows:

i. The Borrower Performance Threshold for a recommended ''Outstanding'' Retail Lending Test conclusion is the minimum of either:

A. The product of 1.0 times the Borrower Community Benchmark; or

B. The product of 1.25 times the Borrower Market Benchmark.

The Outstanding Borrower Performance Range is all potential values of the Borrower Bank Metric equal to or above the Outstanding Borrower Performance Threshold.

ii. The Borrower Performance Threshold for a recommended ''High Satisfactory'' Retail Lending Test conclusion is the minimum of either:

A. The product of 0.9 times the Borrower Community Benchmark; or

B. The product of 1.1 times the Borrower Market Benchmark.

The High Satisfactory Borrower Performance Range is all potential values of the Borrower Bank Metric equal to or above the High Satisfactory Borrower Performance Threshold but below the Outstanding Borrower Performance Threshold.

iii. The Borrower Performance Threshold for a recommended ''Low Satisfactory'' Retail Lending Test conclusion is the minimum of either:

A. The product of 0.65 times the Borrower Community Benchmark; or

B. The product of 0.8 times the Borrower Market Benchmark.

The Low Satisfactory Borrower Performance Range is all potential values of the Borrower Bank Metric equal to or above the Low Satisfactory Borrower Performance Threshold but below the High Satisfactory Borrower Performance Threshold.

iv. The Borrower Performance Threshold for a recommended ''Needs to Improve'' Retail Lending Test conclusion is the minimum of either:

A. The product of 0.33 times the Borrower Community Benchmark; or

B. The product of 0.33 times the Borrower Market Benchmark.

The Needs to Improve Borrower Performance Range is all potential values of the Borrower Bank Metric equal to or above the Needs to Improve Borrower Performance Threshold but below the Low Satisfactory Borrower Performance Threshold.

v. The Substantial Noncompliance Borrower Performance Range is all potential values of the Borrower Bank Metric below the Needs to Improve Borrower Performance Threshold.

e. *Borrower Distribution Recommended Conclusions and Performance Scores.* The [Agency] will compare the Borrower Bank Metric to the Borrower Performance Ranges described in V.2.d.i through V.2.d.v above. The recommended Retail Lending Test conclusion for the borrower distribution performance, for each product and income group, will be that of the Borrower Performance Range the Borrower Bank Metric falls within. Based on this recommended Retail Lending Test conclusion, borrower performance for the product and income group is assigned a numerical performance score using the following points values: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

3. To determine a bank's recommended Retail Lending Test conclusion for an applicable geography, the [Agency] utilizes a weighted average of a bank's performance for the following categories with regard to each major product line:

TABLE 2 TO APPENDIX A—RETAIL LENDING TEST MAJOR PRODUCT LINE WEIGHTING

Major product line	Lending in numerator of bank geographic metric	Lending in numerator of bank borrower metric
Closed-End Home Mortgage Loans	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Open-End Home Mortgage Loans	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Multifamily Loans	Low-Income Census Tracts	N/A.
	Moderate-Income Census Tracts	N/A.
Home Mortgage Loans	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Small Business Loans	Low-Income Census Tracts	Small Businesses with Gross Annual Revenues of $250,000 or Less.
	Moderate-Income Census Tracts	Small Businesses with Gross Annual Revenues of More Than $250,000 but Less Than or Equal to $1 million.
Small Farm Loans	Low-Income Census Tracts	Small Farms with Gross Annual Revenues of $250,000 or Less.
	Moderate-Income Census Tracts	Small Farms with Gross Annual Revenues of More than $250,000 but Less than or Equal to $1 million.
Automobile Loans	Low-Income Census Tracts	Low-Income Households.
	Moderate-Income Census Tracts	Moderate-Income Households.

a. The [Agency] follows the below steps to create a weighted average performance score for each major product line.

i. First, for each major product line, the [Agency] creates a *geographic income average* of the bank's Geographic Performance Scores and a *borrower income average* of the bank's Borrower Performance Scores.

ii. For the geographic income average of each major product line, the relevant Community Benchmark is used to weight together the bank's Geographic Performance Scores. These benchmarks are outlined in the following table:

TABLE 3 TO APPENDIX A—RETAIL LENDING TEST COMMUNITY BENCHMARK USED TO WEIGHT TOGETHER BANK'S GEOGRAPHIC PERFORMANCE SCORES

Major product line	Geographic distribution performance score component	Geographic community benchmark weight
Closed-End Home Mortgage and Open End Home Mortgage Loans.	Low-Income Census Tracts	Percentage of Owner-Occupied Units in Low-Income Census Tracts.
	Moderate-Income Census Tracts	Percentage of Owner-Occupied Units in Moderate-Income Census Tracts.
Multifamily Loans	Low-Income Census Tracts	Percentage of Multifamily Units in Low-Income Census Tracts.
	Moderate-Income Census Tracts	Percentage of Multifamily Units in Moderate-Income Census Tracts.
Small Business Loans	Low-Income Census Tracts	Percentage of Small Businesses in Low-Income Census Tracts.
	Moderate-Income Census Tracts	Percentage of Small Businesses in Moderate-Income Census Tracts.
Small Farm Loans	Low-Income Census Tracts	Percentage of Small Farms in Low-Income Census Tracts.
	Moderate-Income Census Tracts	Percentage of Small Farms in Moderate-Income Census Tracts.
Automobile Loans	Low-Income Census Tracts	Percentage of Households in Low-Income Census Tracts.
	Moderate-Income Census Tracts	Percentage of Households in Moderate-Income Census Tracts.

iii. For the borrower income average of each major product line, excluding multifamily lending, the relevant Community Benchmark is used to weight together the bank's Borrower Performance Scores. These benchmarks are outlined in the following table:

TABLE 4 TO APPENDIX A—RETAIL LENDING TEST COMMUNITY BENCHMARK USED TO WEIGHT TOGETHER BANK'S BORROWER PERFORMANCE SCORES

Major product line	Borrower distribution performance score component	Borrower community benchmark
Closed-End Home Mortgage and Open-End Home Mortgage Loans.	Low-Income Borrowers	Percentage of Low-Income Families.
	Moderate-Income Borrowers	Percentage of Moderate-Income Families.
Multifamily Loans	N/A	N/A.
	N/A	N/A.
Small Business Loans	Small Businesses with Gross Annual Revenues of $250,000 or Less.	Percentage of Small Businesses with Gross Annual Revenues of $250,000 or Less.
	Small Businesses with Gross Annual Revenues of More Than $250,000 and Less Than or Equal to $1 Million.	Percentage of Small Businesses with Gross Annual Revenues of More Than $250,00 and Less Than or Equal to $1 Million.
Small Farm Loans	Small Farms with Gross Annual Revenues of $250,000 or Less.	Percentage of Small Farms with Gross Annual Revenues of $250,000 or Less.
	Small Farms with Gross Annual Revenues of More Than $250,000 and Less Than or Equal to $1 Million.	Percentage of Small Farms with Gross Annual Revenues of More Than $250,00 and Less Than or Equal to $1 Million.
Automobile Loans	Low-Income Borrowers	Percentage of Low-Income Households.
	Moderate-Income Borrowers	Percentage of Moderate-Income Households.

In the case of an assessment area that contains no low-income census tracts and no moderate-income census tracts, the bank will not receive a *geographic income average* for that assessment area

Example: Suppose that a bank originates and purchases closed-end home mortgage loans in a facility-based assessment area. Assume that owner-occupied housing in moderate-income census tracts represent 80 percent of all owner-occupied units in low- and moderate-income census tracts combined, and accordingly closed-end home mortgage loans in moderate-income census tracts receive an 80 percent weight and closed-end home mortgage loans in low-income census tracts receive a 20 percent weight. Additionally, assume that for closed-end home mortgage loans, the bank's geographic distribution conclusion in connection with low-income census tracts was ''High Satisfactory'' (Performance Score of 7 points) and its geographic distribution conclusion in connection with moderate-income census tracts was ''Needs to Improve'' (Performance Score of 3 points).

For geographic distribution: The bank's *geographic income average for closed-end home mortgage loans* would be 3.8 [(7 points

× 0.2 weight = 1.4) + (3 points × 0.8 weight = 2.4)].

Assume also that low-income families account for 70 percent of the total low- and moderate-income families in the assessment area, and that accordingly closed-end home mortgage lending to low-income families receives a 70 percent weight and closed-end home mortgage lending to moderate-income families receives a 30 percent weight. Additionally assume that the bank's borrower distribution conclusion in connection with low-income borrowers was ''Outstanding'' (Performance Score of 10 points) and its borrower distribution conclusion in connection with moderate-income borrowers was ''Low Satisfactory'' (Performance Score of 6 points).

For borrower distribution: The bank's *borrower income average for closed-end home mortgage loans* would be 8.8 [(10 points × 0.7 weight = 7.0) + (6 points × 0.3 weight = 1.8)].

b. Second, for each major product line, the [Agency] then uses the simple mean of the *geographic income average* and the *borrower income average* to develop a *product line average.* For multifamily lending, banks do not receive borrower income performance conclusions so the *product line average* is set equal to the *geographic income average.* If a bank has no *geographic income average* for a product (due to the absence of both low-income census tracts and moderate-income census tracts in the geographic area), then the *product line average* is set equal to the *borrower income average.*

Example: Based on the illustration above:

For closed-end home mortgage loans: The bank's *product line average* for closed-end home mortgage loans would be 6.3 [(3.8 geographic income average × 0.5 weight = 1.9) + (8.8 borrower income average × 0.5 weight = 4.4)].

c. Third, the [Agency] uses the volume of retail lending (measured in dollars of originations and purchases) that the bank made in each major product line in a relevant geographic area to assign a weight to that major product line. A weighted average taken across products then produces a *geographic product average.*

Example: Suppose that, in addition to the closed-end home mortgage lending described in the illustration above, the example bank also engaged in small business lending in its assessment area. Assume that, among major product lines, 60 percent of the banks loans in that assessment area were closed-end home mortgages and 40 percent were small business loans (by dollar volume). Accordingly, closed-end home mortgage lending would receive a 60 percent weight and small business lending would receive a 40 percent weight. Assume further that, based on steps V.3.a.i-iii, the bank's *product line average* for small business lending in the assessment area was 4.2.

For all retail loans: The bank's *geographic product average* for all retail lending is 5.46 [(6.3 closed-end home mortgage product line average × 0.6 weight = 3.78) + (4.2 small business product line average × 0.4 weight = 1.68)].

d. Fourth, the [Agency] takes the *geographic product average* and translates it into a recommended Retail Lending Test conclusion for the relevant geographic area by rounding to the nearest conclusion score using the following points values: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). The rounding procedure works as follows:

i. A geographic product average of less than 1.5 results in a conclusion of ''Substantial Noncompliance'';

ii. A geographic product average of 1.5 or more but less than 4.5 results in a conclusion of ''Needs to Improve'';

iii. A geographic product average of 4.5 or more but less than 6.5 results in a conclusion of ''Low Satisfactory'';

iv. A geographic product average of 6.5 or more but less than 8.5 results in a conclusion of ''High Satisfactory'';

v. A geographic product average of 8.5 or more results in a conclusion of ''Outstanding.''

For small banks evaluated pursuant to the Retail Lending Test, recommended Retail Lending Test conclusions of ''High Satisfactory'' and ''Low Satisfactory'' both result in a recommended Retail Lending Test conclusion of ''Satisfactory'' in any applicable state, multistate MSA, or at the institution level.

Example: Based on the illustration above, the bank's *geographic product average* of 5.46 is closest to the conclusion score (6) associated with a ''Low Satisfactory,'' so the bank's recommended Retail Lending Test conclusion is ''Low Satisfactory'' for the assessment area. Finally, the [Agency] will review additional factors in described in § _ _.22(e) to determine whether and how to adjust a bank's recommended Retail Lending Test conclusion in this facility-based assessment area.

VI. Retail Lending Test and Retail Services and Products Test Weighting and Conclusions in States, Multistate MSAS, and at the Institution Level

1. Retail Lending Test conclusions in states and multistate MSAs are based on Retail Lending Test conclusions for facility-based assessment areas and, as applicable, retail lending assessment areas.

Facility-based assessment area and retail lending assessment area conclusions are translated into numerical performance scores using the following mapping: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). The [Agency] takes a weighted average of these performance scores across assessment areas. Each assessment area is weighted by the simple average of:

a. The dollars of deposits the bank draws from that assessment area, measured as a percentage of all dollars of deposits that the bank draws from assessment areas in the relevant geographic area (*i.e.,* state where the bank has a branch, multistate MSA where the bank has a branch in two or more states of the multistate MSA, and nationwide at the institution level); and

b. The dollars of retail loans the bank made in that assessment area over the evaluation period, measured as a percentage of all of the retail loans that the bank made in assessment areas in the relevant geographic area over the evaluation period.

For banks that collect and maintain deposits data as provided in § __.42, the dollars of deposits in each assessment area are the annual average daily balance of deposits as provided in bank statements (for example, monthly, quarterly) for the bank's deposits associated with an address in that assessment area over the evaluation period. For banks that do not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits in each assessment area as the annual average of deposits assigned to branches that the bank operates in its assessment area, as reported in the FDIC's Summary of Deposits.

The [Agency] calculates the weighted average of facility-based assessment area performance scores and, as applicable, retail lending assessment area performance scores to produce the Retail Lending Test performance score for each state, multistate MSA, and at the institution level. The [Agency] assigns a conclusion corresponding with the conclusion category that is nearest to the performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). For performance scores at the exact mid-point between two conclusions categories, the [Agency] rounds up to assign the conclusion (*i.e.,* a performance score of 8.5 is ''Outstanding''). These performance scores are then each rounded to the nearest conclusion score to produce a Retail Lending Test conclusion for each state, multistate MSA, and at the institution level using the following corresponding points values: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

2. The Retail Lending Test conclusion at the institution level is based on Retail Lending Test conclusions for all facility-based assessment areas and, as applicable, retail lending assessment areas and in outside retail lending areas. Facility-based assessment area, retail lending assessment area, and outside retail lending area conclusions are translated into numerical performance scores using the following mapping: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

The [Agency] takes a weighted average of these performance scores across facility-based assessment areas and, as applicable, retail lending areas and outside retail lending areas. Each assessment area and the outside retail lending area is weighted by the simple average of:

a. The dollars of deposits the bank draws from that assessment area or outside retail lending area, measured as a percentage of all of the bank's dollars of deposits; and

b. The dollars of retail loans the bank made in that assessment area or outside retail lending area over the evaluation period, measured as a percentage of all the retail loans the bank made over the evaluation period.

For banks that collect and maintain deposits data as provided in § __.42, the dollars of deposits in each geographic area are the annual average daily balance of deposits as provided in bank statements (for example, monthly, quarterly) for the bank's deposits associated with an address in that assessment area or outside retail lending area over the evaluation period. For banks that do not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits in each geographic area as the annual average of deposits assigned to branches the bank operates in its assessment area, as reported in the FDIC's Summary of Deposits.

The [Agency] calculates the weighted average of facility-based assessment area performance scores and, as applicable, retail lending assessment area performance scores and outside retail lending area performance scores to produce the Retail Lending Test performance score for bank at the institution level. This institution-level performance score is then rounded to the nearest conclusion score to produce a Retail Lending Test conclusion for the institution using the following points values: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

Example 1: Assume that a large bank operates in one state only, and has two facility-based assessment areas and one retail lending assessment area in that state, and also engages in retail lending activity in an outside retail lending area.

Assume also that:

i. In facility-based assessment area 1, the bank received a ''Needs to Improve'' (3 points) Retail Lending Test conclusion, and that it is associated with 75 percent of the bank's deposits and 10 percent of the bank's retail loans (both, by dollar amount);

ii. In facility-based assessment area 2, the bank received a ''Low Satisfactory'' (6 points) Retail Lending Test conclusion, and that it is associated with 15 percent of the bank's deposits and 20 percent of the bank's retail loans;

iii. In its retail lending assessment area, the bank received an ''Outstanding'' (10 points) Retail Lending Test conclusion, and that it is associated with 8 percent of the bank's deposits and 68 percent of the bank's retail loans; and

iv. In the outside retail lending area, the bank received a ''High Satisfactory'' (7 points) Retail Lending Test conclusion, and that these areas are associated with 2 percent of the bank's deposits and 2 percent of the bank's retail loans.

Calculating Weights

i. For facility-based assessment area 1: weight = 42.5 percent [(75 percent of deposits + 10 percent of retail loans)/2];

ii. For facility-based assessment area 2: weight = 17.5 percent [(15 percent of deposits + 20 percent of retail loans)/2];

iii. For the retail lending assessment area: weight = 38 percent [(8 percent of deposits + 68 percent of retail loans)/2]; and

iv. For the outside retail lending area: weight = 2 percent [(2 percent of deposits + 2 percent of loans)/2].

Institution Retail Lending Test Score and Recommended Retail Lending Test Conclusion: Using the relevant points values—''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points)—and based on the illustration above, the bank's recommended Retail Lending Test performance score at the institution level is 6.3 [(0.425 weight × 3 points in facility-based assessment area 1) + (0.175 weight × 6 points in facility-based assessment area 2) + (0.38 weight × 10 points in retail lending assessment area) + (0.02 weight 7 points in outside retail lending area)].

A performance score of 6.3 is closest to the conclusion score (6) associated with ''Low Satisfactory,'' so the bank's recommended Retail Lending Test conclusion at the institution level is ''Low Satisfactory.''

Example 2: Assume that an intermediate bank operates in one state only, and has two facility-based assessment areas, and also engages in retail lending activity in an outside retail lending area, having originated or purchased over 50 percent of its retail loans outside of its facility-based assessment areas.

Assume also that:

i. In facility-based assessment area 1, the bank received an ''Outstanding'' (10 points) Retail Lending Test conclusion, and that it is associated with 60 percent of the bank's deposits and 30 percent of the bank's retail loans (both, by dollar amount);

ii. In facility-based assessment area 2, the bank received a ''High Satisfactory'' (7 points) Retail Lending Test conclusion, and that it is associated with 40 percent of the bank's deposits and 10 percent of the bank's retail loans; and

iii. In the outside retail lending area, the bank received a ''Needs to Improve'' (3 points) Retail Lending Test conclusion, and that these areas are associated with 0 percent of the bank's deposits (as the bank did not voluntarily collect and maintain depositor location data, so deposit location is based on branch assignment and all branches are necessarily located within facility-based assessment areas) and 60 percent of the bank's retail loans.

Calculating weights:

i. For facility-based assessment area 1: weight = 45 percent [(60 percent of deposits + 30 percent of retail loans)/2];

ii. For facility-based assessment area 2: weight = 25 percent [(40 percent of deposits + 10 percent of retail loans)/2]; and

iii. For the outside retail lending area: weight = 30 percent [(0 percent of deposits + 60 percent of loans)/2].

Institution Retail Lending Test Score and Recommended Retail Lending Test Conclusion: Using the relevant points values—''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points)—and based on the illustration above, the bank's recommended Retail Lending Test performance score at the institution level is 7.2 [(0.45 weight × 10 points in facility-based assessment area 1) + (0.25 weight × 7 points in facility-based assessment area 2) + (0.3 weight × 3 points in outside retail lending area)].

A performance score of 7.2 is closest to the conclusion score (7) associated with ''High Satisfactory,'' so the bank's recommended Retail Lending Test conclusion at the institution level is ''High Satisfactory.''

VII. Retail Services and Products Test Weighting and Conclusions in States, Multistate MSAS, and at the Institution Level

1. *State and multistate MSA.* Retail Services and Products Test conclusions in a state or multistate MSA are based on Services and Products Test conclusions for facility-based assessment areas in the relevant state or multistate MSA. Facility-based assessment area conclusions are translated into numerical performance scores using the following mapping: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

The [Agency] then calculates a weighted average of these performance scores across assessment areas in each relevant state or multistate MSA. Each facility-based assessment area is weighted by the simple average of:

a. The dollars of deposits the bank draws from that assessment area, measured as a percentage of all dollars of deposits that the bank draws from facility-based assessment areas in the relevant state or multistate MSA; and

b. The dollars of retail loans the bank made in that assessment area over the evaluation period, measured as a percentage of all of the retail loans that the bank made in facility-based assessment areas in the relevant state or multistate MSA over the evaluation period.

For banks that collect and maintain deposits data as provided in § __.42, the dollars of deposits in each assessment area are the annual average daily balance of deposits as provided in bank statements (for example, monthly, quarterly) for the bank's deposits associated with an address in that assessment area over the evaluation period. For banks that do not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits in each assessment area as the annual average of deposits assigned to branches the bank operates in its assessment area, as reported in the FDIC's Summary of Deposits.

The raw number resulting from the weighted average calculation is the bank's performance score for its Retail Services and Products Test performance in a state or multistate MSA. The [Agency] assigns a conclusion corresponding with the conclusion category that is nearest to the performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). For performance scores at the exact mid-point between two conclusions categories, the [Agency] rounds up to assign the conclusion (*i.e.,* a performance score of 8.5 is ''Outstanding'').

Example: Assume that a large bank operates two facility-based assessment areas in a particular state.

Assume also that:

i. In facility-based assessment area 1, the bank received a ''Low Satisfactory'' (6 points) Retail Services and Products Test conclusion, and that it is associated with 75 percent of the bank's deposits and 80 percent of the bank's retail loans (both, by dollar amount) in its facility-based assessment areas in the state;

ii. In facility-based assessment area 2, the bank received a ''Needs to Improve'' (3 points) Retail Services and Products Test conclusion, and that it is associated with 25 percent of the bank's deposits and 20 percent of the bank's retail loans in its facility-based assessment areas the state

Calculating weights:

i. For facility-based assessment area 1: Weight = 77.5 percent [(75 percent of deposits + 80 percent of retail loans)/2];

ii. For facility-based assessment area 2: Weight = 22.5 percent [(25 percent of deposits + 20 percent of retail loans)/2].

State-Level Performance Score and Conclusion for the Retail Services and Products Test: Using the relevant points values—''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points)—and based on the illustration above, the bank's weighted average of facility-based assessment area conclusions at the state level is 5.325 [(0.775 weight × 6 points in facility-based assessment area 1) + (0.225 weight × 3 points in facility-based assessment area 2).]

A performance score of 5.325 is closest to the conclusion score (6) associated with ''Low Satisfactory,'' so the bank's Retail Services and Products Test conclusion at the state level is ''Low Satisfactory.''

2. *Institution.* The Retail Services and Products Test conclusion at the institution level is based on a combined assessment of the bank's delivery systems performance under § __.23(b) and its credit and deposit products performance under § __.23(c). The delivery systems evaluation comprises two parts:

a. The weighted average of a bank's Retail Services and Products Test performances scores for its conclusions in all of its facility-based assessment areas, calculated in accordance with section VII.1 but including all of the bank's facility-based assessment areas; and

b. As applicable, the bank's performance regarding digital and other delivery systems under § __.23(b)(3).

Based on an evaluation of the components of the bank's delivery systems performance and the credit and deposit products performance, as applicable, the [Agency] assigns a Retail Services and Products Test conclusion for the bank at the institution level. The institution-level conclusion is translated into a numerical performance score using the following mapping: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

Appendix B to Part __—Calculations for the Community Development Tests

Appendix B includes information and calculations for metrics, benchmarks, combining test elements to derive performance scores and conclusions, and weighting conclusions for, as applicable, the Community Development Financing Test as provided in § __.24, the Community Development Services Test as provided in § __.25, and the Community Development Financing Test for Wholesale or Limited Purpose Banks as provided in § __.26.

1. *Community development loans and community development investments included in the community development financing metrics and benchmarks—in general.* The community development financing metrics and benchmarks in § __.24 are based on annual community development financing activity. Community development financing activity for each calendar year in an evaluation period comprises the following:

a. The dollar amount of all community development loans originated and community development investments made in that year;

b. The dollar amount of any increase in an existing community development loan that is renewed or modified in that year; and

c. The outstanding value of community development loans originated or purchased and community development investments made in previous years that remain on the bank's balance sheet on the last day of each quarter of the year, averaged across the four quarters of the year.

To calculate the community development financing metric for an evaluation period, the [Agency] uses the annual average of community development financing activity for each year, and the annual average of bank deposits over the evaluation period.

For the facility-based assessment area, state, and multistate MSA, and nationwide area community development financing metrics in § __.24(c), all community development financing activities that are attributed to the specific facility-based assessment area, state, multistate MSA, or nationwide area, respectively, are included. *See* section 13 of this appendix for an explanation of how the [Agency] allocates community development financing dollars to a facility-based assessment area, state, multistate MSA, or nationwide area, respectively.

2. *Bank Assessment Area Community Development Financing Metric.* Section __.24(b)(1) provides that, to assist the [Agency] in evaluating a bank's community development financing activity in a facility-based assessment area, the [Agency] considers a Bank Assessment Area Community Development Financing Metric. The Bank Assessment Area Community Development Financing Metric for a facility-based assessment area for the evaluation period is calculated by dividing the annual average of the bank's community development financing activity for each year, over the evaluation period, by the annual average dollar value of deposits from the bank's deposit accounts in the facility-based assessment area over the evaluation period.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits in each assessment area are the annual average of deposits over the evaluation period. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits in each assessment area as the annual average of deposits assigned to branches that the bank operates in its assessment area, as reported in the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the annual average dollar amount of a bank's community development financing activity in a facility-based assessment area over the bank's three-year evaluation period is $100,000. Assume further that the annual average dollar value of deposits from the bank's deposit accounts located in the facility-based assessment, reported each year by the bank as the average of monthly deposit statements, is $10 million. The Bank Assessment Area Community Development Financing Metric for that facility-based assessment area would be $100,000 divided by $10 million, or 0.01 (equivalently, 1 percent).

3. *Assessment Area Community Development Financing Benchmark.* Section __.24(b)(2)(i) provides that the [Agency] uses an Assessment Area Community Development Financing Benchmark for evaluating a bank's community development financing activity in each facility-based assessment area. The Assessment Area Community Development Financing Benchmark is calculated by dividing the total annual community development financing activity for all large banks in the facility-based assessment area for each year, averaged over the years of the evaluation period, by the total dollar value of all large bank deposit accounts in that facility-based assessment area, averaged over the years of the evaluation period.

The deposits in the facility-based assessment area are the sum of: (i) The annual average of deposits in counties in the facility-based assessment area reported by all large banks with assets of over $10 billion over the evaluation period; and (ii) the annual average of deposits assigned to branches in the facility-based assessment area by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the total dollar amount of all large banks' community development financing activity in the facility-based assessment area, average annually over the years of the evaluation period is $10 million. Assume further that the total reported dollar value of all large bank deposit accounts in that facility-based assessment, averaged annually over the years of the evaluation period, is $1 billion. The Assessment Area Community Development Financing Benchmark for the facility-based assessment area would be $10 million divided by $1 billion, or 0.01 (equivalently, 1 percent).

4. *Metropolitan and Nonmetropolitan Nationwide Community Development Financing Benchmarks.* Section __.24(b)(2)(ii) provides that the [Agency] uses Nationwide Community Development Financing Benchmarks for evaluating a bank's community development financing activity in each facility-based assessment area. The [Agency] calculates a Metropolitan Nationwide Community Development Financing Benchmark for metropolitan areas when the relevant facility-based assessment area is in a metropolitan area. The [Agency] calculates a Nonmetropolitan Nationwide Community Development Financing Benchmark for nonmetropolitan areas when the relevant facility-based assessment area is in a nonmetropolitan area.

i. *Metropolitan Nationwide Community Development Financing Benchmark.* The Metropolitan Nationwide Community Development Financing Benchmark is derived by dividing the total dollar amount of all large banks' annual community development financing activity in all metropolitan areas in a nationwide area for each year, averaged over the years of the evaluation period, by the total dollar amount of all deposits from large bank deposit accounts in all metropolitan areas in a nationwide area, averaged over the years of the evaluation period.

The deposits in all metropolitan areas in a nationwide area is the sum of: (i) The annual average of deposits in counties in all metropolitan areas in a nationwide area reported by all large banks with assets of over $10 billion over the evaluation period; and (ii) the annual average of deposits assigned to branches in all metropolitan areas in a nationwide area by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the total dollar amount of all large banks' community development financing activity in metropolitan areas, averaged over the years of the evaluation period, is $100 billion. Assume further that the total dollar value of all large bank deposit accounts in metropolitan areas in the nation as reported by those banks, averaged over the years of the evaluation period, is $5 trillion. The Metropolitan Nationwide Community Development Financing Benchmark would be $100 billion divided by $5 trillion, or 0.02 (equivalently, 2 percent).

ii. *Nonmetropolitan Nationwide Community Development Financing Benchmark.* The Nonmetropolitan Nationwide Community Development Financing Benchmark is derived by dividing the total dollar amount of all large banks' annual community development financing activity in all nonmetropolitan areas in the nationwide area for each year, averaged over the years of the evaluation period, by the reported total dollar amount of all deposits from large bank deposit accounts in all nonmetropolitan areas in a nationwide area, averaged over the years of the evaluation period.

The deposits in all nonmetropolitan areas in a nationwide area is the sum of: (i) The annual average of deposits in counties in all nonmetropolitan areas in a nationwide area reported by all large banks with assets of over $10 billion over the evaluation period; and (ii) the annual average of deposits assigned to branches in all nonmetropolitan areas in a nationwide area by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the average annual dollar amount of all large banks' community development financing activity in nonmetropolitan areas over the evaluation period is $10 billion. Assume further that the total dollar value of all large bank deposit accounts in nonmetropolitan areas, averaged over the years of the evaluation period, is $1 trillion. The Nonmetropolitan Nationwide Community Development Financing Benchmark would be $10 billion divided by $1 trillion, or 0.01 (equivalently, 1 percent).

5. *Bank State Community Development Financing Metric.* Section __.24(c)(2)(ii)(A) provides that, to assist the [Agency] in evaluating a bank's community development financing activity in each state, the [Agency] considers a Bank State Community Development Financing Metric. For each state, the [Agency] calculates a Bank State Community Development Financing Metric for that state for the evaluation period. The Bank State Community Development Financing Metric is calculated by dividing a bank's total community development financing activity within an state for each year, averaged over the years of the evaluation period, including all activities within the bank's facility-based assessment areas and outside of its facility-based assessment areas but within the state, by the total dollar amount of deposits from the bank's deposit accounts in the state at the end of each calendar year, averaged over the years of the evaluation period.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in the state. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in the state, as reported in the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the bank's total community development financing activity within a state, averaged over the years of its evaluation period is $50 million. Assume further that the total dollar amount of deposits from the bank's deposit accounts in the state for each calendar year, averaged over the years of the evaluation period, is $5 billion. The Bank State Community Development Financing Metric would be $50 million divided by $5 billion, or 0.01 (equivalently, 1 percent).

6. *State Community Development Financing Benchmark.* Section __.24(c)(2)(ii)(B)(*1*) provides that the [Agency] uses a State Community Development Financing Benchmark for evaluating a bank's community development financing activity in each state. The State Community Development Financing Benchmark is calculated by dividing the total community development financing activity in a state by all large banks for each year, averaged over the years of the evaluation period, by the total dollar amount of all deposits from large bank deposit accounts in the state at the end of each calendar year, averaged over the years of the evaluation period.

The deposits in the state is the sum of: (i) The annual average of deposits in counties in the state reported by all large banks with assets of over $10 billion over the evaluation period; and (ii) the annual average of deposits assigned to branches in the state by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the total dollar amount of all large banks' community development financing activity in a state, averaged over the years of the evaluation period, is $75 million. Assume further that the total dollar value of all large bank deposit accounts in the state at the end of each calendar year, averaged over the years of the evaluation period, is $500 billion. The State Community Development Financing Benchmark for the facility-based assessment area would be $75 billion divided by $500 billion, or 0.015 (equivalently, 1.5 percent).

7. *State Weighted Assessment Area Community Development Financing Benchmark.* Section __.24(c)(2)(ii)(B)(*2*) provides that the [Agency] uses a State Weighted Assessment Area Community Development Financing Benchmark for evaluating a bank's community development financing activity in each state. The State Weighted Assessment Area Community Development Financing Benchmark is calculated by averaging all of the bank's Assessment Area Community Development Financing Benchmarks (see section 3) in a state, after weighting each in accordance with section 17 of this appendix B.

Example: Assume that a bank has two facility-based assessment areas in a state. (Whether the bank also has retail lending assessment areas or lending activity outside of its assessment areas in the state has no bearing on this benchmark.)

Assume also that:

a. In facility-based assessment area 1, the bank's Assessment Area Community Development Financing Benchmark is 3 percent. Out of the total of the bank's deposits and retail loans that are associated with either of the two assessment areas in the state, this assessment area is associated with 70 percent of the bank's deposits and 60 percent of the bank's retail loans (both, by dollar amount);

b. In facility-based assessment area 2, the bank's Assessment Area Community Development Financing Benchmark is 5 percent. Out of the total of the bank's deposits and retail loans that are associated with either of the two assessment areas in the state, this assessment area is associated with 30 percent of the bank's deposits and 40 percent of the bank's retail loans (both, by dollar amount).

Calculating weights:

a. For facility-based assessment area 1: weight = 65 percent [(70 percent of deposits + 60 percent of retail loans)/2];

b. For facility-based assessment area 2: weight = 35 percent [(30 percent of deposits + 40 percent of retail loans)/2].

State Weighted Assessment Area Community Development Financing Benchmark: The bank's State Weighted Assessment Area Community Development Financing Benchmark is 3.7 percent [(0.65 weight × 3 percent in facility-based assessment area 1) + (0.35 weight × 5 percent in facility-based assessment area 2)].

8. *Bank Multistate MSA Community Development Financing Metric.* Section __.24(c)(3)(ii)(A) provides that, to assist the [Agency] in evaluating a bank's community development financing activity in a multistate MSA, the [Agency] considers a Bank Multistate MSA Community Development Financing Metric. For each multistate MSA, the [Agency] calculates a Bank Multistate MSA Community Development Financing Metric for that multistate MSA for the evaluation period. The Bank Multistate MSA Community Development Financing Metric is calculated by dividing the total community development financing activity within the multistate MSA for each year, averaged together over the years of the evaluation period, including all activities within the bank's facility-based assessment areas and outside of its facility-based assessment areas but within the multistate MSA, by the total dollar amount of deposits from the bank's deposit accounts in the multistate MSA, averaged together over the years of the evaluation period.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in the multistate MSA. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in the multistate MSA, as reported in the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the bank's total community development financing activity within a multistate MSA, averaged over the years of its evaluation period, is $150 million. Assume further that the total dollar amount of deposits from the bank's deposit accounts in the multistate MSA, averaged over the years of the evaluation period, is $10 billion. The Bank Multistate MSA Community Development Financing Metric for that multistate MSA would be $150 million divided by $10 billion, or 0.015 (equivalently, 1.5 percent).

9. *Multistate MSA Community Development Financing Benchmark.* Section __.24(c)(3)(ii)(B)(*1*) provides that the [Agency] uses a Multistate MSA Community Development Financing Benchmark for evaluating a bank's community development financing activity in each multistate MSA. The Multistate MSA Community Development Financing Benchmark is calculated by dividing the total community development financing activity in the multistate MSA by all large banks for each year, averaged over the years of the evaluation period, by the total dollar amount of all deposits from large bank deposit accounts in the multistate MSA, averaged over the years of the evaluation period.

The deposits in the multistate MSA is the sum of: (i) The annual average of deposits in counties in the multistate MSA reported by all large banks with assets of over $10 billion over the evaluation period; and (ii) the annual average of deposits assigned to branches in the multistate MSA by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the total dollar amount of all large banks' community development financing activity in a multistate MSA, averaged over the years of the evaluation period, is $125 million. Assume further that the total dollar value of all large bank deposit accounts in the multistate MSA, averaged over the years of the evaluation period, is $1.5 billion. The Multistate MSA Community Development Financing Benchmark for the facility-based assessment area would be $125 million divided by $1.5 billion, or 0.083 (equivalently, 8.3 percent).

10. *Multistate MSA Weighted Assessment Area Community Development Financing Benchmark.* Section __.24 (c)(3)(ii)(B)(*2*) provides that the [Agency] uses a Multistate MSA Weighted Assessment Area Community Development Financing Benchmark for evaluating a bank's community development financing activity in each multistate MSA. The Multistate MSA Weighted Assessment Area Community Development Financing Benchmark is calculated by averaging all of the bank's Assessment Area Community Development Financing Benchmarks (see section 3) in a multistate MSA, after weighting each in accordance with section 17 of this appendix.

Example: Assume that a bank has two facility-based assessment areas in a multistate MSA. (Whether the bank also has retail lending assessment areas or lending activity outside of its assessment areas in the multistate MSA has no bearing on this benchmark.)

Assume also that:

a. In facility-based assessment area 1, the bank's Assessment Area Community Development Financing Benchmark is 3 percent. Out of the total of the bank's deposits and retail loans that are associated with either of the two assessment areas in the multistate MSA, this assessment area is associated with 70 percent of the bank's deposits and 60 percent of the bank's retail loans (both, by dollar amount);

b. In facility-based assessment area 2, the bank's Assessment Area Community Development Financing Benchmark is 5 percent. Out of the total of the bank's deposits and retail loans that are associated with either of the two assessment areas in the multistate MSA, this assessment area is associated with 30 percent of the bank's deposits and 40 percent of the bank's retail loans (both, by dollar amount).

Calculating weights:

a. For facility-based assessment area 1: Weight = 65 percent [(70 percent of deposits + 60 percent of retail loans)/2];

b. For facility-based assessment area 2: Weight = 35 percent [(30 percent of deposits + 40 percent of retail loans)/2].

Multistate MSA Weighted Assessment Area Community Development Financing Benchmark: The bank's Multistate MSA Weighted Assessment Area Community Development Financing Benchmark is 3.7 percent [(0.65 weight × 3 percent in facility-based assessment area 1) + (0.35 weight × 5 percent in facility-based assessment area 2)].

11. *Bank Nationwide Community Development Financing Metric.* Section __.24(c)(4)(ii)(A) provides that the [Agency] uses a Bank Nationwide Community Development Financing Metric for evaluating a bank's community development financing activity in a nationwide area. The Bank Nationwide Community Development Financing Metric is calculated by dividing the bank's total community development financing activity in a nationwide area for each year, averaged over the years of the evaluation period, by the total dollar amount of deposits from bank deposit accounts in a nationwide area, averaged over the years of the evaluation period.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in the nationwide area. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in the nationwide area, as reported in the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the bank's total community development financing activity nationwide, averaged over the years of the evaluation period, is $200 million. Assume further that the total dollar amount of deposits from the bank's deposit accounts nationwide for each calendar year, averaged over the years of the evaluation period, is $8 billion. The Bank Nationwide Community Development Financing Metric would be $200 million divided by $8 billion, or 0.025 (equivalently, 2.5 percent).

12. *Nationwide Community Development Financing Benchmark.* Section __.24(c)(4)(ii)(B)(*1*) provides that the [Agency] uses a Nationwide Community Development Financing Benchmark for evaluating a bank's total community development financing activity. The Nationwide Community Development Financing Benchmark is calculated by dividing the total community development financing activity for all large banks in a nationwide area for each year, averaged over the years of the evaluation period, by the total dollar amount of all deposits from large bank deposit accounts in a nationwide area, averaged over the years of the evaluation period.

The deposits in a nationwide area is the sum of: (i) The annual average of deposits in counties in a nationwide area reported by all large banks with assets of over $10 billion over the evaluation period; and (ii) the annual average of deposits assigned to branches in a nationwide area by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the total dollar amount of all large banks' community development financing activity nationwide, averaged over the years of the evaluation period, is $110 billion. Assume further that the total dollar value of all large bank deposit accounts nationwide, averaged over the years of the evaluation period, is $6 trillion. The Nationwide Community Development Financing Benchmark would be $110 billion divided by $6 trillion, or 0.0183 (equivalently, 1.83 percent).

13. *Nationwide Weighted Assessment Area Community Development Financing Benchmark.* Section __.24(c)(4)(ii)(B)(*2*) provides that the [Agency] uses a Nationwide Weighted Assessment Area Community Development Financing Benchmark for evaluating a bank's community development financing activity in a nationwide area. The Nationwide Weighted Assessment Area Community Development Financing Benchmark is calculated by averaging all of the bank's Assessment Area Community Development Financing Benchmarks (see section 3) in a nationwide area, after weighting each in accordance with section 17 of this appendix.

Example: Assume that a bank has three facility-based assessment areas nationwide. (Whether the bank also has retail lending assessment areas or lending activity outside of its assessment areas in the nationwide has no bearing on this benchmark.)

Assume also that:

a. In facility-based assessment area 1, the bank's Assessment Area Community Development Financing Benchmark is 2 percent. Out of the total of the bank's deposits and retail loans that are associated with any of the three facility-based assessment areas nationwide, this assessment area is associated with 60 percent of the bank's deposits and 50 percent of the bank's retail loans (both, by dollar amount);

b. In facility-based assessment area 2, the bank's Assessment Area Community Development Financing Benchmark is 3 percent. Out of the total of the bank's deposits and retail loans that are associated with any of the three facility-based assessment areas nationwide, this assessment area is associated with 30 percent of the bank's deposits and 40 percent of the bank's retail loans (both, by dollar amount);

c. In facility-based assessment area 3, the bank's Assessment Area Community Development Financing Benchmark is 4 percent. Out of the total of the bank's deposits and retail loans that are associated with any of the three facility-based assessment areas nationwide, this assessment area is associated with 10 percent of the bank's deposits and 10 percent of the bank's retail loans (both, by dollar amount).

Calculating weights:

a. For facility-based assessment area 1: Weight = 55 percent [(60 percent of deposits + 50 percent of retail loans)/2];

b. For facility-based assessment area 2: Weight = 35 percent [(30 percent of deposits + 40 percent of retail loans)/2];

c. For facility-based assessment area 3: Weight = 10 percent [(10 percent of deposits + 10 percent of retail loans)/2].

Nationwide Weighted Assessment Area Community Development Financing Benchmark: The bank's Nationwide Weighted Assessment Area Community Development Financing Benchmark is 2.55 percent [(0.55 weight × 2 percent in facility-based assessment area 1) + (0.35 weight × 3 percent in facility-based assessment area 2) + (0.10 weight × 4 percent in facility-based assessment area 3)].

14. *Allocation of community development financing dollars.* In developing conclusions for a bank's performance under the Community Development Financing Test in §§ __.24 and __.26, the [Agency] allocates community development financing dollars to a facility-based assessment area, state, multistate MSA, or nationwide area as follows:

Activities that provide a benefit to only one county, and not to any areas beyond that one county, would have the full dollar amount of the activity allocated to that county.

Activities that benefit multiple counties will be allocated according to the geographic scope of the activity and any documentation that the bank can provide regarding the dollar amount allocated to each county, as follows:

a. A bank may opt to produce documentation for an activity specifying the appropriate dollar amount to assign to each county, such as specific addresses and dollar amounts associated with projects at each address, or other accounting information that indicates the specific dollar amount of the activity that benefitted each county. The activity will then be allocated accordingly.

b. If a bank does not produce such documentation for an activity, then:

i. An activity with a geographic scope of less than an entire state will be allocated to the county level based on the proportion of low- and moderate-income families in each county;

ii. Activities with a scope of one or more entire states, but not the entire nation, will be allocated to the state level based on the proportion of low- and moderate-income families in each state; and

iii. Activities with a scope of the entire nation would be allocated to the institution level.

TABLE 1 TO APPENDIX B—COMMUNITY DEVELOPMENT FINANCING ALLOCATION

	Documentation ties activity to counties with specific $ amounts	No documentation to indicate specific $ amounts for each county
Serving or benefitting one county	Allocate to county	NA.
Serving or benefitting multi-county, part of one state	Allocate to counties	Allocate to counties proportionate to the number of low- and moderate-income families.
Serving or benefitting multi-county, part of multiple states.	Allocate to counties	Allocate to counties proportionate to the number of low- and moderate-income families.
Entire statewide area	Allocate to counties	Allocate to state.
Multiple entire states	Allocate to counties	Allocate to states proportionate to the number of low- and moderate-income families.
Entire nation	Allocate to counties	Allocate to nationwide area.

15. *Combined score for assessment area conclusions and metrics analysis/impact review.* As described in § __.24(c), the [Agency] assigns a conclusion for a bank's performance under the Community Development Financing Test in a state, multistate MSA, and nationwide area, respectively and as applicable, based on a score combining the following:

i. *Weighted average of the bank's facility-based assessment area conclusions.* For each state, multistate MSA, and nationwide area, respectively, the [Agency] derives a weighted average of the conclusions for facility-based assessment areas in each respective state, multistate MSA, or nationwide areas, calculated in accordance with section 16 of this appendix.

ii. *Bank score for metrics and benchmark analysis and impact review.* For each state, multistate MSA, and nationwide area, respectively, the [Agency] determines a score by considering the metrics and benchmarks and the impact review, corresponding with the following conclusion categories: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

iii. *Combined score.* The [Agency] derives a performance score, which is then associated with a conclusion category, by calculating a weight for each of components described in sections 15.i and 15.ii, and adding the two weighted results together. The weights for each component are determined by calculating the simple average of the bank's share of deposits associated with facility-based assessment areas out of all of the bank's deposits in the state, multistate MSA, or nationwide area, respectively, and the bank's share of retail loans in facility-based assessment areas out of all of the banks retail loans in the state, multistate MSA, or nationwide area, respectively.

A. If the average of the bank's share of loans and deposits in facility-based assessment areas is 80 percent to 100 percent, then the component in section 15.i receives a 50 percent weight and the component in section 15.ii receives a 50 percent weight.

B. If the average of bank's share of loans and deposits in facility-based assessment areas is at least as much as 60 percent but less than 80 percent, then the component in section 15.i receives a 40 percent weight and the component in section 15.ii receives a 60 percent weight.

C. If the average of the bank's share of loans and deposits in facility-based assessment areas is at least as much as 40 percent but less than 60 percent, then the component in section 15.i receives a 30 percent weight and the component in section 15.ii receives a 70 percent weight.

D. If the average of the bank's share of loans and deposits in facility-based assessment areas is at least as much as 20 percent but less than 40 percent, then the component in section 15.i receives a 20 percent weight and the component in section 15.ii receives an 80 percent weight.

E. If the average of the bank's share of loans and deposits in facility-based assessment areas is below 20 percent, then the component in section 15.i receives a 10 percent weight and the component in section 15.ii receives a 90 percent weight.

Example: Assume that the weighted average of the bank's facility-based assessment area conclusions nationwide (section 15.i) is 7.5. Assume further that the bank score for metrics and benchmark analysis and impact review nationwide (section 15.ii) is 6.

Assume further that 95 percent of the bank's deposits, and 75 percent of the bank's retail loans (both, by dollar amount) are associated with its facility-based assessment areas, with the remaining 5 percent of the bank's deposits, and 25 percent of retail loans, associated with areas outside of the bank's facility-based assessment areas.

Calculating weights:

The weights for each component are assigned based on the bank's share of deposits and loans that are associated with its facility-based assessment areas, which falls in the range of 80 percent—100 percent, corresponding to weights of 50 percent for the first component, and 50 percent for the second component: [(95 percent of deposits + 75 percent of retail loans)/2 = 85 percent, which is between 80 percent and 100 percent]. Thus, the weighted average of the bank's facility-based assessment area conclusions nationwide (section 15.i) receives a weight of 50 percent, and the bank score for metrics and benchmark analysis and impact review nationwide (section 15.ii) receives a weight of 50 percent.

Institution Community Development Financing Test Conclusion: Using the relevant point values—''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points)—and based on the example above, the bank's Community Development Financing Test conclusion at the institution level is a ''High Satisfactory'': [(0.50 weight $\times$ 7.5 points for the weighted average of the bank's facility-based assessment area conclusions nationwide) + (0.50 weight $\times$ 6 points for the bank score for metrics and benchmark analysis and impact review nationwide)] results in a performance score of 6.75, which is closest to the point value (7) associated with ''High Satisfactory.''

16. *Weighting of conclusions.* In developing conclusions for a bank's performance under the Community Development Financing Test in § __.24 and the Community Development Services Test in § __.25, the [Agency] weights conclusions in a state, multistate MSA, and nationwide area as follows:

i. *State.* In a state, the [Agency] weights the bank's performance test conclusion in each facility-based assessment area using the simple average of the percentages of, respectively, statewide bank deposits associated with the facility-based assessment area and statewide retail loans that the bank originated or purchased in the facility-based assessment area. The statewide percentages of deposits and retail loans associated with each facility-based assessment area will be based upon, respectively, the dollar volumes of deposits and loans in each facility-based assessment area compared with, respectively, the statewide dollar totals of deposits and loans within facility-based assessment areas of that state.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in each facility-based assessment area and state. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in each facility-based assessment area and state, as reported in the FDIC's Summary of Deposits, over the evaluation period.

ii. *Multistate MSA.* In a multistate MSA, the [Agency] weights the bank's performance test conclusion in each facility-based assessment area using the simple average of the percentages of, respectively, multistate MSA bank deposits associated with the facility-based assessment area and multistate MSA bank retail loans originated or purchased in the facility-based assessment area. The multistate MSA percentages of deposits and loans associated with each facility-based assessment area will be based upon, respectively, the dollar volumes of deposits and loans in each facility-based assessment area compared with, respectively, the multistate MSA dollar totals of deposits and loans within facility-based assessment areas of that multistate MSA.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in each facility-based assessment area and multistate MSA. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in each facility-based assessment area and multistate MSA, as reported in the FDIC's Summary of Deposits, over the evaluation period.

iii. *Institution.* At the institution level, the [Agency] weights the bank's performance test conclusion in each facility-based assessment area using the simple average of the percentages of, respectively, nationwide bank deposits associated with the facility-based assessment area and nationwide bank retail loans originated or purchased in the facility-based assessment area. The nationwide percentages of deposits and loans associated with each facility-based assessment area will be based upon, respectively, the dollar volumes of deposits and loans in each facility-based assessment area compared with, respectively, the nationwide dollar totals of deposits and loans within facility-based assessment areas of the nationwide area.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in each facility-based assessment area and nationwide area. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in each facility-based assessment area and nationwide area, as reported in the FDIC's Summary of Deposits, over the evaluation period.

17. *Weighting of benchmarks.* In developing benchmarks for assessing a bank's performance under the Community Development Financing Test in § __.24 the [Agency] calculates a weighted average of the Assessment Area Community Development Financing Benchmarks pertaining to a bank's facility-based assessment areas in a state, multistate MSA, and nationwide area as follows:

i. *State Weighted Assessment Area Community Development Financing Benchmark.* To calculate the State Weighted Assessment Area Community Development Financing Benchmark for a state, the [Agency] weights the bank's Assessment Area Community Development Financing Benchmark in each facility-based assessment area using the simple average of the percentages of, respectively, statewide bank deposits associated with the facility-based assessment area and statewide retail loans that the bank originated or purchased in the facility-based assessment area. The statewide percentages of deposits and retail loans associated with each facility-based assessment area will be based upon, respectively, the dollar volumes of deposits and loans in each facility-based assessment area compared with, respectively, the statewide dollar totals of deposits and loans within facility-based assessment areas of that state.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in each facility-based assessment area and state. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in each facility-based assessment area and state, as reported in the FDIC's Summary of Deposits, over the evaluation period.

ii. *Multistate MSA Weighted Assessment Area Community Development Financing Benchmark.* To calculate the Multistate MSA Weighted Assessment Area Community Development Financing Benchmark for a Multistate MSA, the [Agency] weights the bank's Assessment Area Community Development Financing Benchmark in each facility-based assessment area using the simple average of the percentages of, respectively, multistate MSA bank deposits associated with the facility-based assessment area and multistate MSA bank retail loans originated or purchased in the facility-based assessment area. The multistate MSA percentages of deposits and loans associated with each facility-based assessment area will be based upon, respectively, the dollar volumes of deposits and loans in each facility-based assessment area compared with, respectively, the multistate MSA dollar totals of deposits and loans within facility-based assessment areas of that multistate MSA.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in each facility-based assessment area and multistate MSA. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in each facility-based assessment area and multistate MSA, as reported in the FDIC's Summary of Deposits, over the evaluation period.

iii. *Nationwide Weighted Assessment Area Community Development Financing Benchmark.* To calculate the Nationwide Weighted Assessment Area Community Development Financing Benchmark for a nationwide area, the [Agency] weights the bank's Assessment Area Community Development Financing Benchmark in each facility-based assessment area using the simple average of the percentages of, respectively, nationwide bank deposits associated with the facility-based assessment area and nationwide bank retail loans originated or purchased in the facility-based assessment area. The nationwide percentages of deposits and loans associated with each facility-based assessment area will be based upon, respectively, the dollar volumes of deposits and loans in each facility-based assessment area compared with, respectively, the nationwide dollar totals of deposits and loans within facility-based assessment areas of the nationwide area.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in each facility-based assessment area and nationwide area. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in each facility-based assessment area and nationwide area, as reported in the FDIC's Summary of Deposits, over the evaluation period.

18. *Wholesale or Limited Purpose Bank Community Development Financing Metric.* Section __.26(f) provides that, to assist the [Agency] in evaluating a wholesale or limited purpose bank's community development financing activity in a nationwide area, the [Agency] considers a Wholesale or Limited Purpose Bank Community Development Financing Metric. The Wholesale or Limited Purpose Bank Community Development Financing Metric is calculated as follows:

i. The [Agency] calculates the annual average of the bank's community development financing activity of the bank over the years of the evaluation period.

ii. The [Agency] calculates the quarterly average of the bank's total assets for the same years for which the annual average of the bank's community development financing activity is calculated under section 18.i of this appendix.

iii. The [Agency] divides the annual average of the bank's community development financing activity calculated under section 18.i of this appendix by the quarterly average of the bank's total assets calculated under section 18.ii of this appendix.

Appendix C to Part __—Performance Test Conclusions

a. Performance test conclusions in general. The [Agency] assigns conclusions for a bank's performance under, as applicable, the Retail Lending Test, the Retail Services and Products Test, the Community Development Financing Test, the Community Development Services Test, and the Community Development Financing Test for Wholesale or Limited Purpose Banks.

b. *Retail Lending Test conclusions.* The [Agency] assigns conclusions for a bank's Retail Lending Test performance in, as applicable, facility-based assessment areas, retail lending assessment areas, and its outside retail lending area. Conclusions assigned for a bank's performance in facility-based assessment areas and, as applicable, retail lending assessment areas are the basis for assigned conclusions at the state, multistate MSA, and institution levels, as provided in paragraphs (b)(3) and (b)(4) below. As applicable, pursuant to § __.22(a) a bank's performance conclusion at the institution level is also informed by the bank's retail lending activities in its outside retail lending area.

1. *Facility-based assessment area.* i. *Failure to meet retail lending volume threshold without an acceptable basis for such failure.* A. For each facility-based assessment area in which a bank fails to meet the retail lending volume threshold provided in § __.22 and is not deemed to have an acceptable basis for failing to meet the threshold, the [Agency] develops a Retail Lending Test conclusion based on the bank's geographic distribution metrics, borrower distribution metrics, and performance ranges as provided in § __.22 and calculated in sections III, IV, and V of appendix A of this part and the applicable additional factors described in § __.22(e).

B. For large banks, in each such facility-based assessment area, the [Agency] assigns one of the following Retail Lending Test conclusions and corresponding performance score: ''Needs to Improve'' (3 points) or ''Substantial Noncompliance'' (0 points).

C. For intermediate banks, in each such facility-based assessment area, the [Agency] assigns one of the following Retail Lending Test conclusions and corresponding performance score: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory,'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).

ii. *Meeting the retail lending volume threshold or having an acceptable basis for not meeting such threshold.* A. For each facility-based assessment area in which a bank meets the retail lending volume threshold provided in § __.22 or is deemed to have an acceptable basis for failing to meet the threshold, the [Agency] develops a Retail Lending Test conclusion based on the bank's geographic distribution metrics, borrower distribution metrics, and performance ranges provided in § __.22 and calculated in accordance with sections III, IV, and V of appendix A of this part and the additional factors described in § __.22(e).

B. For the bank's performance in each such facility-based assessment area, the [Agency] assigns one of the following Retail Lending Test conclusions and corresponding performance score: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory,'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).

2. *Retail lending assessment area.* i. For each retail lending assessment area, the [Agency] develops a Retail Lending Test conclusion based on the bank's geographic distribution metrics, borrower distribution metrics, and performance ranges provided in § __.22 and calculated in accordance with sections III, IV, and V of appendix A of this part.

ii. For the bank's performance in each retail lending assessment area, the [Agency] assigns one of the following Retail Lending Test conclusions and corresponding performance score: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory,'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).

3. *Outside retail lending area.* i. For each outside retail lending area, the [Agency] develops a Retail Lending Test conclusion based on the bank's geographic distribution metrics, borrower distribution metrics, and performance ranges provided in § __.22 and calculated in accordance with sections III, IV, and V of appendix A of this part.

ii. For the bank's performance in each outside retail lending area, the [Agency] assigns one of the following Retail Lending Test conclusions and corresponding performance score: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory,'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).

4. *State or multistate MSA.* i. For each state or multistate MSA, the [Agency] develops a Retail Lending Test conclusion for a bank's performance based on a bank's Retail Lending Test conclusions for its facility-based assessment areas and, as applicable, retail lending assessment areas in each respective state or multistate MSA. The

[Agency] calculates a weighted average of the performance scores associated with the conclusions in accordance with section VI of appendix A of this part. The resulting raw number is the performance score for the bank's Retail Lending Test performance in a state or multistate MSA.

ii. For the bank's performance in each state or multistate MSA, the [Agency] assigns a conclusion corresponding with the conclusion category that is nearest to the performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). For performance scores at the exact mid-point between two conclusion categories, the [Agency] rounds up to assign the conclusion (*i.e.,* a performance score of 8.5 is ''Outstanding'').

5. *Institution.* i. For an institution overall, the [Agency] develops a Retail Lending Test conclusion for a bank's performance based on all of a bank's Retail Lending Test conclusions for its facility-based assessment areas and, as applicable, retail lending assessment areas. For large banks and certain intermediate banks as provided in § __ .22(a)(3), the [Agency] also bases the institution-level conclusion on the bank's Retail Lending Test conclusion in its outside retail lending area. The [Agency] calculates a weighted average of the performance test conclusions for the assessment areas and outside retail lending area in accordance with section VI of appendix A of this part. The resulting raw number is the performance score for the bank's Retail Lending Test performance at the institution level.

ii. For the bank's performance at the institution level, the [Agency] assigns a conclusion corresponding with the conclusion category that is nearest to the performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). For performance scores at the exact mid-point between two conclusion categories, the [Agency] rounds up to assign the conclusion (*i.e.,* a performance score of 8.5 is ''Outstanding'').

c. *Retail Services and Products Test conclusions.* The [Agency] assigns Retail Services and Products Test conclusions in a bank's facility-based assessment areas and, as applicable, at the state, multistate MSA, and institution levels. Conclusions assigned for a bank's performance in a bank's facility-based assessment areas are the basis for conclusions at the state, multistate MSA, and institution levels. As applicable, a bank's performance conclusion at the institution level is also informed by bank's performance regarding digital and other delivery systems under § __ .23(b)(3) and retail credit and deposit products under § __.23(c).

1. *Facility-based assessment area.* i. Retail Services and Products Test conclusions for a bank's performance in a facility-based assessment area are based on an evaluation of the bank's delivery systems, as described in § __.23(b)(1) and (b)(2).

ii. For each facility-based assessment area, the [Agency] assigns one of the following Retail Services and Products Test conclusions and corresponding performance score: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory,'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).

2. *State or multistate MSA.* For each state and multistate MSA, as applicable, the [Agency] develops a Retail Services and Products Test conclusion for a bank's performance based on a bank's Retail Services and Products Test conclusions for its facility-based assessment areas in each respective state or multistate MSA. The [Agency] calculates a weighted average of the performance test conclusions for facility-based assessment areas in accordance with section VII of appendix A of this part. The resulting raw number is the performance score for the bank's Retail Services and Products Test performance in a state or multistate MSA. The [Agency] assigns a conclusion corresponding with the conclusion category that is nearest to the performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). For performance scores at the exact mid-point between two conclusion categories, the [Agency] rounds up to assign the conclusion (*i.e.,* a performance score of 8.5 is ''Outstanding'').

3. *Institution.* i. For an institution overall, the [Agency] assigns a Retail Services and Products Test conclusion for a bank's performance based on a combined assessment of the bank's delivery systems performance and its credit and deposit products performance, as applicable, as follows:

A. *Delivery systems evaluation. 1.* The weighted average of a bank's Retail Services and Products Test performances scores for its conclusions in all of its facility-based assessment areas, calculated in accordance with section VII of appendix A of this part; and

2. The bank's performance regarding digital and other delivery systems under § __ .23(b)(3).

B. *Credit and deposit products evaluation.* The bank's performance regarding credit and deposit products under § __.23(c), as applicable.

ii. On the basis of paragraph c.3.i of this section, the [Agency] assigns a Retail Services and Products Test conclusion for the bank at the institution level. The institution-level conclusion is translated into a numerical performance score using the following mapping: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

d. *Community Development Financing Test conclusions.* The [Agency] assigns Community Development Financing Test conclusions in facility-based assessment areas and, as applicable, in states, multistate MSAs, and in nationwide areas. Conclusions assigned for a bank's performance in a bank's facility-based assessment areas are the basis for conclusions at the state, multistate MSA, and institution levels, combined with an evaluation of applicable metrics and benchmarks for the bank's community development financing activity at those levels, as well as a review of the impact and responsiveness of those activities.

1. *Facility-based assessment area.* (i) For each facility-based assessment area, the [Agency] develops a Community Development Financing Test conclusion based on the metric and benchmarks in § __ .24 and a review of the impact and responsiveness of a bank's activities under § __.15. The facility-based conclusion is translated into a numerical performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

2. *State, multistate MSA, or nationwide area.* Community Development Financing Test conclusions for a bank's performance in a state, multistate MSA, or nationwide area are derived as set forth in section 15 of appendix B of this part.

e. *Community Development Services Test conclusions.* The [Agency] assigns Community Development Services Test conclusions in facility-based assessment areas and, as applicable, in states, multistate MSAs, and in nationwide areas. Conclusions assigned for a bank's performance in a bank's facility-based assessment areas are the basis of conclusions for state, multistate MSA, and nationwide area performance, with a possible upward adjustment based on the [Agency]'s review of the impact and responsiveness of the bank's community development services activities in those areas, respectively.

1. *Facility-based assessment area.* For each facility-based assessment area, the [Agency] develops a Community Development Services Test conclusion based on, as applicable, an assessment of the Bank Assessment Area Community Development Service Hours Metric and other data set forth in § __.25(b)(1) and a review of the impact and responsiveness of a bank's activities under § __.15. The facility-based assessment area conclusion is translated into a numerical performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

2. *State, multistate MSA, or nationwide area.* For each state, multistate MSA, and for a nationwide area, as applicable, the [Agency] develops a Community Development Services Test for a bank's performance, as follows:

i. For each such state, multistate MSA, and for a nationwide area, the [Agency] calculates a weighted average of the performance test conclusions in accordance with section 15 of appendix B of this part. The resulting raw number is the performance score for the bank's Community Development Services Test performance in a state, multistate MSA, or nationwide area. Subject to paragraph (e)(2)(ii) of this appendix, the [Agency] assigns a conclusion corresponding with the conclusion category that is nearest to the performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial

Noncompliance'' (0 points). For performance scores at the exact mid-point between two conclusion categories, the [Agency] rounds up to assign the conclusion (*i.e.,* a performance score of 8.5 is ''Outstanding'').

ii. The [Agency] may adjust upward the performance score derived under paragraph (e)(2)(i) of this appendix, based on the [Agency]'s review of the impact and responsiveness of the bank's Community Development Services Test activities outside of facility-based assessment areas in each state, multistate MSA, or nationwide area under § __.15 to a performance score associated with one of the following conclusions: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); or ''Needs to Improve'' (3 points).

f. *Community Development Financing Test for Wholesale or Limited Purpose Banks conclusions.* The [Agency] assigns conclusions for a wholesale or limited purpose bank under the Community Development Financing Test for Wholesale or Limited Purpose Banks in facility-based assessment areas and, as applicable, in states, multistate MSAs, and in a nationwide area. Conclusions assigned for a bank's performance in a bank's facility-based assessment areas inform conclusions for state, multistate MSA, and nationwide area performance, along with the [Agency's] review of the volume, impact, and responsiveness of the bank's activities in those areas, respectively.

1. *Facility-based assessment area.* For each facility-based assessment area, the [Agency] assigns one of the following Community Development Financing Test conclusions based on consideration of the dollar value of a bank's community development loans and community development investments that serve the facility-based assessment area during the evaluation period, and a review of the impact and responsiveness of the bank's activities in the facility-based assessment area under § __.15: ''Outstanding;'' ''High Satisfactory;'' ''Low Satisfactory;'' ''Needs to Improve;'' ''Substantial Noncompliance.''

2. *State or multistate MSA.* For each state or multistate MSA, the [Agency] assigns a Community Development Financing Test conclusion of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' based on the following:

i. The bank's facility-based assessment area performance test conclusions in each state or multistate MSA, respectively; and

ii. The dollar value of a bank's community development loans and community development investments that serve the state or multistate MSA during the evaluation period, and a review of the impact and responsiveness of the bank's activities in the state or multistate MSA under § __.15.

3. *Nationwide area.* For a nationwide area, the [Agency] assigns a Community Development Financing Test conclusion of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' based on the following:

i. The bank's community development financing performance in all of its facility-based assessment areas; and

ii. The bank's Wholesale or Limited Purpose Bank Community Development Financing Metric and a review of the impact and responsiveness of the bank's activities in a nationwide area under § __.15.

Appendix D to Part__—Ratings

a. *Ratings in general.* In assigning a rating, the [Agency] evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ __.21 and __.28, including consideration of evidence of discriminatory or other illegal practices. The [Agency] assigns a rating of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' for the bank's performance at the state, multistate MSA, and institution levels.

b. *Large bank ratings at the state, multistate MSA, and institution levels.* 1. *State and multistate MSA.* Subject to paragraph (g) of this appendix, the [Agency] combines a large bank's raw performance scores for its state or multistate MSA performance under the Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test to determine the bank's rating at the state or multistate MSA level.

i. The [Agency] weights the performance scores as follows: Retail Lending Test (45 percent); Retail Services and Products Test (15 percent); Community Development Financing Test (30 percent); and Community Development Services Test (10 percent). The [Agency] multiplies each of these weights by the bank's performance score on the respective performance test, and then adds the resulting values together to develop a state or multistate MSA performance score.

ii. The [Agency] assigns a rating corresponding with the rating category that is nearest to the state or multistate MSA performance score, as follows:

A. A state or multistate MSA performance score of less than 1.5 results in a state or multistate MSA rating of ''Substantial Noncompliance;''

B. A state or multistate MSA performance score of 1.5 or more but less than 4.5 results in a state or multistate MSA rating of ''Needs to Improve;''

C. A state or multistate MSA performance score of 4.5 or more but less than 8.5 results in a state or multistate MSA rating of ''Satisfactory;''

D. A state or multistate MSA performance score of 8.5 or more results in a state or multistate MSA rating of ''Outstanding.''

Example: Assume that a large bank received the following performance scores and conclusions in a state:

1. On the Retail Lending Test, the bank received a 7.3 performance score and a corresponding conclusion of ''High Satisfactory;''

2. On the Retail Services and Products Test, the bank received a 6.0 performance score and a corresponding conclusion of ''Low Satisfactory;''

3. On the Community Development Financing Test, the bank received a 5.7 performance score and a corresponding conclusion of ''Low Satisfactory;'' and

4. On the Community Development Services Test, the bank received a 3.0 performance score and a corresponding conclusion of ''Needs to Improve.''

Calculating weights:

1. For the Retail Lending Test, the weight is 45 percent (or 0.45);

2. For the Retail Services and Products Test, the weight is 15 percent (or 0.15);

3. For the Community Development Financing Test, the weight is 30 percent (or 0.3); and

4. For the Community Development Services Test, the weight is 10 percent (or 0.1).

State Performance Score and Rating: Based on the illustration above, the bank's state performance score is 6.2.

(0.45 weight × 7.3 performance score on the Retail Lending Test = 3.29) + (0.15 weight × 6.0 performance score on the Retail Services and Products Test = 0.9) + (0.3 weight × 5.7 performance score on the Community Development Financing Test = 1.7) + (0.1 weight × 3.0 performance score on the Community Development Services Test = 0.3).

A state performance score of 6.2 is greater than or equal to 4.5 but less than 8.5, resulting in a rating of ''Satisfactory.''

2. *Institution.* Subject to paragraph g. of this appendix, the [Agency] combines a large bank's raw performance scores for its institution-level performance under the Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test to determine the bank's rating at the institution level.

i. The [Agency] weights the performance scores as follows: Retail Lending Test (45 percent); Retail Services and Products Test (15 percent); Community Development Financing Test (30 percent); and Community Development Services Test (10 percent). The [Agency] multiplies each of these weights by the bank's performance score on the respective performance test, and then adds the resulting values together to develop an institution performance score.

ii. The [Agency] assigns a rating corresponding with the rating category that is nearest to the institution performance score, as follows:

A. An institution performance score of less than 1.5 results in an institution rating of ''Substantial Noncompliance;''

B. An institution performance score of 1.5 or more but less than 4.5 results in an institution rating of ''Needs to Improve;''

C. An institution performance score of 4.5 or more but less than 8.5 results in an institution rating of ''Satisfactory;''

D. An institution performance score of 8.5 or more results in an institution rating of ''Outstanding.''

Example: Assume that a large bank received the following performance scores and conclusions at the institution level:

A. On the Retail Lending Test, the bank received a 6.2 performance score and a corresponding conclusion of ''Low Satisfactory;''

B. On the Retail Services and Products Test, the bank received a 7 performance score and a corresponding conclusion of ''High Satisfactory;''

C. On the Community Development Financing Test, the bank received a 6.4

performance score and a corresponding conclusion of ''Low Satisfactory;'' and

D. On the Community Development Services Test, the bank received a 2.5 performance score and a corresponding conclusion of ''Needs to Improve.''

Calculating weights:

A. For the Retail Lending Test, the weight is 45 percent (or 0.45);

B. For the Retail Services and Products Test, the weight is 15 percent (or 0.15);

C. For the Community Development Financing Test, the weight is 30 percent (or 0.3); and

D. For the Community Development Services Test, the weight is 10 percent (or 0.1).

Institution Performance Score and Rating: Based on the illustration above, the bank's institution performance score is 6.01.

(0.45 weight × 6.2 performance score on the Retail Lending Test = 2.79) + (0.15 weight × 7.0 performance score on the Retail Services and Products Test = 1.05) + (0.3 weight × 6.4 performance score on the Community Development Financing Test = 1.92) + (0.1 weight × 2.5 performance score on the Community Development Services Test = 0.25).

An institution performance score of 6.012 is greater than or equal to 4.5 but less than 8.5, resulting in an overall institution rating of ''Satisfactory.''

c. *Intermediate bank ratings.* 1. *Intermediate banks evaluated under the Retail Lending Test and the Community Development Financing Test.* i. *State or multistate MSA.* Subject to paragraph (g) of this appendix, the [Agency] combines an intermediate bank's raw performance scores for its state or multistate MSA performance under Retail Lending Test and Community Development Financing Test to determine the bank's rating at the state or multistate MSA level.

A. The [Agency] weights the performance scores as follows: Retail Lending Test (50 percent) and Community Development Financing Test (50 percent). The [Agency] multiplies each of these weights by the bank's corresponding performance score on the respective performance test, and then adds the resulting values together to develop a state or multistate MSA performance score.

B. The [Agency] assigns a rating corresponding with the rating category that is nearest to the state or multistate MSA performance score, as follows:

1. A state or multistate MSA performance score of less than 1.5 results in a state or multistate MSA rating of ''Substantial Noncompliance;''

2. A state or multistate MSA performance score of 1.5 or more but less than 4.5 results in a state or multistate MSA rating of ''Needs to Improve;''

3. A state or multistate MSA performance score of 4.5 or more but less than 8.5 results in a state or multistate MSA rating of ''Satisfactory;''

4. A state or multistate MSA performance score of 8.5 or more results in a state or multistate MSA rating of ''Outstanding.''

ii. *Institution.* Subject to paragraph g. of this appendix, the [Agency] combines an intermediate bank's raw performance scores for its institution-level performance under Retail Lending Test and Community Development Financing Test to determine the bank's rating at the institution level.

A. The [Agency] weights the performance test conclusions as follows: Retail Lending Test (50 percent) and Community Development Financing Test (50 percent). The [Agency] multiplies each of these weights by the bank's corresponding performance score on the respective performance test, and then adds the resulting values together to develop an institution performance score.

B. The [Agency] assigns a rating corresponding with the rating category that is nearest to the institution performance score, as follows:

1. An institution performance score of less than 1.5 results in an institution rating of ''Substantial Noncompliance;''

2. An institution performance score of 1.5 or more but less than 4.5 results in an institution rating of ''Needs to Improve;''

3. An institution performance score of 4.5 or more but less than 8.5 results in an institution rating of ''Satisfactory;''

4. An institution performance score of 8.5 or more results in an institution rating of ''Outstanding.''

C. The [Agency] may adjust an intermediate bank's institution rating from ''Satisfactory'' to ''Outstanding'' where the bank has requested and received sufficient additional consideration for activities that qualify under the Retail Services and Products Test, the Community Development Services Test, or both.

2. *Intermediate banks evaluated under the Retail Lending Test and the intermediate bank community development evaluation in § __.29(b).* (i) *State or multistate MSA.* The [Agency] combines an intermediate bank's raw performance scores for its state or multistate MSA conclusions under Retail Lending Test and the intermediate bank community development evaluation in § __ .29(b) to determine the bank's rating at the state or multistate MSA level.

A. The [Agency] weights the performance scores as follows: Retail Lending Test (50 percent) and intermediate bank community development evaluation (50 percent). The [Agency] multiplies each of these weights by the bank's corresponding performance score on the respective performance test and performance evaluation, and then adds the resulting values together to develop a state or multistate MSA performance score. For purposes of this paragraph, the performance score for the intermediate bank community development evaluation corresponds to the conclusion assigned, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

B. The [Agency] assigns a rating corresponding with the rating category that is nearest to the state or multistate MSA performance score, as follows:

1. A state or multistate MSA performance score of less than 1.5 results in a state or multistate MSA rating of ''Substantial Noncompliance;''

2. A state or multistate MSA performance score of 1.5 or more but less than 4.5 results in a state or multistate MSA rating of ''Needs to Improve;''

3. A state or multistate MSA performance score of 4.5 or more but less than 8.5 results in a state or multistate MSA rating of ''Satisfactory;''

4. A state or multistate MSA performance score of 8.5 or more results in a state or multistate MSA rating of ''Outstanding.''

iii. *Institution.* The [Agency] combines an intermediate bank's raw performance scores for its institution-level conclusions under Retail Lending Test and intermediate bank community development evaluation to determine the bank's rating at the institution level.

A. The [Agency] weights the performance test conclusions as follows: Retail Lending Test (50 percent) and intermediate bank community development evaluation (50 percent). The [Agency] multiplies each of these weights by the bank's corresponding performance score on the respective performance test and performance evaluation, and then adds the resulting values together to develop an institution performance score.

B. The [Agency] assigns a rating corresponding with the rating category that is nearest to the institution performance score, as follows:

1. An institution performance score of less than 1.5 results in an institution rating of ''Substantial Noncompliance;''

2. An institution performance score of 1.5 or more but less than 4.5 results in an institution rating of ''Needs to Improve;''

3. An institution performance score of 4.5 or more but less than 8.5 results in an institution rating of ''Satisfactory;''

4. An institution performance score of 8.5 or more results in an institution rating of ''Outstanding.''

d. *Ratings for small banks evaluated under the Retail Lending Test.* The [Agency] determines a small bank's state, multistate MSA, or institution rating based on the raw performance score for its Retail Lending Test conclusions at the state, multistate MSA, or institution level, respectively.

1. The [Agency] assigns a rating corresponding with the rating category that is nearest to the state, multistate MSA, or institution performance score, as follows:

i. A state, multistate MSA, or institution performance score of less than 1.5 results in a state, multistate MSA, or institution rating of ''Substantial Noncompliance;''

ii. A state, multistate MSA, or institution performance score of 1.5 or more but less than 4.5 results in a state, multistate MSA, or institution rating of ''Needs to Improve;''

iii. A state, multistate MSA, or institution performance score of 4.5 or more but less than 8.5 results in a state, multistate MSA, or institution rating of ''Satisfactory;''

iv. A state, multistate MSA, or institution performance score of 8.5 or more results in a state, multistate MSA, or institution rating of ''Outstanding.''

2. The [Agency] may adjust a small bank's institution rating from ''Satisfactory'' to ''Outstanding'' where the bank has requested and received sufficient additional consideration for activities that qualify for its performance in making community

development investments and services and its performance in providing branches and other services and delivery systems that enhance credit availability in its facility-based assessment areas.

e. *Wholesale or limited purpose banks.* 1. The [Agency] determines a wholesale or limited purpose bank's state, multistate MSA, or institution level rating based on its Community Development Financing Test for Wholesale or Limited Purpose Banks conclusion at the state, multistate MSA, or nationwide area, respectively.

2. The [Agency] assigns a rating according to the category of the conclusion assigned: ''Outstanding;'' ''High Satisfactory;'' ''Low Satisfactory;'' or ''Needs to Improve;'' or ''Substantial Noncompliance.'' A conclusion of either ''Low Satisfactory'' or ''High Satisfactory'' corresponds to a rating of ''Satisfactory.''

3. The [Agency] may adjust a wholesale or limited purpose bank's institution-level rating from ''Satisfactory'' to ''Outstanding'' where the bank has requested and received sufficient additional consideration for activities that qualify for consideration under the Community Development Services Test.

f. *Ratings for banks operating under an approved strategic plan.* 1. *Satisfactory goals.* The [Agency] approves as ''Satisfactory'' measurable goals that adequately help to meet the credit needs of the bank's assessment areas.

2. ''*Outstanding*'' *goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as ''Satisfactory,'' the [Agency] will approve those goals as ''Outstanding.''

3. *Rating.* The [Agency] assesses the performance of a bank operating under an approved plan, to determine if the bank has met its plan goals:

i. If the bank substantially achieves its plan goals for a ''Satisfactory'' rating, the [Agency] will rate the bank's performance under the plan as ''Satisfactory.''

ii. If the bank exceeds its plan goals for a ''Satisfactory'' rating and substantially achieves its plan goals for an ''Outstanding'' rating, the Board will rate the bank's performance under the plan as ''Outstanding.''

iii. If the bank fails to meet substantially its plan goals for a ''Satisfactory'' rating, the [Agency] will rate the bank as either ''Needs to Improve'' or ''Substantial Noncompliance,'' depending on the extent to which it falls short of its plan goals, unless the bank elected in its plan to be rated otherwise, as provided in § __.27(f)(6).

g. *Minimum performance test conclusion requirements.* 1. *Retail lending test minimum conclusion.* An intermediate or large bank must receive at least a ''Low Satisfactory'' Retail Lending Test conclusion at, respectively, the state, multistate MSA, or institution level to receive an overall state, multistate MSA, or institution rating of ''Satisfactory'' or ''Outstanding.''

2. *Minimum of* ''*low satisfactory*'' *overall assessment area conclusion for 60 percent of assessment areas.* i. A large bank with a total of 10 or more facility-based and retail lending assessment areas in any state or multistate MSA, or nationwide, as applicable, may not receive a rating of ''Satisfactory'' or ''Outstanding'' in that state or multistate MSA, or for the institution unless the bank received an overall assessment area conclusion of at least ''Low Satisfactory'' in 60 percent or more of the total number of its assessment areas in that state or multistate MSA, or nationwide, as applicable.

ii. *Overall assessment area conclusion.* For purposes of the requirement in paragraph (g)(2)(i) of this appendix:

A. An overall assessment area conclusion in a retail lending assessment area is the retail lending assessment area conclusion derived under the Retail Lending Test in accordance with appendix C of this part.

B. An overall assessment area conclusion in a facility-based assessment area is calculated by combining a large bank's raw performance scores for its conclusions in the facility-based assessment area under the Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test.

C. The [Agency] weights the performance scores as follows: Retail Lending Test (45 percent); Retail Services and Products Test (15 percent); Community Development Financing Test (30 percent); and Community Development Services Test (10 percent). The [Agency] multiplies each of these weights by the bank's performance score on the respective performance test, and then adds the resulting values together to develop a facility-based assessment area performance score.

D. The [Agency] assigns a conclusion corresponding with the conclusion category that is nearest to the performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). For performance scores at the midpoint between two conclusion categories, the [Agency] rounds up to assign the conclusion (*i.e.,* a performance score of 8.5 is ''Outstanding'').

Appendix E to Part __—Small Bank Conclusions and Ratings and Intermediate Bank Community Development Evaluation Conclusions

a. *Small banks evaluated under the small bank performance standards*—1. *Lending evaluation conclusions.* Unless a small bank has opted to be evaluated pursuant to the Retail Lending Test, the [Agency] assigns conclusions for a small bank's lending test performance under § __.29 of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

i. *Eligibility for a* ''*Satisfactory*'' *lending evaluation conclusion.* The [Agency] assigns a small bank's lending performance a conclusion of ''Satisfactory'' if, in general, the bank demonstrates:

A. A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its facility-based assessment areas, and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and community development investments;

B. A majority of its loans and, as appropriate, other lending-related activities, are in its facility-based assessment areas;

C. A distribution of retail lending to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's facility-based assessment areas;

D. A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its facility-based assessment areas; and

E. A reasonable geographic distribution of loans given the bank's facility-based assessment areas.

ii. *Eligibility for an* ''*Outstanding*'' *lending evaluation conclusion.* A small bank that meets each of the standards for a ''Satisfactory'' conclusion under this paragraph and exceeds some or all of those standards may warrant consideration for a lending evaluation conclusion of ''Outstanding.''

iii. ''*Needs to Improve*'' *or* ''*Substantial Noncompliance*'' *lending evaluation conclusions.* A small bank may also receive a lending evaluation conclusion of ''Needs to Improve'' or ''Substantial Noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''Satisfactory'' conclusion.

2. *Small bank ratings.* Unless a small bank has opted to be evaluated pursuant to the Retail Lending Test, the [Agency] assigns a small bank rating of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' based on § __.29 and consideration of evidence of discriminatory or other illegal practices as described in § __.28.

i. ''*Outstanding*'' *overall small bank rating.* A small bank that meets each of the standards for a ''Satisfactory'' rating under the lending evaluation and exceeds some or all of those standards may warrant consideration for an overall bank rating of ''Outstanding.'' In assessing whether a bank's performance is ''Outstanding,'' the [Agency] considers the extent to which the bank exceeds each of the performance standards for a ''Satisfactory'' rating and its performance in making community development investments and services and its performance in providing branches and other services and delivery systems that enhance credit availability in its facility-based assessment areas.

ii. ''*Needs to Improve*'' *or* ''*Substantial Noncompliance*'' *overall bank ratings.* A small bank may also receive an overall bank rating of ''Needs to Improve'' or ''Substantial Noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''Satisfactory'' rating.

b. *Intermediate banks evaluated under the community development performance standards in § __.29.* Unless an intermediate bank has opted to be evaluated pursuant to the Community Development Financing Test, the [Agency] assigns conclusions for an intermediate bank's community development performance under § __.29 of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

1. *Community development evaluation conclusions.* i. A. *Eligibility for a ''Satisfactory'' community development evaluation conclusion.* The [Agency] assigns an intermediate bank's community development performance a ''Low Satisfactory'' conclusion if the bank demonstrates adequate responsiveness, and a ''High Satisfactory'' conclusion if the bank demonstrates good responsiveness, to the community development needs of its facility-based assessment areas through community development loans, community development investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its facility-based assessment areas' need for such community development activities, and the availability of such opportunities for community development in the bank's facility-based assessment areas.

B. The [Agency] considers an intermediate bank's retail banking services and products activities as community development services if they provide benefit to low- and moderate-income individuals.

ii. *Eligibility for an ''Outstanding'' community development evaluation conclusion.* The [Agency] assigns an intermediate bank's community development performance an ''Outstanding'' conclusion if the bank demonstrates excellent responsiveness to community development needs in its facility-based assessment areas through community development loans, community development investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's facility-based assessment areas.

iii. *''Needs to Improve'' or ''Substantial Noncompliance'' community development evaluation conclusions.* The [Agency] assigns an intermediate bank's community development performance a ''Needs to Improve'' or ''Substantial Noncompliance'' conclusion depending on the degree to which its performance has failed to meet the standards for a ''Satisfactory'' conclusion.

2. *Intermediate bank ratings.* The [Agency] rates an intermediate bank's performance as described in appendix D of this part.

Appendix F to Part __[RESERVED]

End of Common Proposed Rule Text

List of Subjects

12 CFR Part 25

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

12 CFR Part 228

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble and under the authority of 12 U.S.C. 93a and 2905, the Office of the Comptroller of the Currency proposes to amend part 25 of chapter I of title 12, Code of Federal Regulations as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 is revised 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).

Subpart E—[Redesignated]

■ 2. Redesignate subpart E as subpart F.
■ 3. Amend part 25 by revising subparts A though D, adding a new subpart E, revising appendices A and B and adding appendices C through F to read as set forth at the end of the common preamble.
■ 4. In part 25 amend subparts A through E and appendices A through E by:
■ a. Removing ''[Agency]'' wherever it appears and adding ''appropriate Federal banking agency'' in its place;
■ b. Removing ''bank'', ''*bank*'', ''banks'', ''*banks*'', ''bank's'', and ''*bank's*'', wherever they appear and adding ''bank or savings association'', ''*bank or savings association*'', ''banks or savings associations'', ''*banks or savings associations*'', bank's or savings association's'', or ''*bank's or savings association's*'' in their places, respectively;
■ c. Removing ''Bank'', ''*Bank*'', ''Banks'', and ''*Banks*'' wherever they appear and adding ''Bank and savings association'', ''*Bank and savings association*'', ''Banks and savings associations'', or ''*Banks and savings associations*'' in their places, respectively;
■ d. Removing ''[operations subsidiary or operating subsidiary]'' wherever it appears and adding ''operating subsidiary'' in its place;
■ e. Removing ''[operations subsidiaries or operating subsidiaries]'' wherever it appears and adding ''operating subsidiaries'' in its place; and
■ f. Removing ''[*operations subsidiaries or operating subsidiaries*]'' wherever it appears and adding ''*operating subsidiaries*'' in its place.
■ 5. Amend § 25.11 by revising paragraphs (a) and (c) to read as follows:

§ 25.11 Authority, purposes, and scope.

(a) *Authority.* The authority for this part is 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).

* * * * *

(c) *Scope*—(1) *General.* (i) Subparts A, B, C, D, and E and appendices A, B, C, D, E, and F apply to all banks and savings associations except as provided in paragraphs (c)(2) and (3) of this section. Subpart F only applies to banks.

(ii) With respect to subparts A, B, C, D, and E and appendices A, B, C, D, E, and F:

(A) The OCC has the authority to prescribe these regulations for national banks, Federal savings associations, and State savings associations and has the authority to enforce these regulations for national banks and Federal savings associations; and

(B) The FDIC has the authority to enforce these regulations for State savings associations.

(iii) With respect to subparts A (except in the definition of *Minority depository institution* in § 25.12), B, C, D, and E and appendices A, B, C, D, E, and F, references to appropriate Federal banking agency will mean the OCC when the institution is a national bank or Federal savings association and the FDIC when the institution is a State savings association.

(2) *Federal branches and agencies.* (i) This part applies to all insured Federal branches and to any Federal branch that is uninsured that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(ii) Except as provided in paragraph (c)(2)(i) of this section, this part does not apply to Federal branches that are uninsured, limited Federal branches, or Federal agencies, as those terms are defined in part 28 of this chapter.

(3) *Certain special purpose banks and savings associations.* This part does not apply to special purpose banks or special purpose savings associations that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their

specialized operations. These banks or savings associations include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks or savings associations that engage only in one or more of the following activities: Providing cash management controlled disbursement services or serving as correspondent banks or savings associations, trust companies, or clearing agents.

■ 6. In § 25.12:

■ a. Add the definition of ''*Bank*'';

■ b. Remove the definitions of ''*Bank and savings association*'' and ''[*Operations subsidiary or operating subsidiary*]''; and

■ c. Add the definitions of ''*Operating subsidiary*'', and ''*Savings association*''.

The additions read as follows:

§ 25.12 Definitions.

* * * * *

Bank means a national bank (including a Federal branch as defined in part 28 of this chapter) with Federally insured deposits, except as provided in § 25.11(c).

* * * * *

Operating subsidiary means an operating subsidiary as described in 12 CFR 5.34 in the case of an operating subsidiary of a national bank or an operating subsidiary as described in 12 CFR 5.38 in the case of a savings association.

* * * * *

Savings association means a Federal savings association or a State savings association.

* * * * *

■ 7. Add § 25.31 to read as follows:

§ 25.31 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the appropriate Federal banking agency takes into account the record of performance under the CRA of each applicant bank or savings association, and for applications under 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)), of each proposed subsidiary savings association, in considering an application for:

(1) The establishment of:

(i) A domestic branch for insured national banks; or

(ii) A domestic branch or other facility that would be authorized to take deposits for savings associations;

(2) The relocation of the main office or a branch;

(3) The merger or consolidation with or the acquisition of assets or assumption of liabilities of an insured depository institution requiring approval under the Bank Merger Act (12 U.S.C. 1828(c));

(4) The conversion of an insured depository institution to a national bank or Federal savings association charter; and

(5) Acquisitions subject to section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)).

(b) *Charter application.* (1) An applicant (other than an insured depository institution) for a national bank charter shall submit with its application a description of how it will meet its CRA objectives. The OCC takes the description into account in considering the application and may deny or condition approval on that basis.

(2) An applicant for a Federal savings association charter shall submit with its application a description of how it will meet its CRA objectives. The appropriate Federal banking agency takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The appropriate Federal banking agency takes into account any views expressed by interested parties that are submitted in accordance with the applicable comment procedures in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A bank's or savings association's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term ''insured depository institution'' has the meaning given to that term in 12 U.S.C. 1813.

§ 25.42 [Amended]

■ 8. In § 25.42 amend paragraph (i) by removing ''[other Agencies]'' and adding in its place the phrase ''Board of Governors of the Federal Reserve System and FDIC or OCC, as appropriate''.

§ 25.43 [Amended]

■ 9. In § 25.43 amend paragraph (b)(2) by removing ''[operations subsidiaries' or operating subsidiaries']'' and adding ''operating subsidiaries''' in its place.

§ 25.46 [Amended]

■ 10. In § 25.46 amend paragraph (b) by removing ''[Agency contact information]'' and adding in its place ''*CRAComments@occ.treas.gov* for banks and Federal savings associations or *CRACommentCollector@fdic.gov* for State savings associations''.

■ 11. Revise paragraph (c)(2) of § 25.51 to read as follows:

§ 25.51 Applicability dates, and transition provisions.

* * * * *

(c) * * *

(2) *Existing plans.* A strategic plan in effect as of [DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] remains in effect until the expiration date of the plan except for provisions that were not permissible under this part as of January 1, 2022.

■ 12. Revise the heading of Appendix A to read as follows:

Appendix A to Part 25—Calculations for the Retail Tests

■ 13. Revise the heading of Appendix B to read as follows:

Appendix B to Part 25—Calculations for the Community Development Tests

■ 14. Revise the heading of Appendix C to read as follows:

Appendix C to Part 25—Performance Test Conclusions

■ 15. Revise the heading of Appendix D to read as follows:

Appendix D to Part 25—Ratings

■ 16. Revise the heading of Appendix E to read as follows:

Appendix E to Part 25— Small Bank Conclusions and Ratings and Intermediate Bank Community Development Evaluation Conclusions

■ 17. Add Appendix F to read as follows:

Appendix F to Part 25—CRA Notice

(a) Notice for main offices and, if an interstate bank, one branch office in each state.

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), as appropriate] evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or FDIC, as appropriate] 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, as appropriate]; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 60 days before the beginning of each calendar quarter, the [OCC or FDIC, as appropriate] publishes a list of the banks that are scheduled for CRA examination by the [OCC or FDIC, as appropriate] for the next two quarters. This list is available through the [OCC's or FDIC's, as appropriate] website at [*OCC.gov* or *FDIC.gov,* as appropriate].

You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank), (title of responsible official), to the [OCC or FDIC Regional Director, as appropriate, (address)]. You may also submit comments electronically to the [OCC at *CRAComments@occ.treas.gov* or FDIC through the FDIC's website at *FDIC.gov/regulations/cra,* as appropriate]. Your written comments, together with any response by us, will be considered by the [OCC or FDIC, as appropriate] in evaluating our CRA performance and may be made public.

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

(b) Notice for branch offices.

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), as appropriate] evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or FDIC, as appropriate] 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. You may review today the public section of our most recent CRA Performance Evaluation, prepared by the [OCC or FDIC, as appropriate], and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us:

(1) A map showing the facility-based assessment area containing this branch, which is the area in which the [OCC or FDIC, as appropriate] evaluates our CRA performance in this community;

(2) Information about our branches in this facility-based assessment area;

(3) A list of services we provide at those locations;

(4) Data on our lending performance in this facility-based assessment area; and

(5) Copies of all written comments received by us that specifically relate to our CRA performance in this facility-based 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.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available on our website (website address) and at (name of office located in state), located at (address).]

At least 60 days before the beginning of each calendar quarter, the [OCC or FDIC, as appropriate] publishes a list of the banks that are scheduled for CRA examination by the [OCC or FDIC, as appropriate] for the next two quarters. This list is available through the [OCC's or FDIC's, as appropriate] website at [*OCC.gov* or *FDIC.gov,* as appropriate].

You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank), (title of responsible official), to the [OCC or FDIC Regional Director, as appropriate (address)]. You may also submit comments electronically to the [OCC at *CRAComments@occ.treas.gov* or FDIC through the FDIC's website at *FDIC.gov/regulations/cra,* as appropriate]. Your written comment, together with any response by us, will be considered by the [OCC or FDIC, as appropriate] in evaluating our CRA performance and may be made public.

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

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons discussed in the common preamble section, the Board of Governors of the Federal Reserve System proposes to amend part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 18. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 19. Revise part 228 as set forth at the end of the common preamble.

■ 20. Amend newly revised part 228 by:

■ a. Removing ''[Agency]'' wherever it appears and adding ''Board'' in its place;

■ b. Removing the words ''[operations subsidiary or operating subsidiary]'' wherever they appear and adding, in their place, the words ''operations subsidiary'';

c. Removing the words ''[operations subsidiaries or operating subsidiaries]'', ''[*operations subsidiaries or operating subsidiaries*]'' wherever they appear and adding in their place, ''operations subsidiaries'' ''*operations subsidiaries*'', respectively.

■ 21. Amend § 228.11 by revising paragraphs (a) and (c) to read as follows:

§ 228.11 Authority, purposes and scope.

(a) *Authority.* The Board of Governors of the Federal Reserve System (the Board) issues this part to implement the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*) (CRA). The regulations comprising this part are issued under the authority of the CRA and under the provisions of the United States Code authorizing the Federal Reserve:

(1) To conduct examinations of state-chartered banks that are members of the Federal Reserve System (12 U.S.C. 325);

(2) To conduct examinations of bank holding companies and their subsidiaries (12 U.S.C. 1844) and savings and loan holding companies and their subsidiaries (12 U.S.C. 1467a); and

(3) To consider applications for:

(i) Domestic branches by state member banks (12 U.S.C. 321);

(ii) Mergers in which the resulting bank would be a state member bank (12 U.S.C. 1828(c));

(iii) Formations of, acquisitions of banks by, and mergers of, bank holding companies (12 U.S.C. 1842);

(iv) The acquisition of savings associations by bank holding companies (12 U.S.C. 1843); and

(v) Formations of, acquisitions of savings associations by, conversions of, and mergers of, savings and loan holding companies (12 U.S.C. 1467a).

* * * * *

(c) *Scope.* (1) *General.* This part applies to all banks except as provided in paragraph (c)(3) of this section.

(2) *Foreign bank acquisitions.* This part also applies to an uninsured state branch (other than a limited branch) of a foreign bank that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)). The terms ''state branch'' and ''foreign bank'' have the same meanings as given to those terms in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*); the term ''uninsured state branch'' means a state branch the deposits of which are not insured by the Federal Deposit Insurance Corporation; the term ''limited branch'' means a state branch that accepts only deposits that are permissible for a corporation organized

under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).

(3) *Certain exempt banks.* This part does not apply to banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations and done on an accommodation basis. These banks include bankers' banks, as defined in 12 U.S.C. 24 (Seventh), and banks that engage only in one or more of the following activities: providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

§ 228.11 [Amended]

■ 22. In § 228.11 amend paragraph (b) by removing the words ''Community Reinvestment Act (12 U.S.C. 2901 *et seq.*) (CRA)'' and adding, in their place, ''CRA''.

■ 23. In § 228.12:

■ a. Revise the definition of ''*Affiliate*''.

■ b. Remove the definition of ''[*Operations subsidiary or operating subsidiary*]'' and add, in its place, the definition of ''*Operations subsidiary*''.

The revision and addition read as follows:

§ 228.12 Definitions.

* * * * *

Affiliate means any company that controls, is controlled by, or is under common control with another company. The term ''control'' has the meaning given to that term in 12 U.S.C. 1841(a)(2), as implemented by the Board in 12 CFR part 225, and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

* * * * *

Operations subsidiary means an organization designed to serve, in effect, as a separately incorporated department of the bank, performing, at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly.

■ 24. Add § 228.31 to read as follows:

§ 228.31 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the Board takes into account the record of performance under the CRA of:

(1) Each applicant bank for the:

(i) Establishment of a domestic branch by a State member bank; and

(ii) Merger, consolidation, acquisition of assets, or assumption of liabilities requiring approval under the Bank Merger Act (12 U.S.C. 1828(c)) if the acquiring, assuming, or resulting bank is to be a State member bank; and

(2) Each insured depository institution (as defined in 12 U.S.C. 1813) controlled by an applicant and subsidiary bank or savings association proposed to be controlled by an applicant:

(i) To become a bank holding company in a transaction that requires approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842);

(ii) To acquire ownership or control of shares or all or substantially all of the assets of a bank, to cause a bank to become a subsidiary of a bank holding company, or to merge or consolidate a bank holding company with any other bank holding company in a transaction that requires approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842);

(iii) To own, control or operate a savings association in a transaction that requires approval under section 4 of the Bank Holding Company Act (12 U.S.C. 1843);

(iv) To become a savings and loan holding company in a transaction that requires approval under section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a); and

(v) To acquire ownership or control of shares or all or substantially all of the assets of a savings association, to cause a savings association to become a subsidiary of a savings and loan holding company, or to merge or consolidate a savings and loan holding company with any other savings and loan holding company in a transaction that requires approval under section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

(b) *Interested parties.* In considering CRA performance in an application described in paragraph (a) of this section, the Board takes into account any views expressed by interested parties that are submitted in accordance with the Board's Rules of Procedure set forth in part 262 of this chapter.

(c) *Denial or conditional approval of application.* A bank or savings association's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(d) *Definitions.* For purposes of paragraphs (a)(2)(i)–(iii) of this section, ''bank,'' ''bank holding company,'' ''subsidiary,'' and ''savings association'' have the same meanings given to those terms in section 2 of the Bank Holding Company Act (12 U.S.C. 1841). For purposes of paragraphs (a)(2)(iv) and (v) of this section, ''savings and loan holding company'' and ''subsidiary'' have the same meaning given to those terms in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

§ 228.42 [Amended]

■ 25. In § 228.42 amend paragraph (i) by removing the words ''[other Agencies]'' and adding in their place, the words ''FDIC and OCC''.

§ 228.43 [Amended]

■ 26. In § 228.43 amend paragraph (b)(2) by removing the words ''[operations subsidiaries' or operating subsidiaries']'' and add in their place, the words ''operations subsidiaries' ''.

§ 228.46 [Amended]

■ 27. In § 228.46 amend paragraph (b) by removing the words ''[Agency contact information]'' and adding in their place, the words ''at Staff Group: Community Reinvestment Act at *https://federalreserve.gov/apps/contactus/feedback.aspx?Submit=Submit,* by mail to Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551, or by facsimile at (202) 452–3819''.

■ 28. Revise the heading of Appendix A to read as follows:

Appendix A to Part 228—Calculations for the Retail Tests

■ 29. Revise the heading of Appendix B to read as follows:

Appendix B to Part 228—Calculations for the Community Development Tests

■ 30. Revise the heading of Appendix C to read as follows:

Appendix C to Part 228—Performance Test Conclusions

■ 31. Revise the heading of Appendix D to read as follows:

Appendix D to Part 228—Ratings

■ 32. Revise the heading of Appendix E to read as follows:

Appendix E to Part 228—Small Bank Conclusions and Ratings and Intermediate Bank Community Development Evaluation Conclusions

■ 33. Add Appendix F to read as follows:

Appendix F to Part 228—CRA Notice

(a) Notice for main offices and, if an interstate bank, one branch office in each state.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Reserve Board (Board) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Board 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 Federal Reserve Bank of ____(Reserve Bank); and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 60 days before the beginning of each calendar quarter, the Federal Reserve System publishes a list of the banks that are scheduled for CRA examination by the Reserve Bank for the next two quarters. This list is available from (title of responsible official), Federal Reserve Bank of ____(address), or through the Board's website at *federalreserve.gov*.

You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and (title of responsible official), Federal Reserve Bank of ____(address), or through the Board's website at *federalreserve.gov.* Your letter, together with any response by us, will be considered by the Federal Reserve System in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Reserve Bank. You may also request from the Reserve Bank an announcement of our applications covered by the CRA filed with the Reserve Bank. [We are an affiliate of (name of holding company), a bank holding company. You may request from (title of responsible official), Federal Reserve Bank of ____(address) an announcement of applications covered by the CRA filed by bank holding companies.]

(b) Notice for branch offices.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Reserve Board (Board) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Board 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. You may review today the public section of our most recent CRA evaluation, prepared by the Federal Reserve Bank of ____(address), and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) A map showing the assessment area containing this branch, which is the area in which the Board evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this 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.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available at (name of office located in state), located at (address).]

At least 60 days before the beginning of each calendar quarter, the Federal Reserve System publishes a list of the banks that are scheduled for CRA examination by the Reserve Bank for the next two quarters. This list is available from (title of responsible official), Federal Reserve Bank of ____(address), or through the Board's website at *federalreserve.gov.*

You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and (title of responsible official), Federal Reserve Bank of ____(address), or through the Board's website at *federalreserve.gov.* Your letter, together with any response by us, will be considered by the Federal Reserve System in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Reserve Bank. You may also request from the Reserve Bank an announcement of our applications covered by the CRA filed with the Reserve Bank. [We are an affiliate of (name of holding company), a bank holding company. You may request from (title of responsible official), Federal Reserve Bank of ____(address) an announcement of applications covered by the CRA filed by bank holding companies.]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons discussed in the preamble, the Federal Deposit Insurance Corporation proposes to revise part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 34. Revise the authority citation for part 345 to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u, 2901–2908, 3103–3104, and 3108(a).

■ 35. Revise part 345 to read as set forth at the end of the common preamble.

■ 36. Amend newly revised part 345 by:

■ a. Removing the word ''[Agency]'' wherever it appears and adding ''FDIC'' in its place;

■ b. Removing the phrase ''[operations subsidiary or operating subsidiary]'' wherever it appears and adding ''operating subsidiary'' in its place;

■ c. Removing the phrase ''[operations subsidiaries or operating subsidiaries]'' wherever it appears and adding ''operating subsidiaries'' in its place;

■ d. Removing the phrase ''[*operations subsidiaries or operating subsidiaries*]'' wherever it appears and adding ''*operating subsidiaries*'' in its place.

■ 37. Revise paragraphs (a) and (c) of § 345.11 to read as follows:

§ 345.11 Authority, purposes, and scope.

(a) *Authority.* The authority for this part is 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u, 2901–2908, 3103–3104, and 3108(a).

* * * * *

(c) *Scope.* (1) *General.* Except for certain special purpose banks described in paragraph (c)(3) of this section, this part applies to all insured State nonmember banks, including insured State branches as described in paragraph (c)(2) and any uninsured State branch that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(2) *Insured State branches.* Insured State branches are branches of a foreign bank established and operating under the laws of any State, the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act. In the case of insured State branches, references in this part to main office mean the principal branch within the United States and the term branch or branches refers to any insured State branch or branches located within the United States. The assessment area of an insured State branch is the community or communities located within the United States served by the branch as described in § 345.41.

(3) *Certain special purpose banks.* This part does not apply to special purpose banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These banks include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks that engage only in one or more of the following activities: Providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

■ 38. Amend § 345.12 as follows:

■ a. Revise the definition of ''*Bank*''.

■ b. Remove the definition of ''[*Operations subsidiary or operating subsidiary*]'' and add in its place the definition of ''*Operating subsidiary*''.

The revision and addition read as follows:

§ 345.12 Definitions.

* * * * *

Bank means a State nonmember bank, as that term is defined in section 3(e)(2) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1813(e)(2)), with Federally insured deposits, except as defined in § 345.11(c)). The term bank also includes an insured State branch as defined in § 345.11(c)).

* * * * *

Operating subsidiary, for purposes of this part, means an operating subsidiary as described in 12 CFR 5.34.

■ 39. Add § 345.31 to read as follows:

§ 345.31 Effect of CRA performance on applications.

(a) CRA performance. Among other factors, the FDIC takes into account the record of performance under the CRA of each applicant bank in considering an application for approval of:

(1) The establishment of a domestic branch or other facility with the ability to accept deposits;

(2) The relocation of the bank's main office or a branch;

(3) The merger, consolidation, acquisition of assets, or assumption of liabilities; and

(4) Deposit insurance for a newly chartered financial institution.

(b) New financial institutions. A newly chartered financial institution shall submit with its application for deposit insurance a description of how it will meet its CRA objectives. The FDIC takes the description into account in considering the application and may deny or condition approval on that basis.

(c) Interested parties. The FDIC takes into account any views expressed by interested parties that are submitted in accordance with the FDIC's procedures set forth in part 303 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) Denial or conditional approval of application. A bank's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

§ 345.42 [Amended]

■ 40. In § 345.42 amend paragraph (i) by removing ''[other Agencies]'' and adding, in its place, the phrase ''Federal Reserve and OCC''.

§ 345.43 [Amended]

■ 41. In § 345.43 amend paragraph (b)(2) by removing ''[operations subsidiaries' or operating subsidiaries']'' and adding ''operating subsidiaries' '' in its place.

§ 345.46 [Amended]

■ 42. In § 345.46 amend paragraph (b) by removing ''[Agency contact information]'' and adding in its place ''at *CRACommentCollector@fdic.gov*''.

■ 43. Revise the heading of Appendix A to read as follows:

Appendix A to Part 345—Calculations for the Retail Lending Test

■ 44. Revise the heading of Appendix B to read as follows:

Appendix B to Part 345—Calculations for the Community Development Tests

■ 45. Revise the heading of Appendix C to read as follows:

Appendix C to Part 345—Performance Test Conclusions

■ 46. Revise the heading of Appendix D to read as follows:

Appendix D to Part 345—Ratings

■ 47. Revise the heading of Appendix E to read as follows:

Appendix E to Part 345—Small Bank Conclusions and Ratings and Intermediate Bank Conclusions

■ 48. Add Appendix F to read as follows:

Appendix F to Part 345—CRA Notice

(a) Notice for main offices and, if an interstate bank, one branch office in each state.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the 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 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 FDIC; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 60 days before the beginning of each calendar quarter, the FDIC publishes a nationwide list of the banks that are scheduled for CRA examination for the next two quarters. This list is available from the Regional Director, FDIC (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and FDIC Regional Director. You may also submit comments electronically through the FDIC's website at *www.fdic.gov/regulations/cra.* Your letter, together with any response by us, will be considered by the FDIC in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the FDIC Regional Director. You may also request from the FDIC Regional Director an announcement of our applications covered by the CRA filed with the FDIC. [We are an affiliate of (name of holding company), a bank 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 bank holding companies.]

(b) *Notice for branch offices.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the 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 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. You may review today the public section of our most recent CRA evaluation, prepared by the FDIC, and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us:

(1) A map showing the assessment area containing this branch, which is the area in which the FDIC evaluates our CRA performance in this community;

(2) Information about our branches in this assessment area;

(3) A list of services we provide at those locations;

(4) Data on our lending performance in this assessment area; and

(5) Copies of all written comments received by us that specifically relate to our CRA performance in this 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.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available at (name of office located in state), located at (address).]

At least 60 days before the beginning of each calendar quarter, the FDIC publishes a nationwide list of the banks that are scheduled for CRA examination for the next two quarters. This list is available from the Regional Director, FDIC (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and the FDIC Regional Director. You may also submit comments electronically through the FDIC's website at *www.fdic.gov/regulations/cra.* Your letter, together with any response by us, will be considered by the FDIC in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the FDIC Regional Director. You may also request from the FDIC Regional Director an announcement of our applications covered by the CRA filed with the FDIC. [We are an affiliate of (name of holding company), a bank 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 bank holding companies.]

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on May 5, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–10111 Filed 6–2–22; 8:45 am]

BILLING CODE 6210–01–P; 6714–01–P; 4810–33–P